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January 23, 2008

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Commonwealth Court of Pennsylvania
Philadelphia Filing Office
990 Widener Building
1339 Chestnut Street
Philadelphia, PA 19107

Re: Manayunk Neighborhood Council v. Zoning Board of Adjustment

Dear Sir or Madam:

Enclosed for filing is an original and two copies of Appellees' Motion to Quash Appeal. Kindly file the original and return a time-stamped copy to me in the self-addressed, stamped envelope I have provided for your convenience.

Very truly yours,



Richard C. DeMarco

RCD:rg

cc: Henry L. Schirmer, Jr., Esquire
Edward Jefferson, Esquire
The Honorable Jane Cutler Greenspan



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C.D.

MANAYUNK NEIGHBORHOOD COUNCIL and KEVIN SMITH

Appellants;

v.

ZONING BOARD OF ADJUSTMENT

And

THE CITY OF PHILADELPHIA

And

RECTOR STREET ASSOCIATES, L.P.

Appellees.

MOTION TO QUASH APPEAL

On Appeal from the Order of Court Entered December 4, 2007 by the Court of Common Pleas of Philadelphia County, Pennsylvania at Docket No. 3448, December Term, 2006

Brett D. Feldman, Esquire (I.D. No. 82689)
Richard C. DeMarco, Esquire (I.D. No. 67676)
Klehr, Harrison, Harvey Branzburg & Ellers, LLP
260 South Broad Street, 4th Floor
Philadelphia PA 19102
(215) 569-1499
(F) (215) 568-6603
Attorney for Appellees

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MANAYUNK NEIGHBORHOOD COUNCIL :
and KEVIN SMITH :

v. :

ZONING BOARD OF ADJUSTMENT, THE :
CITY OF PHILADELPHIA, and RECTOR :
STREET ASSOCIATES, L.P. :

ORDER

And now, this day of , 2008, upon consideration of the Appellees' Motion to Quash Appellants Appeal, and any response thereto, it is hereby ORDERED and DECREED that the Motion is GRANTED, and Appellants' appeal is QUASHED.

BY THE COURT:

J.

Appellees, Rector Street Associates, L.P. (Appellees) hereby file the within Motion to Quash the Appeal of the Appellants Manayunk Neighborhood Council Inc. and Kevin Smith (“Appellants”) due to the fact that their appeal was filed more than 30 days after the Order and Opinion of the Honorable Jane Cutler Greenspan denying their appeal was filed with the Prothonotary and mailed to the parties pursuant to Rule 236(a) of the Pennsylvania Rules of Civil Procedure. Appellees aver in support as follows:

1. On November 30, 2006, Appellant obtained variance relief from the Philadelphia Zoning Board of Adjustment (“Zoning Board”) to construct a residential addition to an existing and obsolete warehouse property in the Manayunk Section of the City. The development was widely supported by the District Councilperson, who is now the current Mayor of Philadelphia, Michael A. Nutter, the Philadelphia Planning Commission, the Philadelphia Preservation Alliance, and the Manayunk Development Corporation. Appellants filed an appeal to the Court of Common Pleas from the decision of the Zoning Board.

2. After briefing and oral argument before the Honorable Jane Cutler Greenspan, of the Court of Common Pleas, Judge Greenspan issued an order and opinion denying the Appellants’ appeal. The Order was filed with the Prothonotary on December 4, 2007, *and the Prothonotary stamped the Order as filed on December 4, 2007*. A copy of the order and cover letter of Judge Greenspan is attached hereto as Exhibit “A”.

3. The Order and Opinion is also stamped with the notation “Copies sent pursuant to Pa.R.C.P. 236(a), December 4, 2007, First Judicial District of PA.” The stamp contains the signature of what appears to be a Court employecc. See Exhibit “A” (top corner).

4. Judge Greenspan also mailed the Order to the parties on December 4, 2007, attaching a cover letter dated December 4, 2007 to the order. See Exhibit “A”.

5. On January 11, 2008, an appeal was filed by the Appellants with the Court of Common Pleas and the Commonwealth Court. The Notice of Appeal claims that the order of Judge Greenspan was docketed on December 12, 2007. A copy of the Notice of Appeal is attached hereto as Exhibit "B".

6. The online dockets and official docket of the First Judicial District reflect that the order was docketed on December 12, 2007, despite the fact that the Judge's Order and Opinion was filed and entered with the Prothonotary, and mailed to the parties on December 4, 2007. However, the online docket entry states: "Order and opinion filed. And now, this 4th day of December 2007, it is hereby ordered that this court affirms the November 30, 2006 decision of the Board. (See Order and Opinion for full terms and conditions)...by the Court: Greenspan, J. 12-4-07." A copy of the online dockets is attached hereto as Exhibit "C".

