

# EMAN Zoning Committee Variance Review

## Review Key Documents

- Zoning District Map
- L&I Refusal
- Application for Appeal
- Project Architectural Plans and Renderings
- Philadelphia Zoning Code
- ZBA Variance Approval Criteria

## Assist Applicant and Neighbors to:

- Understand Zoning Code and Variance Approval Process
- Provide Neighbors with clear understanding of the intended project and L&I's basis for refusal
- Identify Questions and Issues that need to be addressed

City of Philadelphia Atlas  
Department of Licenses and Inspections  
CITY OF PHILADELPHIA

405 E Mt Airy Ave

City of Philadelphia Zoning Board of Adjustment

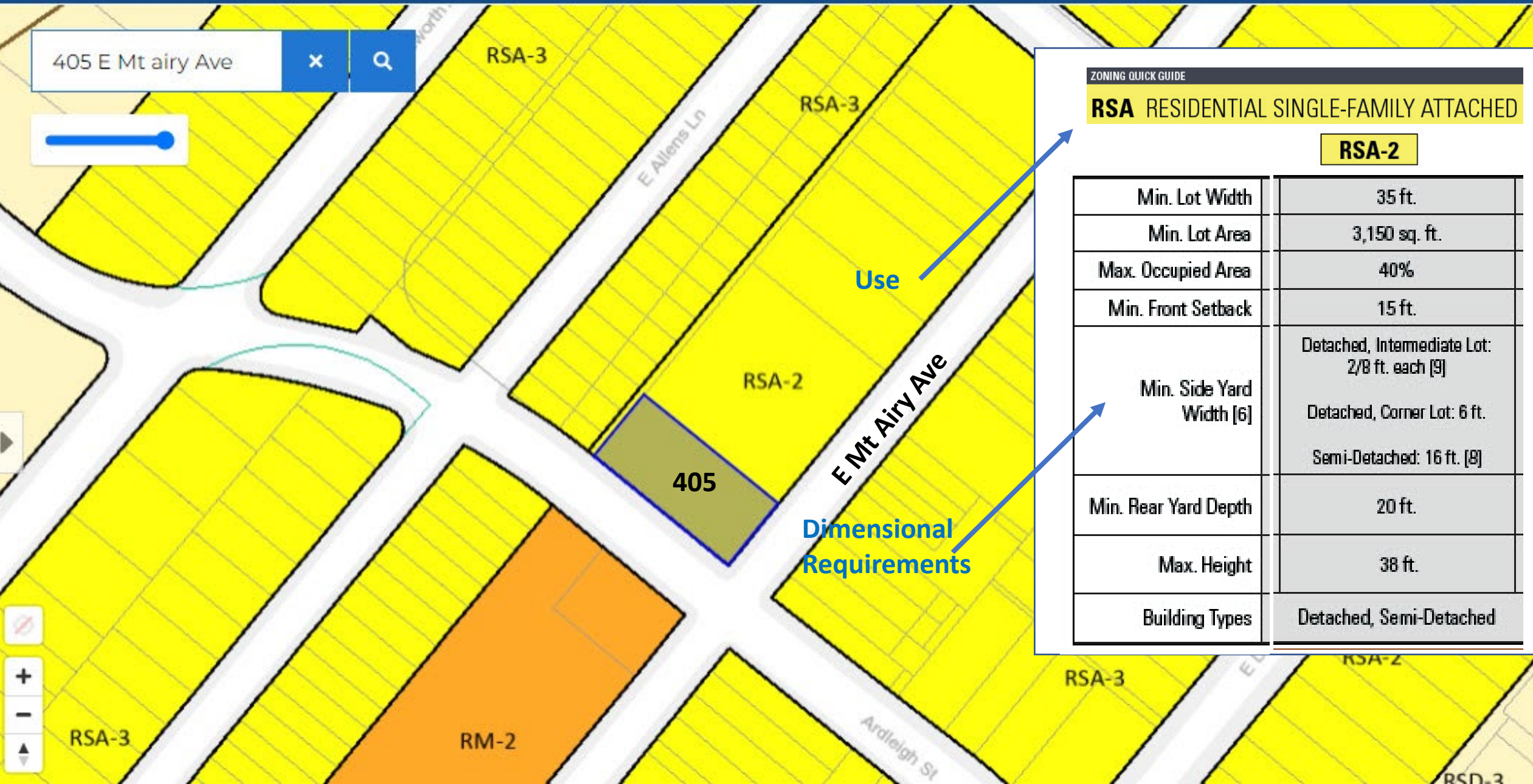
WHEN COMPLETED, MAIL TO:  
CITY OF PHILADELPHIA  
Development  
Engineering  
Room

**THE PHILADELPHIA CODE**

ZBA Variance Review Criteria - Philadelphia Code: §14-303(8)(e)  
EMAN Zoning Committee Variance Review

Project: _____	
(1) General Criteria.	
... The Zoning Board shall grant a variance only if it finds each of the following criteria are satisfied:	
(1)(a)	Denial would result in an unnecessary hardship. The applicant shall demonstrate that the unnecessary hardship was not created by the applicant and that the criteria set forth in § 14-303(8)(e)(2) (Use Variances) below, in the case of use variances, or the criteria set forth in § 14-303(8)(e)(3) (Dimensional Variances) below, in the case of dimensional variances, have been satisfied;
(1)(b)	The variance, whether use or dimensional, if authorized will represent the minimum variance that will afford relief and will represent the least modification possible of the use or dimensional regulation in issue
(1)(c)	The grant of the variance will be in harmony with the purpose and spirit of this Zoning Code
(1)(d)	The grant of the variance will not substantially increase congestion in the public streets, increase the danger of fire, or otherwise endanger the public health, safety, or general welfare
(1)(e)	The variance will not substantially or permanently injure the appropriate use of adjacent conforming property or impair an adequate supply of light and air to adjacent conforming property
(1)(f)	The grant of the variance will not adversely affect transportation or unduly burden water, sewer, school, park, or other public facilities
(1)(g)	The grant of the variance will not adversely and substantially affect the implementation of any adopted plan for the area where the property is located
(1)(h)	The grant of the variance will not create any significant environmental damage, pollution, erosion, or siltation, and will not significantly increase the danger of flooding either during or after construction, and the applicant will take measures to minimize environmental damage during any construction
(2) Use Variances.	
To find an unnecessary hardship in the case of a use variance, the Zoning Board must make all of the following findings:	
(a)	That there are unique physical circumstances or conditions (such as irregularity, narrowness,

