



EMAN

East Mount Airy Neighbors

Zoning Committee Variance Review SOP

Created by: Kelly O'Day, Retired environmental engineer & EMAN Zoning Committee Member, in partnership with the EMAN Zoning Committee

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Introduction

November 21, 2023

Dear EMAN Community Member,

Thank you for taking the time to review this handbook.

EMAN's Zoning Committee has established this set of procedures for how we handle variances when EMAN is the Coordinating RCO. This document also describes how the Zoning Committee researches a proposed variance to provide factual information for East Mt. Airy residents to better understand the proposed project and the ZBA variance approval criteria.

Additional information can be found on our website at:

<https://www.eastmountairy.org/zoning>

Thank you in advance for being an active part of our community!

Sincerely

Nina Curlett & Antoine Joseph
Zoning Committee Chairs

EMAN Zoning Committee

EMAN's **Zoning Committee** consists of EMAN members who meet on a regular basis to review development trends and issues and participate in the RCO variance process for cases where EMAN has been designated as the Coordinating RCO. The following statements reflect our guiding principles:

Who We Are:

We are fellow East Mt Airy residents with previous zoning, RCO and ZBA hearing experience.

Our Goal:

To help our Near Neighbors navigate the steep Zoning, RCO and ZBA procedure learning curves in the short time available between the Applicant's Notification of the RCO Community Meeting to the Near Neighbors and the actual RCO Vote and ZBA Hearing.

Our Approach:

We systematically assess the Applicant's variance request and proposed plan, using the City's on-line data, real estate data, and the ZBA Variance Approval Criteria.

Our Variance Review:

We research the property, abutting properties, the nearby neighborhood and the proposed project to understand the site, the neighborhood and the project. We prepare a set of Findings with technical backup to help identify facts and issues that may be important for Neighbors to consider in their RCO Vote decision.

EMAN RCO Community Meetings

eastmountairy.org

1

FIRST STEP: COMMUNITY MEETING

We host a Community Information Meeting where the variance Applicant presents the proposed project, the Zoning Committee presents our Variance Review and Project neighbors are invited to ask questions and make comments on the proposed project. We prepare a list of outstanding issues that the Applicant should address prior to a vote at the RCO Vote Meeting.

2

SECOND STEP: VOTING MEETING

We host a Vote Meeting where the Applicant addresses any outstanding issues identified at the Community Meeting and then neighbors vote in support or in opposition to the requested variance. We Notify the ZBA of the Neighbors Position on the Variance Request.

3

ZBA LETTER

EMAN's ZBA letter includes the vote outcome, required vote result tabulation, and a verbal summary of the issues raised by the neighbors in the EMAN hosted meetings and the Applicant's response to them. We may testify in the ZBA Hearing.

Required Applicant Information Needed for the Zoning Committee to Conduct Review

The Zoning Committee must have the following information in digital form prior to starting a review of a proposed variance:

- L&I Refusal Letter
- Applicant's Application for Appeal
- Existing Site Plan and Project Drawing
- Zoning Plan Drawing

The Zoning Committee encourages the Applicant to prepare a 3D massing model that can be shared with the Zoning Committee as a Sketchup model.

ZBA Variance Approval Criteria

The Zoning Committee uses the ZBA'S VARIANCE Approval Criteria to review proposed variances. Exhibit 1 presents a current version of the ZBA's criteria.