7. Rule 903(a) of the Pennsylvania Rules of Appellate procedure provides that an Appellant must appeal an order of the lower court "within 30 days after the entry of the order from which the appeal is taken."

8. Rule 108 of the Pennsylvania Rules of Appellate Procedure states as follows:

(a) Except as otherwise prescribed in this rule, in computing any period of time under these rules involving the date of entry of an order by a court or other governmental unit, *the day of entry shall be the day the clerk of the court or the office of the government unit mails or delivers copies of the order to the parties*, or if such delivery is not otherwise required by law, the day the clerk or office of the government unit makes such copies public. The day of entry of an order may be the day of its adoption by the court or other government unit, or any subsequent day, as required by the actual circumstances.

[Emphasis added].

9. The order of Judge Greenspan was required to be mailed to the parties by Pennsylvania Rules of Civil Procedure Rule 236(a). By the clear language of Appellate Rule

108(a)(1), the thirty (30) day appeal period began to run on December 4, 2007: the day the Order was filed with the Prothonotary and the day which the Prothonotary indicated the Order of Judge Greenspan was mailed to the parties.

10. It is clear from the Court documents that a court employee improperly waited 8 days to enter the Judge's order on the online dockets, and erroneously entered as December 12, 2007 the day the order was mailed to the parties. This notation was clearly erroneous, *since the Order itself states that notice to the parties was given on December 4, 2007*, with a signature of an official court employee.

11. Appellants may not claim the additional time to file the appeal to this Court, since the Rules of Appellate Procedure clearly state that the time period for appeal runs on the date the Order is mailed to the parties, and Appellants, who are represented by counsel, were aware of the Rules of Appellate Procedure and aware that the order was mailed and filed on December 4, 2007.

12. Therefore, this Court should quash the appeal of the Appellants as untimely, since the appeal was taken more than thirty days after the Order of Judge Greenspan was filed and mailed to the parties.

WHEREFORE, Appellee Rector Street Associates L.P. requests that this Honorable Court quash the Appellants' appeal for failure to appeal the Order of Judge Greenspan within thirty days pursuant to the Rules of Appellate Procedure.

Respectfully submitted,



Brett D. Feldman, Esquire
Richard C. DeMarco, Esquire
Klehr, Harrison, Harvey, Branzburg &
Ellers, LLP
260 South Broad Street, 4th Floor
Philadelphia, PA 19102
Attorneys for Appellees

A

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS
JUDICIAL CHAMBERS



JANE CUTLER GREENSPAN
JUDGE

December 4, 2007

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Philadelphia, PA 19102

Re: Manayunk Neighborhood Council Inc. et al. v. Zoning Board of Adjustments
December Term, 2006, No. 3448

Dear Counsel:

Enclosed for you is a copy of Judge Greenspan's Opinion filed today.

Yours truly,


Delores Bates
Judicial Secretary

Enclosure
/db

DEC 04 2007

FIRST JUDICIAL DISTRICT OF PA
USER ID: [Signature]

IN THE
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

MANAYUNK NEIGHBORHOOD : COURT OF COMMON PLEAS
COUNCIL, Inc. and KEVIN SMITH : PHILADELPHIA COUNTY

Appellants

v.

ZONING BOARD OF : DECEMBER TERM, 2006
ADJUSTMENT, CITY OF : No.: 3448
PHILADELPHIA, and RECTOR :
STREET ASSOCIATES, L.P. :

Appellees/Intervenors

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ORDER & OPINION

GREENSPAN, J.

DATED: December 4, 2007

Manayunk Neighborhood Council, Inc. and Kevin Smith have appealed from the November 30, 2006, decision of the Philadelphia Zoning Board of Adjustment ("Board") in which the Board granted variances to Rector Street Associates, L.P. to construct a residential addition to an historic industrial warehouse.

The relevant facts are as follows. The building at issue is a warehouse located at 3 Rector Street in the Manayunk section of Philadelphia. (N.T. 10/04/06: 3).¹ 3 Rector Street is an historic structure situated along the river and pedestrian tow path. (N.T. 10/04/06: 4). Originally a mill, the building dates back to the late 1800's. (N.T. 10/04/06: 4, 54). Today, the building is a vacant warehouse with G-2 industrial designation. (N.T. 10/04/06: 5, 39, 44, 75). G-2 industrial zoning prohibits residential

¹ N.T. refers to the notes of testimony from an October 4, 2006, hearing before the City of Philadelphia Zoning Board of Adjustment.

use. While zoned for industrial use, the building housed a plumbing and heating supply business (Labov's) from 1946 to 2001.² (N.T. 10/04/06: 4-5). Due to the combined effects of the inability to compete with large, super-store competitors and the increasing difficulties resulting from the age of the building, mounting maintenance costs and lack of loading areas for customers and deliveries, the failing business vacated the premises in 2001. (N.T. 10/04/06: 4-6, 44). The vacant building was then placed on the real-estate market where, despite the great heights of the economic real estate boom, it remained unsold for several years. (N.T. 10/04/06: 5, 28-29).