405 E Mt Airy Ave



Use

Dimensional Requirements

ZONING QUICK GUIDE

**RSA RESIDENTIAL SINGLE-FAMILY ATTACHED**

**RSA-2**

Min. Lot Width	35 ft.
Min. Lot Area	3,150 sq. ft.
Max. Occupied Area	40%
Min. Front Setback	15 ft.
Min. Side Yard Width [6]	Detached, Intermediate Lot: 2/8 ft. each [9] Detached, Corner Lot: 6 ft. Semi-Detached: 16 ft. [8]
Min. Rear Yard Depth	20 ft.
Max. Height	38 ft.
Building Types	Detached, Semi-Detached



**Ardleigh St & E Mt Airy Ave**

**Looking North**

**Ardleigh St & E Mt Airy Ave**

**Looking South**



House

Garage

405 E Mt Airy Ave

Ardleigh St

4/21/2018

405 E Mt Airy Ave

# View of Garage From Ardleigh St





Existing

View from Ardleigh St

Proposed



2 Garage Elev - West  
1/4" = 1'-0"

# L&I's Notice of Refusal

## 405 E Mt Airy Ave Zoning Use Permit Request

Application for:

Refusals:

Notice of:  Refusal  Referral

Application Number: ZP-2022-009578	Zoning District(s): RSA-2 with Overlay /EDO Eighth District Overlay District	Date of Refusal: 9/15/2022
Address/Location: 405 E MOUNT AIRY AVE, Philadelphia, PA 19110-1143 Parcel (PWD Record)		Page Number Page 1 of 1
Applicant Name: LC Architecture LLC DBA: Living City Architecture	Applicant Address: 500 W Office Center Dr Suite 400 Dresher, PA 19034 USA	

Application for:

FOR THE ERECTION OF AN ADDITION ABOVE AN EXISTING DETACHED GARAGE STRUCTURE. FOR THE RESULTING CREATION OF TWO PRINCIPAL STRUCTURES. FOR SINGLE FAMILY HOUSEHOLD LIVING. NO CHANGES TO THE EXISTING PRINCIPAL DETACHED STRUCTURE. NO CHANGES TO EXISTING PARKING. SIZE AND LOCATION AS SHOWN ON APPLICATION/PLAN.

The permit for the above location cannot be issued because the proposal does not comply with the following provisions of the Philadelphia Zoning Code. (Codes can be accessed at [www.phila.gov](http://www.phila.gov).)

Code Section(s):	Code Section Title(s):	Reason for Refusal:						
Section 14-401(4)(b)	Multiple Principal Uses and Buildings	Whereas no more than one principal building is allowed per lot in the RSA-2 Zoning District, but two are proposed.						
Table 14-701-1	Dimensional Standards for Lower Density Residential Districts (RSA-2)	<table border="1"><thead><tr><th colspan="2">Rear Yard Depth</th></tr><tr><th>Required</th><th>Provided</th></tr></thead><tbody><tr><td>20 ft</td><td>0 ft</td></tr></tbody></table>	Rear Yard Depth		Required	Provided	20 ft	0 ft
Rear Yard Depth								
Required	Provided							
20 ft	0 ft							

ONE (1) USE REFUSAL

ONE (1) ZONING REFUSAL

Fee to File Appeal: \$125

**NOTES TO THE ZBA:**

See AP # 44566-B, CAL # K-2683, Zoning Board of Adjustment refused Two-Family Household Living on 1-5-1952.

See AP # 85256-B, CAL # N-1322, Zoning Board of Adjustment refused Two-Family Household Living on 10-19-1954.

The 14 ft. driveway at the rear of the lot, half of which is contained on the property, is not mentioned in the most recent deed, however, the driveway is mentioned in the deeds of several other properties on the block and is stated to extend from Anderson St. to Ardleigh St.

Parcel Owner:

LISACHENKO BOGDAN, YANNESSA ANGELA

 Willow Jessop PLANS EXAMINER	9/15/2022 DATE SIGNED
--	--------------------------

**Notice to Applicant:** An appeal from this decision may be made to the Zoning Board of Adjustment, One Parkway Building, 1515 Arch St., 18<sup>th</sup> Fl., Phila., PA 19102 within thirty (30) days of date of Refusal / Referral. Please see appeal instructions for more information.