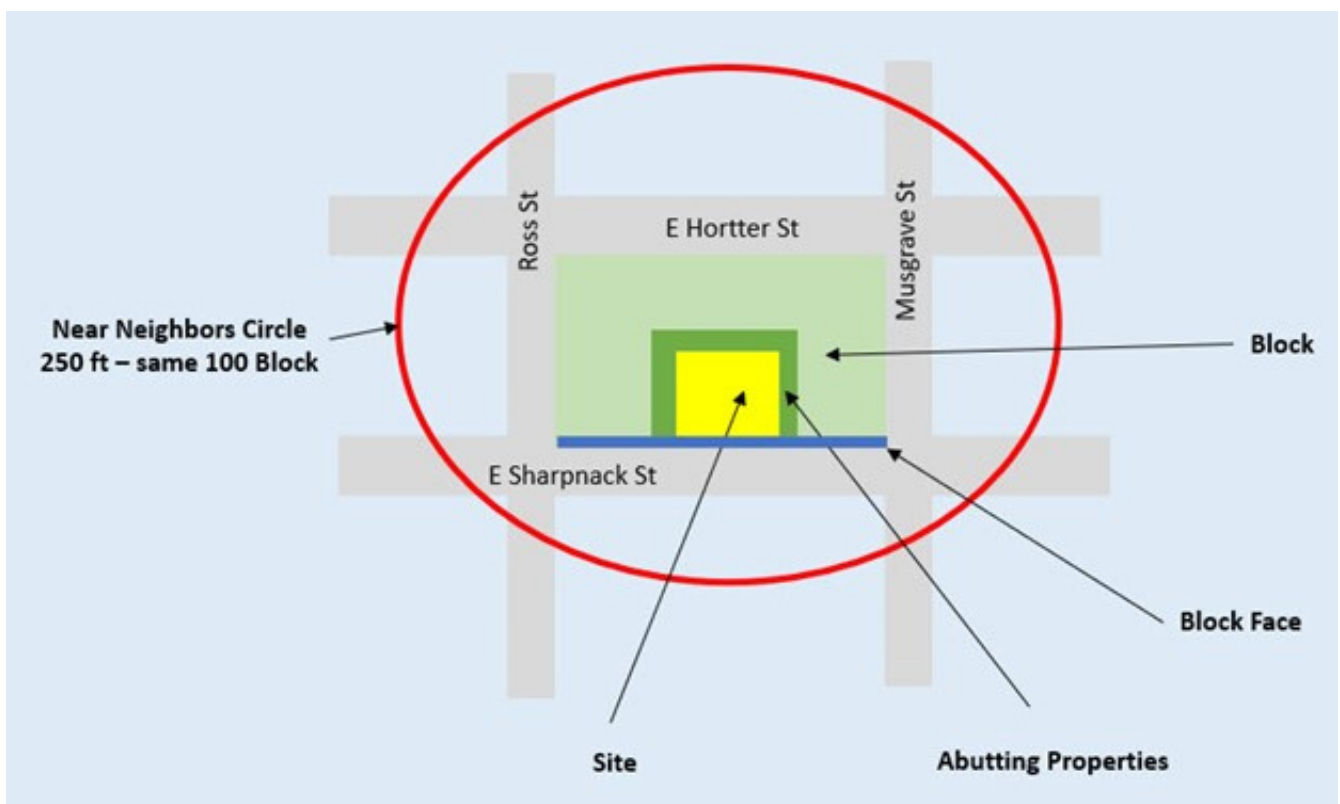
East Mount Airy Project Neighbors

East Mt. Airy Neighbors to Project Site

The Zoning Committee assesses the impacts of the proposed project on each neighborhood level.

The following example map sketch shows the 4 levels of Project Site residential neighbors involved in an RCO variance case:

- Abutting Properties are properties that share a boundary line with the Project Site.
- Block Face Properties are properties that are on the same side of the street and located between the same cross streets as the Project Site.
- Block Properties are properties that are located in the same block as the Project Site.
- Near Neighbor Properties are properties that are within 250 feet of the Project Site property line or the same 100 block as the Project Site.(4)



Mt Airy Development History and Character of Neighborhood

Mt Airy, like other parts of Philadelphia, has been under continual development-redevelopment since the early 1700s. Areas along Germantown Avenue have the oldest development history. The time period when a particular neighborhood was developed has a major impact on the architectural and density characteristics of the neighborhood.

Exhibit 2 shows the areas in E Mt. Airy that were fully or partially developed in 1910 according to the Bromley Atlas of 1910. Much of the development between Germantown Ave and Chew Ave occurred before Philadelphia's first zoning code in 1933.

The Zoning Committee has identified several recurring concerns that neighbors have expressed at RCO Community and Vote Meetings. These concerns include:

1. Incompatibility of the Proposed Building with the Character of the Neighborhood

- Building Heights
- Building Size - Massing
- Architectural Features (Porches, Roof Decks, balconies, garages, back yards)
- Building Materials
- Setbacks

2. Impact of Increased Population Density on Near Neighbors Quality of Life (traffic patterns, parking, congestion)

3. Impact on Tree Canopy

4. Impact on Stormwater Runoff and Downstream Flooding

Variance Review: 5-Step Process

Review Tasks and Standard Initial Questions

The Zoning Committee will conduct a Variance Review for major projects. This review includes 5 tasks and a series of standard initial questions for each task. The tasks and standard initial questions are summarized below.

1

SITE PLAN REVIEW

What are the impacts of the proposed project on quality of life for people already living in abutting properties (setbacks, solar shading)?