The owners of the building were unable to secure a serious purchase offer for the property, which was being sold as is. (N.T. 10/04/06: 5). Several factors contributed to the undesirability of the structure. Significant repairs would have been required in order to operate an industrial or commercial enterprise from 3 Rector Street. Even if the historic building had undergone the necessary repairs, the building still would have been unfit for modern manufacturing as the property lacks a loading dock for deliveries, parking for customers, and room for horizontal expansion. (N.T. 10/04/06: 5-6, 44).

Any debate over the building's fitness for industrial use is irrelevant as, following local and national trends, industry has not returned to Manayunk. (N.T. 10/04/06: 75). The building, and its surrounding neighborhood, is no longer suited for industry. Moreover, the building is ill-suited for a commercial business because the location has no frontage on the main street and substantial renovation would be required for a commercial or retail venture. (N.T. 10/04/06: 8). Finally, the ultimate failure of the prior

² While the Labov family owned the property and originally owned the business, the business was sold in the late 1990's. Under new ownership, the business continued to operate under the Labov family name. The new business owner relocated the business and vacated 3 Rector Street in 2001. (N.T. 10/04/06: 4-5).

commercial plumbing business further demonstrates the lack of commercial feasibility at 3 Rector Street. (N.T. 10/04/06: 5).

Under Pennsylvania law, a reviewing court must affirm an adjudication by the Board unless it finds that the adjudication is in violation of the constitutional rights of the appellant, is not in accordance with law, that statutory provisions were violated in agency proceedings, or that any finding of fact made by the agency and necessary to support its adjudication was not supported by substantial evidence. 2 Pa.C.S. § 754(b). Substantial evidence has been defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Valley View Civic Association v. Zoning Bd. of Adjustment, 462 A.2d 637, 640 (Pa. 1983); Direnzo Coal Co. v. Dep’t of General Services, 825 A.2d 773, 775 (Pa. Cmwlth. 2003).

Under Philadelphia Code §14-1802, the criteria for granting variances include a determination that a literal enforcement of the provisions would result in unnecessary hardship and that the grant of the variance would not adversely affect public health, safety or general welfare. Unnecessary hardship is found where the “physical features of the property are such that it cannot be used for a permitted purpose or that the property can be conformed for a permitted use only at a prohibitive expense.” Allegheny West Civic Council v. ZBA, City of Pittsburgh, 689 A.2d 225, 227 (Pa. 1997). To meet the hardship standard, there are multiple factors relevant for consideration, such as the prohibitive expense of developing the property without a variance, the surrounding neighborhood, the length of vacancy and condition of disrepair, and the economic feasibility of converting the property without a variance. Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh, 721 A.2d 43, 49 (Pa. 1998). An applicant is not

required to prove that a property is valueless without a variance in order to prove unnecessary hardship. Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh, 721 A.2d 43, 48 (Pa. 1998). Nor is it mandatory for an applicant to prove that it would be impossible to develop a property in conformity with the applicable zoning ordinance in order to prove unnecessary hardship. Talkish v. Zoning Hearing Bd. of Harborcreek Twp., 738 A.2d 50, 52 (1999). Hardship can be established where the applicant demonstrates that the property has no value or distressed value if used only for one of the permitted purposes. Eighteenth & Rittenhouse Assoc. v. Zoning Bd. of Adjustment, 26 Pa. Cmwlth. 554, 557, 364 A.2d 973, 976 (1976).

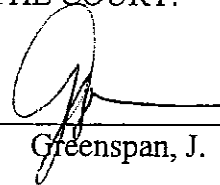
Here, the physical features of the property, namely its state of disrepair, large size, historical significance, lack of loading area, lack of parking and location are such that the warehouse cannot be used for a permitted G-2 purpose without unnecessary hardship. The facility at 3 Rector Street could conform to G-2 permitted uses, but only at a prohibitive cost as conformity would require extensive renovation. Conformity would also require substantial investment in industry or business while local economic trends indicate that such permitted G-2 uses are no longer viable ventures in Manayunk. Moreover, to wait until a buyer for such a limited G-2 use appears would leave this property vacant and hence subject to the many ills that befall vacant properties. Clearly the neighborhood and community would suffer in such an event.

At the hearing below, the property owners established unnecessary hardship by presenting substantial evidence to the Board. Only after consideration of the substantial evidence, the Board granted the variances. The Board recognized that the "as is" sale of the structure presented unnecessary hardship and that the Manayunk neighborhood trend

was against demolition and toward preservation of otherwise unusable historic sites by conversion to residential uses. As such, the Board granted variances allowing for a conversion from G-2 industrial use to residential use.³ The Board's findings of unnecessary hardship were supported by substantial evidence. As such, the adjudication of the Board is affirmed.