**Notice of:**

**Refusal**

**Referral**

**Application Number:**  
*ZP-2022-009578*

**Zoning District(s):**  
*RSA-2 with Overlay /EDO Eighth District Overlay District*

**Date of Refusal:**  
*9/15/2022*

**Address/Location:**  
*405 E MOUNT AIRY AVE, Philadelphia, PA 19119-1143*  
*Parcel (PWD Record)*

**Page Number**  
Page 1 of 1

**Applicant Name:**  
*LC Architecture LLC DBA: Living  
City Architecture*

**Applicant Address:**  
*500 W Office Center Dr  
Suite 400  
Dresher, PA 19034  
USA*

**Application for:**

**FOR THE ERECTION OF AN ADDITION ABOVE AN EXISTING DETACHED GARAGE STRUCTURE. FOR THE RESULTING CREATION OF TWO PRINCIPAL STRUCTURES. FOR SINGLE FAMILY HOUSEHOLD LIVING. NO CHANGES TO THE EXISTING PRINCIPAL DETACHED STRUCTURE. NO CHANGES TO EXISTING PARKING. SIZE AND LOCATION AS SHOWN ON APPLICATION/PLAN.**



# L&I Refusals

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ONE (1) USE REFUSAL

ONE (1) ZONING REFUSAL

**Refusal 1:** Multiple Principal Uses and Buildings

**Refusal 2:** Dimension Standards for RSA-2 District

## L&I Refusals

The permit for the above location cannot be issued because the proposal does not comply with the following provisions of the Philadelphia Zoning Code. (Codes can be accessed at [www.phila.gov](http://www.phila.gov).)

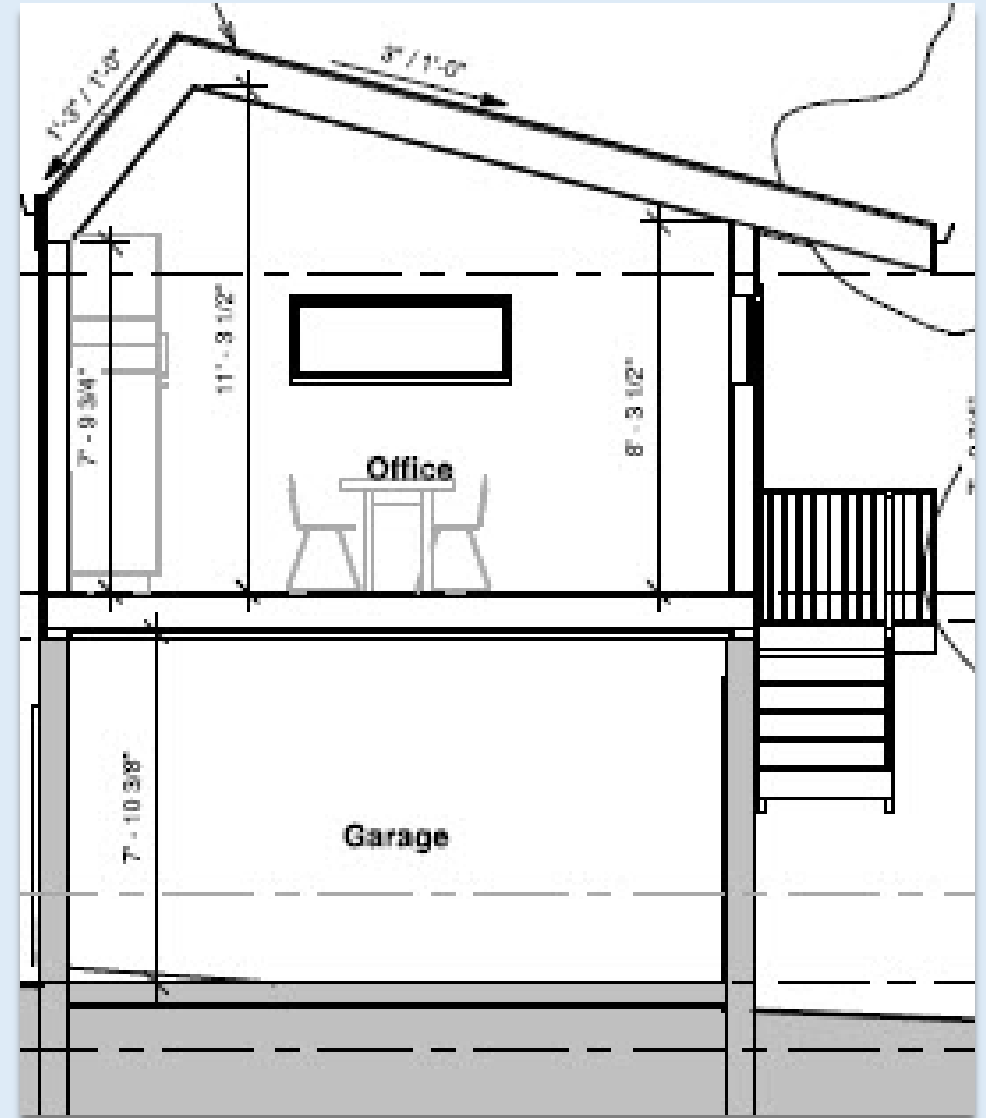
<u>Code Section(s):</u>	<u>Code Section Title(s):</u>	<u>Reason for Refusal:</u>						
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Table 14-701-1	Dimensional Standards for Lower Density Residential Districts (RSA-2) <i>Dimensional setback violation</i>	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="2" style="text-align: center;">Rear Yard Depth</th> </tr> <tr> <th style="text-align: center;">Required</th> <th style="text-align: center;">Provided</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">20 ft</td> <td style="text-align: center;">0 ft</td> </tr> </tbody> </table>	Rear Yard Depth		Required	Provided	20 ft	0 ft
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ONE (1) USE REFUSAL

ONE (1) ZONING REFUSAL

# Zoning Committee Has Identified 4 Questions

1. Is request for 2 Principal Buildings **or** just an existing, accessory Garage Addition?
2. What are **intended uses** of the Garage Addition?
3. Is Applicant actually requesting an Accessory Dwelling Unit?
4. Is the existing garage a **nonconforming structure**?