What are the tree canopy impacts of the project?

Are there site stormwater runoff issues that may impact downstream Historic Wingohocking Creek combined sewer overflows and/or street/basement flooding?

Are there street conditions (street and sidewalk widths, one or two way traffic, on-street parking restrictions) that may be affected by this proposed project?

2

ZONING CODE REVIEW

Will the proposed project comply with the property's current base zoning district and overlays' use and dimensional criteria?

If the case is for an RSA5 parcel, does the variance comply with /EDO Eighth District Overlay?

3

HISTORY AND CHARACTER OF NEIGHBORHOOD REVIEW

What is the housing density impact of the proposed project?

Are there important historical or architectural characteristics of the site, block face, or immediate neighborhood that need to be respected/preserved?

Do the proposed architectural design/materials conform to existing neighborhood building characteristics?

Variance Review: 5-Step Process (continued)

4

REAL ESTATE MARKET ANALYSIS

- What were the initial purchase costs and site expenses for this property?
- What have comparable new construction properties recently sold sell for in this neighborhood?
- What are current properties assessed for in this neighborhood?
- How will current homeowners property assessments and taxes be effected?

5

ZBA VARIANCE APPROVAL CRITERIA REVIEW

- What is the Applicant's justification/evidence for claiming an unnecessary hardship?
- Has the Applicant established a valid unnecessary hardship, as specified in §14- 303(8)(e)(1)(a)?
- Has the Applicant demonstrated that the proposed project is the least modification possible, as specified in §14-303(8)(e)(1)(b)?
- Does the Variance Request satisfy ZBA Criteria as specified in §14-303(8)(e)(1)(c) to (h)?

Variance Review Findings

The Zoning Committee will prepare a list of Findings that will be presented to the Applicant and Neighbors during the RCO Community Meeting. The Applicant will be provided time to respond to the Committee's Findings during the Community Meeting and/or prior to the Vote at the RCO Vote Meeting.

1 <https://www.phila.gov/media/20190417143814/RCO-FACT-SHEET-2018-3.pdf>

2 See Philadelphia RCO Rights – Responsibilities: <https://www.phila.gov/media/20190417143814/RCO-Rights-and-Responsibilities-5.pdf> (link)

3 ZBA Variance Approval Criteria: https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-288861 (link)

4 Philadelphia Planning Commission has a web site that provides a list of Near Neighbor addresses for user specified address:

<https://www.phila.gov/rconotification/> (link)

5 Philadelphia's 1933 Zoning Code: <https://www.phila.gov/documents/1933-philadelphia-zoning-ordinance/> (link)

EMAN Responsibility Table

The table below represents the lists of actions that EMAN will complete to meet our RCO Civic responsibilities to East Mount Airy neighbors for each major variance request.

Table 1: EMAN Responsibility Table

Phase	RCO Task	Responsibility
Applicant Communication	Coordinate with Applicant	Executive Director
	Schedule Community Information and Vote Meetings	
Near Neighbors Communication	Prepare Meeting Flyers	Zoning Committee Member to be assigned as lead for each task
	Inform Near Neighbors of Meetings	
Variance Review	Site Plan Review	
	Zoning Code Review	
	History & Character of Neighborhood Review	
	Real Estate Market Analysis	
ZBA Variance Approval Criteria Review		
RCO Meetings & ZBA Notification	Conduct RCO Community & Vote Meetings	Executive Director & Zoning Committee Lead
	Prepare ZBA Meeting Summary Letter	
	Testify at ZBA Hearing	

Exhibit 1

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, or shallowness of lot size or shape, or exceptional topographical or other physical conditions) peculiar to the property, and that the unnecessary hardship is due to such conditions and not to circumstances or conditions generally created by the provisions of this Zoning Code in the area or zoning district where the property is located;
(b)	That because of those physical circumstances or conditions, there is no possibility that the property can be used in strict conformity with the provisions of this Zoning Code and that the authorization of a variance is therefore necessary to enable the viable economic use of the property;
(c)	That the use variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
(d)	That the hardship cannot be cured by the grant of a dimensional variance.
(3) Dimensional Variances. To find an unnecessary hardship in the case of a dimensional variance, the Zoning Board may consider the economic detriment to the applicant if the variance is denied, the financial burden created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.	