For the foregoing reasons, this Court affirms the November 30, 2006, decision of the Board.

BY THE COURT:



Greenspan, J.

³ Appellants argue that appellees failed to obtain a height variance, however, appellants waived this issue when they did not make this argument before the Board. Issues that are not raised at the board level are waived and may not be addressed on appeal. Sherwood v. Elgart, 383 Pa. 110, 115, 117 A.2d 899, 901 (1955); Myers v. State College Zoning Hearing Board, 108 Pa.Cmwlth. 624, 627, 530 A.2d 526, 527 (1987). In any event, given the fact that the appellees requested that the Board grant "any other variances, use certificates or special use permits that are necessary," in their original variance application, the claim is meritless; the term "any other variance" necessary includes a height variance.

CERTIFICATE OF SERVICE

I, Delores Bates, hereby certify that a true and correct copy of the foregoing order/verdict/or opinion was served on the below listed parties in the manner indicated below in accordance with the Rules of Civil Procedure.

Re: Manayunk Neighborhood Council Inc et al. v. Zoning Board of Adjustments
December Term, 2006, No. 3448

Counsel/Party: Henry L. Schirmer, Esquire
315 North Main Street
P. O. Box 247
Telford, PA 18969

Type of Service: Personal First Class Mail Other _____

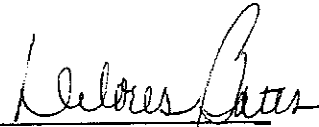
Counsel/Party: Cheryl L. Gaston, Esquire
City of Philadelphia Law Dept.
1515 Arch Street, 16th Floor
Philadelphia, PA 19102

Type of Service: Personal First Class Mail Other _____

Counsel/Party: Richard C. DeMarco, Esquire
Klehr, Harrison, Harvey, Branzburg & Fullers
260 South Broad Street
Philadelphia, PA 19102

Type of Service: Personal First Class Mail Other _____

Dated: December 4, 2007


Delores Bates
Judicial Secretary

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LAW OFFICE OF HENRY L SCHIRMER JR., ESQ.
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TELFORD, PA 18969
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January 11, 2008

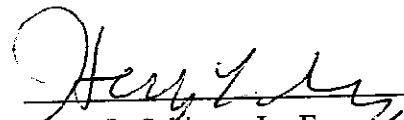
Richard C. DeMarco Esquire
Klehr, Harvey, Harrison, Bransburg & Ellers
260 South Broad Street
Philadelphia PA, 19102

**RE: Manayunk Neighborhood Council et al. v.
Zoning Board of Adjustment
Court of Common Pleas, Philadelphia County
December Term, 2006, Docket No 03448**

Dear, Mr. DeMarco

Please find enclosed a notice of appeal for the above referenced case.

Respectfully submitted,


Henry L. Schirmer Jr., Esq.

COPY

THE LAW OFFICE OF HENRY L SCHIRMER JR.
Henry L. Schirmer Jr. (No. 92090)
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Telford, PA 18969
215-530-87274

APPELLANTS RECEIVED
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Attorney for Appellants
Manayunk Neighborhood
Council and Kevin Smith
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**COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY**

COMMONWEALTH COURT

MANAYUNK NEIGHBORHOOD COUCLIL et al. :
Appellants, :

Civil Action No. 061203448

v.

December Term, 2006,
No. 03448

PHILADELPHIA ZONING BOARD
OF ADJUSTMENT, et al, :
Appellees. :

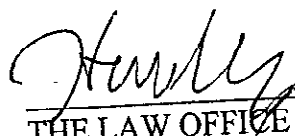
COMMONWEALTH COURT

NOTICE OF APPEAL

Notice is hereby given that Manayunk Neighborhood Council Inc. and Kevin Smith, appellants above named, hereby appeal to the Commonwealth Court of Pennsylvania from the order docketed on the 12th Day of December, 2007. This order has been entered in the docket. A copy of the order is attached.

Dated January 11, 2008

BY



THE LAW OFFICE OF
HENRY L SCHIRMER, ESQUIRE
Henry L. Schirmer. (Pa. Bar ID No: 920902)
315 North Main Street
Telford, PA 18969
215-530-87274

*Attorney for Appellants Manayunk
Neighborhood Council Inc. and
Kevin Smith*

DEC 04 2007

IN THE
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

FIRST JUDICIAL DISTRICT OF PA
US 1111

MANAYUNK NEIGHBORHOOD
COUNCIL, Inc. and KEVIN SMITH

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

Appellants

v.

ZONING BOARD OF
ADJUSTMENT, CITY OF
PHILADELPHIA, and RECTOR
STREET ASSOCIATES, L.P.