**Question 1: Is request for 2 Principal Buildings or just an existing, accessory Garage Addition?**



**Notice of:**

**Refusal**

**Referral**

Application Number: ZP-2022-009578	Zoning District(s): RSA-2 with Overlay /EDO Eighth District Overlay District	Date of Refusal: 9/15/2022
Address/Parcel (P)	<b><i>L&amp;I refusal</i></b> <b><i>“Whereas no more than one principal building is allowed per lot in the RSA-2 Zoning District, but two are proposed.”</i></b>	
Applicant LC Architecture LLC DBA. Living City Architecture	Suite 400 Dresher, PA 19034 USA	

Application for:

FOR THE ERECTION OF AN ADDITION ABOVE AN EXISTING DETACHED GARAGE STRUCTURE. FOR THE RESULTING CREATION OF TWO PRINCIPAL STRUCTURES. FOR SINGLE FAMILY HOUSEHOLD LIVING NO CHANGES TO THE EXISTING PRINCIPAL DETACHED STRUCTURE. NO CHANGES TO EXISTING PARKING. SIZE AND LOCATION AS SHOWN ON APPLICATION/PLAN.

# Zoning Code Distinguishes between Principal Uses and Accessory Uses

## § 14-203. Definitions.

### (246) **Principal Building.**

A building in which the principal use of the lot on which the building is located is conducted.

### (247) **Principal Use.**

The main use and primary purpose of a lot or structure as distinguished from an accessory use

### (2) **Accessory Use.**

A use, including all necessary public utility facilities, that is subordinate to and on the same lot as the principal use on a lot and customarily incidental to the principal use. ...

L&I refusal

***“Whereas no more than one principal building is allowed per lot in the RSA-2 Zoning District, but two are proposed.”***

- ***RSA-2: Only 1 Principal Use per Lot***
- ***RSA-2: Only 1 Principal Building per Lot***
- ***Existing Garage is an Accessory Building***
- ***Changes to an Accessory Building does not make it a Principal Building***

**Question 1: Is the request actually for 2 Principal Buildings or just an accessory garage addition?**

*Original Application Request  
2 Principal Buildings*

*Is this the actual  
Application Request?*

Application for:

FOR THE ERECTION OF AN ADDITION ABOVE AN EXISTING DETACHED GARAGE STRUCTURE. **FOR THE RESULTING CREATION OF TWO PRINCIPAL STRUCTURES**. FOR SINGLE FAMILY HOUSEHOLD LIVING. NO CHANGES TO THE EXISTING PRINCIPAL DETACHED STRUCTURE. NO CHANGES TO EXISTING PARKING. SIZE AND LOCATION AS SHOWN ON APPLICATION/PLAN.

**For the erection of an addition above an existing, detached, accessory garage for office space.**

***These are significantly different zoning use permit requests. L&I treats “two principal structures” vs. “accessory garage structure addition” requests differently.***

## Question 2: What Are Intended Uses of the Garage Addition?

*Applicants stated uses are conflicting and contradictory.*

### L&I Notice of Refusal

1. "FOR SINGLE FAMILY HOUSEHOLD LIVING. ..."

### Application for Appeal

2. "We're in need of additional space for remote work and household living, ..."

3. "We are in need of additional space for remote work. ..."

### Need Clarity on Intended Use

*Home Office - Remote Work*

*Business Office*

*or*

*Remote Work and Household Living*

### 4. Proposed Plan View



## Question 3: Is Applicant actually requesting an Accessory Dwelling Unit?

### § 14-604. Accessory Uses and Structures.

#### (11) Accessory Dwelling Units.

##### (d) Permitted Areas.

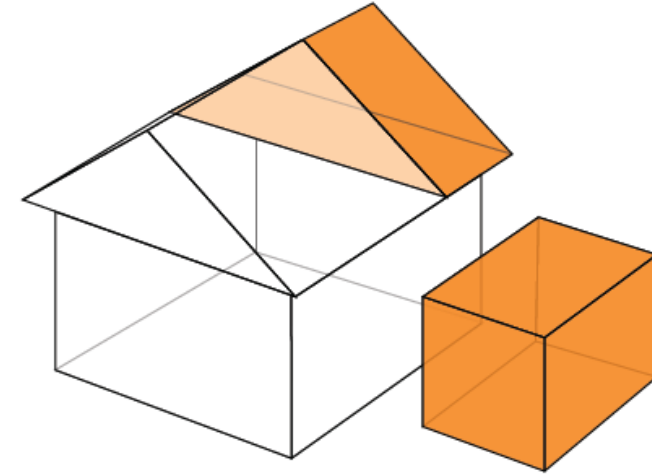
(.1) Historic Structures.

(.2) Large Lots in RSA-5, CMX-1 Districts.

***Not Permitted in RSA-2 District***

#### Case Study: Accessory Dwelling Units

Accessory Dwelling Units (ADUs) are small housing units within or next to a primary residence. They are often referred to by familiar terms like "in-law suites," "granny flats," "carriage houses," and "basement apartments." ADUs generate rental income for their owners and meet the needs of smaller households like first-time renters, retirees, and live-in caretakers. These units are popular in communities because they can expand a neighborhood's housing supply without changing its outward appearance. Many U.S. cities have recently changed their laws to make adding ADUs simpler and less expensive.



***If yes, Accessory Dwelling Unit request should be stated in Zoning Use Permit Application.***



# Question 3: Is Applicant actually requesting an Accessory Dwelling Unit?

## § 14-604. Accessory Uses and Structures.

### (11) Accessory Dwelling Units.

#### (d) Permitted Areas.

(.1) Historic Structures.