Exhibit 2

E Mt Airy's Development in 1910

Based on Bromley Atlas, 1910

Mt Airy, like other parts of Philadelphia, has been under development since the early 1700s. Areas along Germantown Avenue have the oldest development. Much of the development between Germantown Ave and Chew Ave occurred before Philadelphia's first zoning code in 1933.

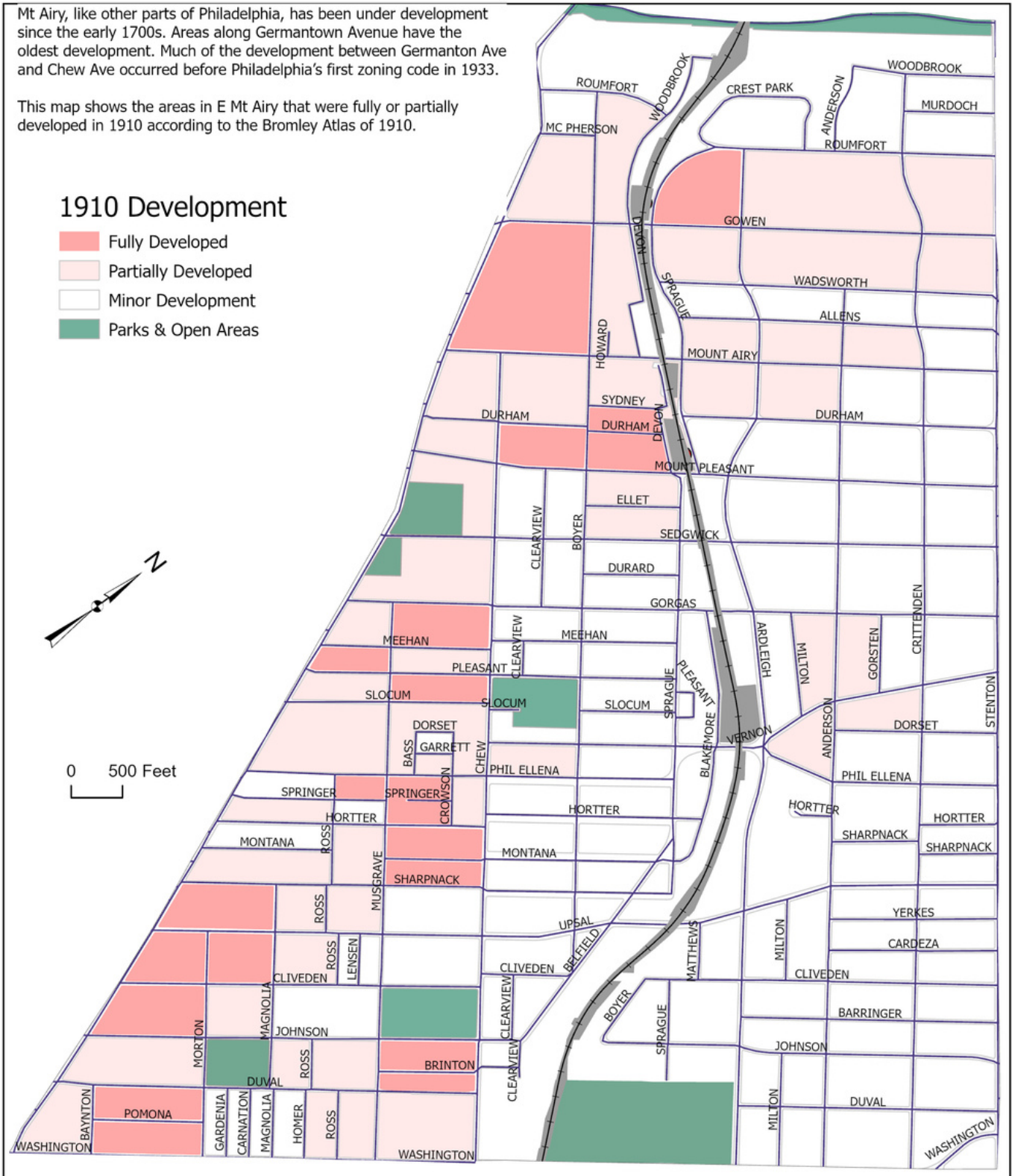
This map shows the areas in E Mt Airy that were fully or partially developed in 1910 according to the Bromley Atlas of 1910.

1910 Development

- Fully Developed
- Partially Developed
- Minor Development
- Parks & Open Areas



0 500 Feet



Resources



EMAN ZONING

Visit the EMAN Zoning page for more information.