Appellees/Intervenors

DECEMBER TERM, 2006
No.: 3448

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PRO PROTHY

ORDER & OPINION

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DATED: December 4, 2007

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The owners of the building were unable to secure a serious purchase offer for the property, which was being sold as is. (N.T. 10/04/06: 5). Several factors contributed to the undesirability of the structure. Significant repairs would have been required in order to operate an industrial or commercial enterprise from 3 Rector Street. Even if the historic building had undergone the necessary repairs, the building still would have been unfit for modern manufacturing as the property lacks a loading dock for deliveries, parking for customers, and room for horizontal expansion. (N.T. 10/04/06: 5-6, 44).

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commercial plumbing business further demonstrates the lack of commercial feasibility at 3 Rector Street. (N.T. 10/04/06: 5).

Under Pennsylvania law, a reviewing court must affirm an adjudication by the Board unless it finds that the adjudication is in violation of the constitutional rights of the appellant, is not in accordance with law, that statutory provisions were violated in agency proceedings, or that any finding of fact made by the agency and necessary to support its adjudication was not supported by substantial evidence. 2 Pa.C.S. § 754(b). Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Valley View Civic Association v. Zoning Bd. of Adjustment, 462 A.2d 637, 640 (Pa. 1983); Direnzo Coal Co. v. Dep't of General Services, 825 A.2d 773, 775 (Pa. Cmwlth. 2003).

Under Philadelphia Code §14-1802, the criteria for granting variances include a determination that a literal enforcement of the provisions would result in unnecessary hardship and that the grant of the variance would not adversely affect public health, safety or general welfare. Unnecessary hardship is found where the "physical features of the property are such that it cannot be used for a permitted purpose or that the property can be conformed for a permitted use only at a prohibitive expense." Allegheny West Civic Council v. ZBA, City of Pittsburgh, 689 A.2d 225, 227 (Pa. 1997). To meet the hardship standard, there are multiple factors relevant for consideration, such as the prohibitive expense of developing the property without a variance, the surrounding neighborhood, the length of vacancy and condition of disrepair, and the economic feasibility of converting the property without a variance. Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh, 721 A.2d 43, 49 (Pa. 1998). An applicant is not

required to prove that a property is valueless without a variance in order to prove unnecessary hardship. Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh, 721 A.2d 43, 48 (Pa. 1998). Nor is it mandatory for an applicant to prove that it would be impossible to develop a property in conformity with the applicable zoning ordinance in order to prove unnecessary hardship. Talkish v. Zoning Hearing Bd. of Harborcreek Twp., 738 A.2d 50, 52 (1999). Hardship can be established where the applicant demonstrates that the property has no value or distressed value if used only for one of the permitted purposes. Eighteenth & Rittenhouse Assoc. v. Zoning Bd. of Adjustment, 26 Pa. Cmwlth. 554, 557, 364 A.2d 973, 976 (1976).

Here, the physical features of the property, namely its state of disrepair, large size, historical significance, lack of loading area, lack of parking and location are such that the warehouse cannot be used for a permitted G-2 purpose without unnecessary hardship. The facility at 3 Rector Street could conform to G-2 permitted uses, but only at a prohibitive cost as conformity would require extensive renovation. Conformity would also require substantial investment in industry or business while local economic trends indicate that such permitted G-2 uses are no longer viable ventures in Manayunk. Moreover, to wait until a buyer for such a limited G-2 use appears would leave this property vacant and hence subject to the many ills that befall vacant properties. Clearly the neighborhood and community would suffer in such an event.

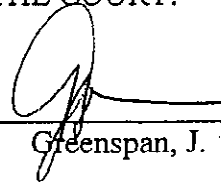
At the hearing below, the property owners established unnecessary hardship by presenting substantial evidence to the Board. Only after consideration of the substantial evidence, the Board granted the variances. The Board recognized that the "as is" sale of the structure presented unnecessary hardship and that the Manayunk neighborhood trend

was against demolition and toward preservation of otherwise unusable historic sites by conversion to residential uses. As such, the Board granted variances allowing for a conversion from G-2 industrial use to residential use.³ The Board's findings of unnecessary hardship were supported by substantial evidence. As such, the adjudication of the Board is affirmed.

For the foregoing reasons, this Court affirms the November 30, 2006, decision of the Board.

Barry J. Greenspan
Judge
P. O. Box 200
Philadelphia, PA 19101

BY THE COURT:



Greenspan, J.