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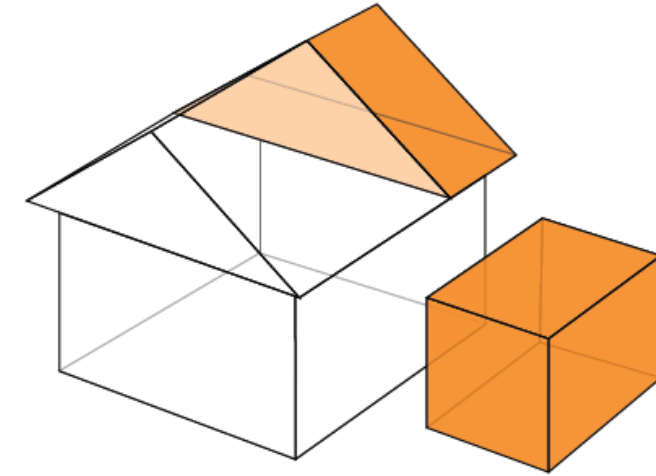
**Not Permitted in RSA-2 District**

Philadelphia City Planning Commission

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### Case Study: Accessory Dwelling Units

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### Recommended in Upper Northwest 2035 Plan

PRIORITY	HOUSING RECOMMENDATIONS	IMPLEMENTING AGENCIES & PARTNERS	CITYWIDE VISION OBJECTIVES
		5	Direct multifamily housing development to commercial streets and train stations to increase the number of people using public transportation and shopping at local businesses
6	Preserve large houses and properties by allowing Accessory Dwelling Units ("in-law suites")	Council PCPC	1.2.1 1.2.2
7	Secure conservation easements in areas with limited road access or incomplete water, sewer, gas, and electric networks	Nonprofits	3.2.1
8	Refrain from granting special exceptions for single-room-occupancy housing ("rooming houses" or "boarding houses") to avoid concentrations of this type of housing	ZBA	1.2.2
9	Increase residents' awareness of the hazards of lead paint and resources to remove it <ul style="list-style-type: none"> <li>Encourage blood lead level testing for all children under age 6 who live in housing constructed before 1978</li> <li>Distribute educational materials about lead risks and removal</li> <li>Promote access to lead removal resources and requirements for tenants, landlords, and homeowners of all income levels</li> </ul>	DHCD PDPH MCEO Hospitals Nonprofits	1.2.1

THRIVE  
Philadelphia City Planning Commission  
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**If yes, should be stated in Zoning Use Permit Request**

**Question 4:** Is the existing garage a nonconforming structure?

*If yes, Applicant may be able to modify the garage by right.*



## Zoning Code Recognizes Nonconforming Properties/Structures

### §14-305. Nonconformities

**(1) Purpose** “... many land uses ... do not conform with the requirements of this Zoning Code ... because ... (b) they were legal when established but have become nonconforming due to later zoning amendments.”

#### **(4) General Requirements.**

“(b) Any rights conferred on a nonconformity run with the property [not owners] ...”

“(d) The burden of establishing the prior existence of a nonconformity is on the applicant.”

#### Philadelphia Zoning Code Amendments

1932

1942

1962

2012

*When was the existing garage built?*

*Did it conform to the zoning code at time of construction?*

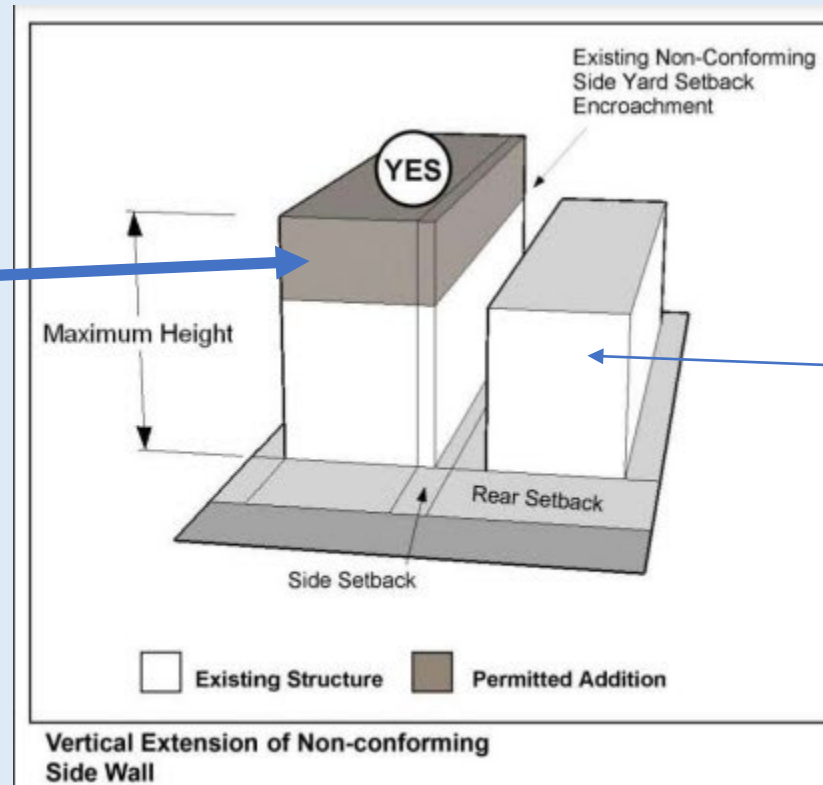
*Is it a nonconforming structure?*

## §14-305

### (6) Nonconforming Structures.

Nonconforming structures may be expanded or extended, provided that the expanded or extended area (a) complies with all provisions of § 14-701 (Dimensional Standards) and § 14-702 (Floor Area, Height, and Dwelling Unit Density Bonuses) applicable to the zoning district where the property is located, (b) complies with the provisions of this § 14-305(6) (Nonconforming Structures), and (c) does not increase any existing nonconformity. [240.1](#)

*Applicant's  
Request for Additional Floor  
May Be Approved*



Neighbor

**Question 4: Is the existing garage a nonconforming structure?  
If yes, Applicant may be able to modify the garage by right.**

# Summary of Zoning Committee Review Questions

1. Is request for 2 Principal Buildings **or** just an existing, accessory garage addition?
2. What are **intended uses** of the Garage Addition?
3. Is Applicant requesting an Accessory Dwelling Unit?
4. Is the existing garage a **nonconforming structure**?



*Applicant's zoning use permit application wording may have unnecessarily caused L&I's use violation.*

*Lack of Applicant's determination of garage's nonconforming structure status may have unnecessarily triggered L&I's dimensional setback violation.*



City of Philadelphia Zoning Board of Adjustment



# Application for Appeal

CALENDAR # \_\_\_\_\_ (FOR OFFICE USE ONLY)

WHEN COMPLETED, MAIL TO:

CITY OF PHILADELPHIA  
Department of Planning & Development  
Zoning Board of Adjustment  
One Parkway Building  
1515 Arch St, 18<sup>th</sup> Floor  
Philadelphia, PA 19102

APPLICANT MUST COMPLETE ALL INFORMATION BELOW. PRINT CLEARLY AND PROVIDE FULL DETAILS

LOCATION OF PROPERTY (LEGAL ADDRESS)

405 E Mount Airy Ave Phila PA 19119

PROPERTY OWNER'S NAME:

Angela Yannessia  
Bogdan Lisachenko

PHONE #: 6093133613

E-MAIL: ang@joyofphilly.com

PROPERTY OWNER'S ADDRESS (INCLUDE CITY, STATE, AND ZIP)

405 E Mount Airy Ave Phila PA 19119

A CORPORATION MUST BE REPRESENTED BY AN ATTORNEY LICENSED TO PRACTICE IN PENNSYLVANIA

APPLICANT: Angela Yannessia

APPLICANT'S ADDRESS (INCLUDE CITY, STATE, AND ZIP)

405 E Mount Airy Ave Phila PA 19119

FIRM/COMPANY: Owner

PHONE #: 609-313-3613

E-MAIL:

RELATIONSHIP TO OWNER:  TENANT/LESEE  ATTORNEY  DESIGN PROFESSIONAL  CONTRACTOR  EXPEDITOR  OTHER

APPEAL RELATED TO ZONING/USE REGISTRATION PERMIT APPLICATION #

ZP-2022-009578

City of Philadelphia Zoning Board of Adjustment



# Application for Appeal

CALENDAR # \_\_\_\_\_ (FOR OFFICE USE ONLY)

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One Parkway Building  
1515 Arch St, 18<sup>th</sup> Floor  
Philadelphia, PA 19102

**What are Applicant's Intended Uses of Garage Addition?**

APPLICANT MUST COMPLETE ALL INFORMATION BELOW. PRINT CLEARLY AND PROVIDE FULL DETAILS

LOCATION OF PROPERTY (LEGAL ADDRESS)

405 E Mount Airy Ave Phila PA 19119

PROPERTY OWNER'S NAME:

Angela Yannessia  
Bogdan Lisachenko

PROPERTY OWNER'S ADDRESS (INCLUDE CITY, STATE, AND ZIP)

405 E Mount Airy Ave Phila PA 19119

PHONE #: 6093133613

E-MAIL: ang@joyofphilly.com

**Does compliance with the requirements of the zoning code cause an unnecessary hardship**

**REASONS FOR APPEAL:**

*"We're in need of additional space for remote work and household living, and we've determined the existing garage is the best location. The hardships arise from the fact that the existing garage is located at the rear of the property where no setback is possible, and the garage is not attached to the house, therefore creating a second primary structure."*

*"We are in need of additional space for remote work. The space above the garage is the most appropriate place for an addition in character with the existing character of the house and neighborhood. It will have no impact on the neighborhood. We are decreasing the impact of the structure on the neighborhood since it was previously a duplex. The house and property is being modernized and is in need of significant updates which we are taking care of."*

## Application for Appeal - Questions

IF A VARIANCE IS REQUESTED, PLEASE PROVIDE AN EXPLANATION OF EACH OF THE FOLLOWING CRITERIA AS REQUIRED FOR THE GRANTING OF A VARIANCE:

Does compliance with the requirements of the zoning code cause an unnecessary hardship due to the size, shape, contours or physical dimensions of your property? Did any action on your part cause or create the special conditions or circumstances? Explain.

1

We're in need of additional space for remote work and household living, and we've determined the existing garage is the best location. The hardships arise from the fact that the existing garage is located at the rear of the property where no setback is possible, and the garage is not attached to the house, therefore creating a second primary structure.





## Application for Appeal - Questions

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### REASONS FOR APPEAL:

- 2 we are in need of additional space for remote work. The space above the garage is the most appropriate place for an addition in character with the existing character of the house and neighborhood. It will have no impact on the neighborhood. we are decreasing the impact of the structure on the neighborhood since it was previously a duplex. The house and property is being modernized and is in need of significant updates which we are taking care of.