Service: Personal First Class Mail

City: Philadelphia, PA
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1515 Arch Street, 15th Floor
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City: Philadelphia, PA
Richard A. Klehr, Esq.
Klehr, Harrison, & Associates
260 South 4th Street
Philadelphia, PA 19106

Service: Personal First Class Mail

December 4, 2007

³ Appellants argue that appellees failed to obtain a height variance, however, appellants waived this issue when they did not make this argument before the Board. Issues that are not raised at the board level are waived and may not be addressed on appeal. Sherwood v. Elgart, 383 Pa. 110, 115, 117 A.2d 899, 901 (1955); Myers v. State College Zoning Hearing Board, 108 Pa.Cmwlth. 624, 627, 530 A.2d 526, 527 (1987). In any event, given the fact that the appellees requested that the Board grant "any other variances, use certificates or special use permits that are necessary," in their original variance application, the claim is meritless; the term "any other variance" necessary includes a height variance.

THE LAW OFFICE OF HENRY L SCHIRMER JR.
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315 North Main Street
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215-530-87274

Attorney for Appellants

**COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY**

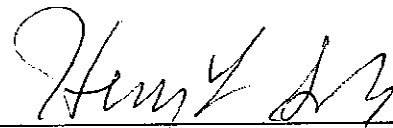
MANAYUNK NEIGHBORHOOD COUCIL et al.	:	
Appellants,	:	Civil Action No. 061203448
	:	
v.	:	
	:	December Term, 2006,
PHILADELPHIA ZONING BOARD	:	No. 03448
OF ADJUSTMENT, et al,	:	
Appellees.	:	

Pa.R.A.P. 1911(a) REQUEST FOR TRANSCRIPT

A notice of appeal having been filed in this matter, the official court reporter, Edna M. Donovan, is hereby ordered to produce, certify and file a transcript in this matter in conformity with Rules 1911 and 1922 of the Pennsylvania Rules of Appellate Procedure

Dated January 11, 2008

BY



THE LAW OFFICE OF
HENRY L SCHIRMER, ESQUIRE
Henry L. Schirmer. (Pa. Bar ID No. 920902)
315 North Main Street
Telford, PA 18969
215-530-87274

*Attorney for Appellants Manayunk
Neighborhood Council Inc. and
Kevin Smith*

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January 2008, I cause a true and accurate copy of the foregoing Notice of Appeal and Request for Transcript to be served by first class mail, postage prepaid on the following persons:


Cheryl L. Gaston, Esquire
City of Philadelphia Law Dept.
1515 Arch St 16th Floor
Philadelphia PA 19102

Edna M. Donovan
Official Court Reporter
Land Title Building
100 South Broad Street
Philadelphia, PA 19110

Richard C. DeMarco Esquire
Klehr, Harrison, Harvey,
Branbug & Fullers
260 South Broad Street
Philadelphia PA, 19102

Commonwealth Court
100 South Broad Street
2nd Floor (Appeals)
Philadelphia, PA 19107

The Honorable Jane C. Greenspan
Philadelphia Court of Common Pleas
1206 Criminal Justice Center
1301 Filbert Street
Philadelphia, PA 19107



Henry L. Schirmer Jr. Esq.

C

Civil Docket Report

Case Description

Case ID: 061203448
Case Caption: MANAYUNK NEIGHBORHOOD COUNCIL INC ETAL VS ZBA
Filing Date: Thursday , December 28th, 2006
Court: SA - AGENCY APPEAL
Location: CH - City Hall
Jury: N - NON JURY
Case Type: 5Z - ZONING BOARD OF ADJUSTMENTS
Status: ORDRF - ORDER ENTERED - FINAL DISPOS

Related Cases

No related cases were found.

Case Event Schedule

No case events were found.

Case Parties

Seq #	Assoc	Expn Date	Type	ID	Name
1			ATTORNEY FOR APPELLANT	A92090	SCHIRMER JR, HENRY L
Address:	315 NORTH MAIN STREET PO BOX 247 TELFORD PA 18969 (215)530-		Aliases:	none	
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Address:	293 HERMITAGE ST PHILADELPHIA PA 19127		Aliases:	none	

3	1		APPELLANT	@5620310	SMITH, KEVIN
Address:	293 HERMITAGE ST PHILADELPHIA PA 19127		Aliases:	none	
4	8		APPELLEE	14916	ZONING BOARD OF ADJUSTMENT
Address:	MSB 1401 JFK BLVD PHILADELPHIA PA 19103		Aliases:	none	
5			APPELLEE	@5620312	RECTOR STREET ASSOCIATES LP
Address:	230 S BROAD ST PHILADELPHIA PA 19102		Aliases:	none	
6		12-SEP- 2007	TEAM LEADER	J370	GLAZER, GARY S
Address:	469 CITY HALL PHILADELPHIA PA 19107 (215)686-9540		Aliases:	none	
7	8		APPELLEE	11000	CITY OF PHILADELPHIA
Address:	C/O LAW DEPARTMENT 1515 ARCH ST ONE PARKWAY PHILADELPHIA PA 19102-1595		Aliases:	none	
8			ATTORNEY FOR APPELLEE	A51192	GASTON, CHERYL L
Address:	CITY OF PHILA LAW DEPT		Aliases:	none	