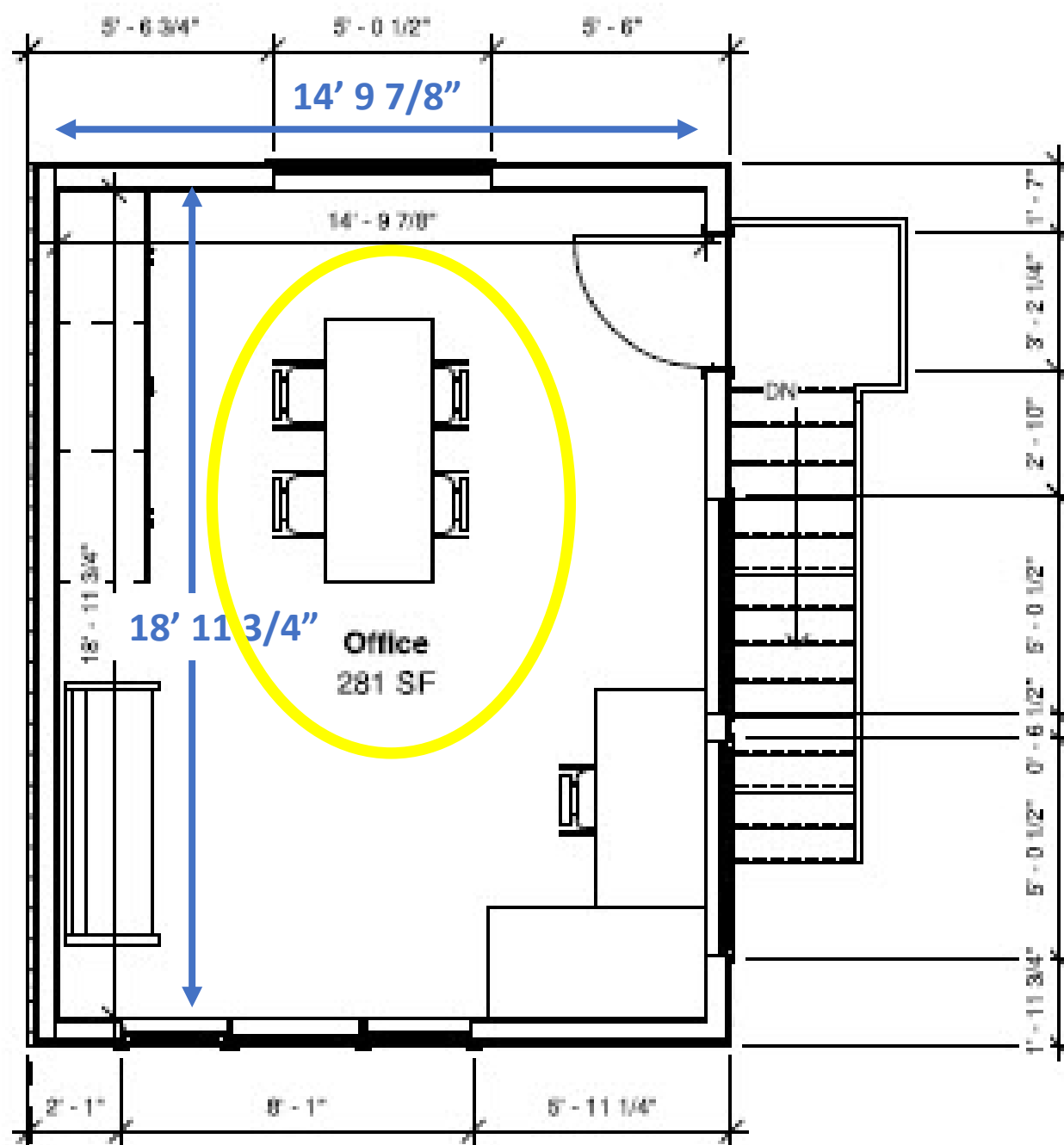
**Proposed Plan View**

**Office:**  
14'-9 7/8" by 18'11 3/4"

281 SF

**No Information:**

- Intended Use of Space
- Hours of Use
- Water Service
- Sanitary Sewer Service
- Electrical Service
- Heating, Ventilating, AC
- External Lighting
- Visitor Parking



**Entry:**  
2<sup>nd</sup> Floor Stairway –  
South Side of Building

**Notice of:**

**Refusal**

**Referral**

<b>Application Number:</b> <i>ZP-2022-009578</i>	<b>Zoning District(s):</b> <i>RSA-2 with Overlay /EDO Eighth District Overlay District</i>	<b>Date of Refusal:</b> <i>9/15/2022</i>
<b>Address/Location:</b> <i>405 E MOUNT AIRY AVE, Philadelphia, PA 19119-1143</i> <i>Parcel (PWD Record)</i>		<b>Page Number</b> Page 1 of 1
<b>Applicant Name:</b> <i>LC Architecture LLC DBA: Living City Architecture</i>	<b>Applicant Address:</b> <i>500 W Office Center Dr</i> <i>Suite 400</i> <i>Dresher, PA 19034</i> <i>USA</i>	

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Refusal

Garage floor plan and elevation

**EMAN COMMUNITY MEETING: 2/21/2023**

EMAN RCO Meeting Date: 3/7/2023

Zoning Hearing Date: 3/22/2023

Neighborhood Decision:

Zoning Board Decision:



# 405 E Mt Airy Ave Variance

Community Meeting Agenda

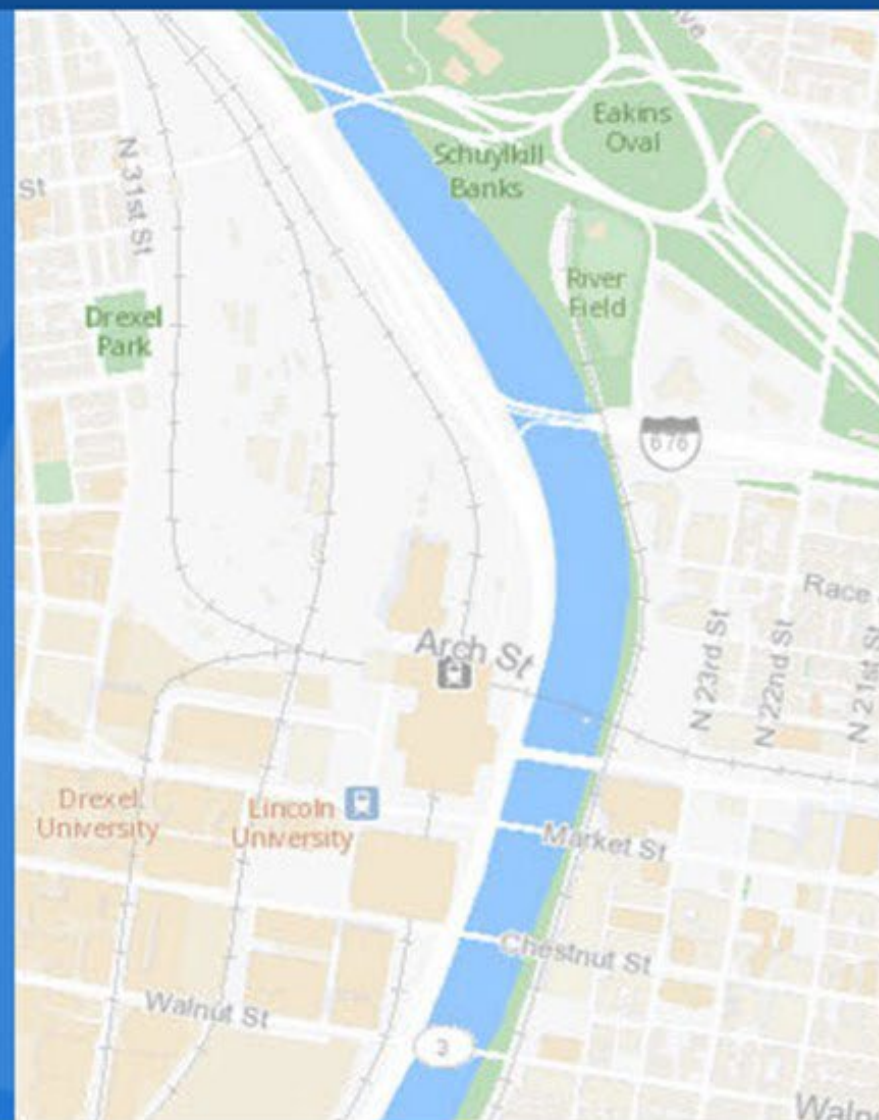
2/21/23

1. Welcome, Introductions, RCO Basics
2. Zoning Committee Variance Review
3. Applicants' Presentation
4. Neighbors' Q & A

RCO Voting Meeting scheduled for 3/7/23

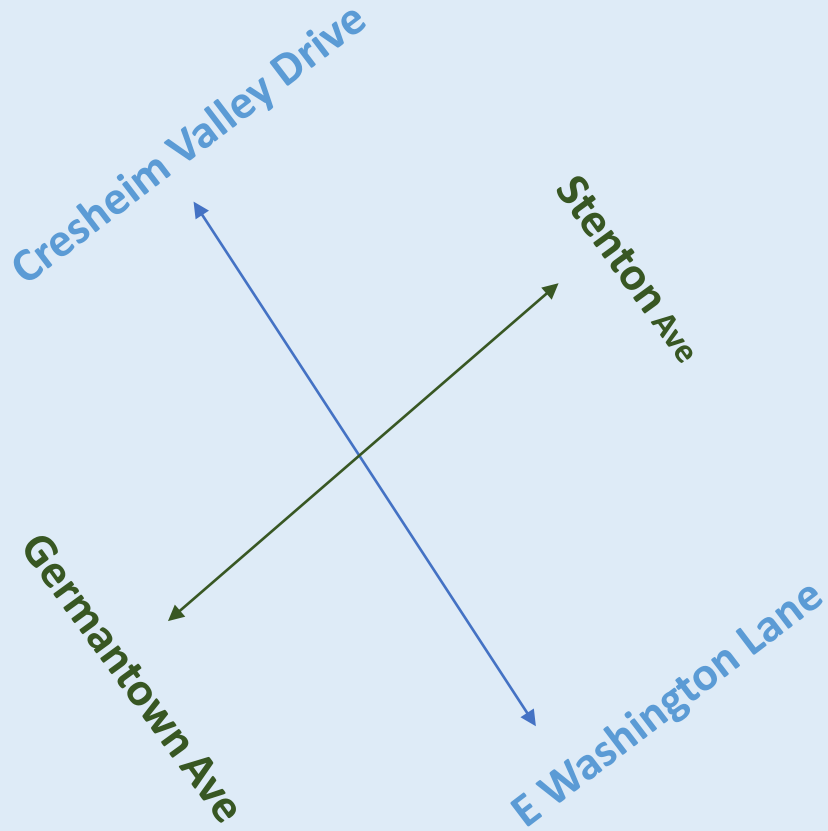
# Registered Community Organizations (RCOs)

Ensuring that community members have a chance to learn about and give feedback on nearby developments that affect them.





*Since 1966, East Mount Airy Neighbors (EMAN) has been committed to providing a means of friendly communication, mutual understanding, information and education to the neighbors of East Mount Airy.*



# 405 E Mt Airy Ave Near Neighbors



Near Neighbors

Properties within 250-ft radius or same 100 block

## RCO NOTIFICATION FOR ZONING APPLICATIONS

Info

405 E Mt Airy Ave

**SUBJECT:** 405 E MOUNT AIRY AVE

**COUNCIL DISTRICT:** 8

**RCO:** East Mt. Airy Neighbors

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### Near Neighbors by Street

Street	Number	From	To
ARDLEIGH ST	3	7148	7150
E Allens LN	34	323	422
E DURHAM ST	2	415	417
E MOUNT AIRY AVE	37	330	447
Total	76		



**Have all Near Neighbors been notified of this RCO meeting by mail?**