	1515 ARCH STREET, 16TH FLOOR PHILADELPHIA PA 19102 (215)683-5105				
9	5		ATTORNEY FOR DEFENDANT	A67676	DEMARCO, RICHARD C
Address:	KLEHR, HARRISON, HARVEY, BRANZBURG & FULLERS 260 SOUTH BROAD STREET PHILADELPHIA PA 19102 (215)568-6060		Aliases:	none	
10			TEAM LEADER	J330	GREENSPAN, JANE C
Address:	1206 CRIMINAL JUSTICE CENTER 1301 FILBERT STREET PHILADELPHIA PA 19107 (215)683-7035		Aliases:	none	

Docket Entries

Filing Date/Time	Docket Type	Filing Party	Disposition Amount
28-DEC-2006 03:01 PM	ACTIV - ACTIVE CASE		
Docket Entry:	none.		
28-DEC-2006 03:07 PM	CMOIS - CASE MANAGEMENT ORDER ISSUED	SCHIRMER JR, HENRY L	

Docket Entry:	<i>none.</i>		
28-DEC-2006 03:07 PM	STAPP - NOTICE OF STATUTORY APPEAL	SCHIRMER JR, HENRY L	
Docket Entry:	APPEAL FROM THE ADJUDICATION OF THE ZONING BOARD OF ADJUSTMENT MADE ON 30-NOV-2006.		
02-JAN-2007 10:52 AM	CLWSO - WAITING/ISSUE SCHEDULING ORDER		
Docket Entry:	<i>none.</i>		
03-JAN-2007 03:41 PM	SASOI - SCHEDULING ORDER ISSUED		
Docket Entry:	<p>It is hereby ORDERED as follows: 1. Record: The Agency listed above is ORDERED to file its record with the Office of the Prothonotary, 2nd Filing Unit, Room 278, City Hall by 02-APR-2007 or risk sanctions. 2. Motions for Extraordinary Relief: From the dates set forth below in this Order should be filed with Motions Court (Room 296 City Hall) not later than 07-MAY-2007 any request for continuance should also be filed as a Motion for Extraordinary Relief. 3. Briefs: Appellant's brief is due by 07-MAY-2007. Appellee's brief is due by 04-JUN-2007. Briefs are to be filed with the Office of Civil Administration, Attn: Debbie Dailey, Room 296, City Hall, and served upon all opponents. 4. Oral Argument: On the legal merits of this appeal will take place anytime after 02-JUL-2007. Notice of the scheduled date, time and location will be sent to all interested parties at least fifteen (15) days prior to the scheduled event. Questions concerning this Order and its contents shall be referred to Ellen Glass, Esquire, Program Coordinator, in writing via facsimile at 216-686-9566. GARY GLAZER, J. 03-JAN-2007</p>		
03-JAN-2007 03:41 PM	CLLOR - LISTED FOR ORAL ARGUMENTS		
Docket Entry:	<i>none.</i>		
05-JAN-2007 10:15 AM	ENAPP - ENTRY OF APPEARANCE FILED	GASTON, CHERYL L	
Docket	ENTRY OF APPEARANCE OF CHERYL GASTON FILED ON BEHALF		

Entry:	OF APPELLEES ZONING BOARD OF ADJUSTMENT & CITY OF PHILA.		
17-JAN-2007 03:57 PM	PRINV - PRAECIPE TO INTERVENE	DEMARCO, RICHARD C	
Docket Entry:	PRAECIPE TO INTERVENE AND ENTRY OF APPERANCE OF RICHARD DEMARCO ESQ ON BEHALF OF AJPPELLEES INTERVENORS RECTOR STREET ASSOCIATES LP FILED.		
17-APR-2007 03:19 PM	MTEXR - MOT-FOR EXTRAORDINARY RELIEF	MANAYUNK NEIGHBORHOOD COUNCIL INC,	
Docket Entry:	38-07041438 MOTION FOR X-RELIEF FILED.		
19-APR-2007 03:20 PM	MTASN - MOTION ASSIGNED		
Docket Entry:	38-07041438 MOTION FOR EXTRAORDINARY RELIEF ASSIGNED TO JUDGE GLAZER ON 4-20-07.		
23-APR-2007 03:02 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	GLAZER, GARY S	
Docket Entry:	38-07041438 AND NOW, THIS 20TH DAY OF APRIL, 2007, UPON REVIEW OF MOVANT'S MOTION FOR EXTRAORDINARY RELIEF AND ANY RESPONSE THERETO, IT IS HEREBY ORDERED THAT MOVANTS' MOTION FOR EXTRAORDINARY RELIEF IS GRANTED: AN EXTENSION OF THREE MONTHS IS GRANTED. NEW SCHEDULING ORDER TO ISSUE FORTHWITH. ...BY THE COURT: GLAZER, J. 4-20-07		
23-APR-2007 03:07 PM	RVCMO - REVISED CASE MGMT ORDER ISSUED		
Docket Entry:	It is hereby ORDERED as follows: 1. Record: The Agency listed above is ORDERED to file its record with the Office of the Prothonotary, 2nd Filing Unit, Room 278, City Hall by 02-JUL-2007 or risk sanctions. 2. Motions for Extraordinary Relief: From the dates set forth below in this Order should be filed with Motions Court (Room 296 City Hall) not later than 06-AUG-2007 any request for continuance should also be filed as a Motion for Extraordinary Relief. 3. Briefs: Appellant's brief is due by 06-AUG-2007. Appellee's brief is due by 03-SEP-2007. Briefs are to be filed with the Office of Civil Administration, Attn: Debbie Dailey, Room 296, City Hall, and		

	served upon all opponents. 4. Oral Argument: On the legal merits of this appeal will take place anytime after 01-OCT-2007. Notice of the scheduled date, time and location will be sent to all interested parties at least fifteen (15) days prior to the scheduled event. Questions concerning this Order and its contents shall be referred to Ellen Glass, Esquire, Program Coordinator, in writing via facsimile at 216-686-9566. GARY GLAZER, J. 23-APR-2007		
23-APR-2007 03:15 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	GLAZER, GARY S	
Docket Entry:	38-07041438 AND NOW, THIS 20TH DAY OF APRIL, 2007, UPON REVIEW OF MOVANTS' REQUEST FOR A STAY AND ANY RESPONSE THERETO, IT IS HEREBY ORDERED THAT MOVANTS' REQUEST FOR A STAY IS DENIED. ...BY THE COURT: GLAZER, J. 4-20-07		
27-APR-2007 07:39 AM	MTANS - ANSWER (MOTION/PETITION) FILED	RECTOR STREET ASSOCIATES LP,	
Docket Entry:	38-07041438 ANS FILED TO MOTION FOR X-ORDINARY RELIEF.		
30-APR-2007 10:01 AM	CRTRR - CERTIFIED RECORD RECEIVED	ZONING BOARD OF ADJUSTMENT,	
Docket Entry:	CERTIFIED RECORD WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW, FILED.		
08-AUG-2007 03:56 PM	BRIEF - BRIEF FILED		
Docket Entry:	APPELANTS BRIEF IN SUPPORT OF THEIR APPEAL FILED.		
05-SEP-2007 07:22 AM	BRIEF - BRIEF FILED	RECTOR STREET ASSOCIATES LP,	
Docket Entry:	BRIEF FILED.		
12-SEP-2007 03:04 PM	CLADS - ARGUMENT DATE SET		

Docket Entry:	<i>none.</i>		
12-SEP-2007 03:58 PM	CLLOR - LISTED FOR ORAL ARGUMENTS		
Docket Entry:	<i>none.</i>		
14-SEP-2007 12:01 AM	CLNGV - NOTICE GIVEN		
Docket Entry:	<i>none.</i>		
12-DEC-2007 02:31 PM	ORDRF - ORDER ENTERED - FINAL DISPOS	GREENSPAN, JANE C	
Docket Entry:	ORDER AND OPINION FILED. AND NOW, THIS 4TH DAY OF DECEMBER, 2007, IT IS HEREBY ORDERED THAT THIS COURT AFFIRMS THE NOVEMBER 30, 2006, DECISION OF THE BOARD. (SEE ORDER AND OPINION FOR FULL TERMS AND CONDITIONS) ...BY THE COURT: GREENSPAN, J. 12-4-07		
12-DEC-2007 02:31 PM	ZR236 - NOTICE GIVEN UNDER RULE 236		
Docket Entry:	<i>none.</i>		
11-JAN-2008 02:58 PM	APCOM - APPEAL TO COMMONWEALTH COURT	SCHIRMER JR, HENRY L	
Docket Entry:	*****NOTICE IS HEREBY GIVEN THAT APPELLENTS MANAYUNK NEIGHBORHOOD COUNCIL INC AND KEVIN SMITH APPEALS FROM THE ORDER DATED 12-4-07 AND DOCKETED ON 12-12-07 BY JUDGE GREENSPAN.ORDER FOR TRANSCRIPT FILED. PROOF OF SERVICE FILED.*****		

CERTIFICATION OF SERVICE

I, Richard DeMarco, hereby certify that on January 23, 2008, a copy of the foregoing Motion to Quash was served via first class mail upon the following individuals:

Henry L. Schirmer, Jr., Esquire
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Acting Attorney for Zoning Board of Adjustment and City of Philadelphia

The Honorable Jane Cutler Greenspan
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