ZBA APPEALS CALENDAR

Find scheduled appeals hearings for the Zoning Board of Adjustment.



VOTING POLICY

Summary of the EMAN's RCO Voting Policy and Procedures.



YOUTUBE PLAYLIST

The City of Philadelphia provides a playlist to help you learn more about zoning.

Sample FLYER

You are a
NEIGHBOR to this
project!



Street

COMMUNITY ZONING MEETING

Information Session:

SEPTEMBER 26TH 7PM



Scan code
with your
camera to
join on
ZOOM

Voting Meeting:

OCTOBER 3RD 7PM



Come, ask questions, and have your voice heard!



Sample ZBA Letter

William Bergman
Chair, Zoning Board of Adjustment
1401 John F. Kennedy Boulevard, 11th Floor
Philadelphia, PA 19102

October 9, 2023

Re: RCO Community Meeting
[REDACTED], Philadelphia, PA 19119

Council District 8
Application # ZP-2022-008453
Calendar # MI-2023-001748

Dear Mr. Bergman,

On October 3, 2023, East Mt. Airy Neighbors (EMAN) convened a public community RCO Voting meeting to discuss the above-noted variance request. This was the RCO Voting meeting after the initial community meeting held on September 26. The Applicant notified all the required property owners/residents of this meeting.

ISSUES OF CONCERN:

Some of the issues near neighbors found with the proposed subdivision include:

1. Access, air, and light for the existing [REDACTED] pre-1895 semidetached house will be affected by the proposed new easternmost building built to the property line. [REDACTED] has 5 windows and a door on the west side of the house, and a very narrow side yard. Building to the property line would cause undue hardship on the existing semi-detached neighboring house at [REDACTED] restricting the light and air currently enjoyed by the existing neighbor.
2. Air and light for the existing [REDACTED] 933 attached house back yard may be affected by the proposed westernmost building built to the property line. Narrow right of way may not provide sufficient width to provide access to both the [REDACTED] houses and the newly proposed westernmost building proposed by the Applicant if built directly to the property line of [REDACTED]
3. Recent new home construction at [REDACTED] and [REDACTED] demonstrate that developers can build and sell 1,500 sf sized lots in the [REDACTED] area at \$450,000 – \$475,000 per house. This conflicts with the applicant's claims the lots are overly large for construction of an economically viable development at 141 and [REDACTED] lot sizes.
4. The Applicant has not demonstrated an unnecessary hardship or financial hardship caused by Council District 8's RSA-5 minimum lot area 1,440 sf requirement or its' 1,600 sf lot subdivision exception. Lot sizes exceeding the 1,440 sq ft RSA-5 minimum did not affect the development or sales of the three newly constructed houses at [REDACTED] and [REDACTED] newly constructed house is within the City defined near neighbor circle of the Applicant's proposed project, and each sold for \$450,000 to \$475,000 between May and August of 2023, demonstrating the existing lots are not too large for viable development in the immediate area.
5. The requested 3-lot subdivision does not meet Council District 8 RSA-5 1,440 sf minimum lot requirements or the exception, outlined below in point number 6.
6. The requested lot subdivision does not meet The Eight District Overlay RSA-5 subdivision exception requirements for lots over 1,600 sf. adjacent to smaller lots. Only 12.3 % of lots within the City Defined near Neighbor circle are less than

Sample ZBA Letter (continued)

1000 sq ft in size. The Eight District Overlay requires 75% of adjacent properties be less than 1000 sf to be eligible for subdivision below 1440 sf. [REDACTED] do not meet the requirements of Council District Eight Overlay 1,600 sf subdivision exception.

7. Applicant's noted adjacent small area and nonconforming lots cited in the Appeal were established before Philadelphia's 1st zoning code in 1933.

8. Fitting new homes into the Pre-1933 character of this neighborhood is challenging. Building height, width, front porches, roof decks, setbacks, and materials all need to be considered. Concerns 7 and 8 support the need for any new construction be built with consideration for the existing, directly adjacent property at [REDACTED] (including windows, door, and narrow side setback) and the narrow public ROW b [REDACTED] block) to prevent new hardships imposed on existing neighbors developed pre-1933 zoning code, and to fit harmoniously within the character of the existing neighborhood.

SUMMARY OF MEETINGS:

The Applicant originally indicated wanting to build 3 houses from property line to property line of the 60ft total frontage. The applicant noted there was nothing about the lots creating hardship necessitating subdivision, other than claims of financial non-viability for development without subdivision. Recent sales data shows the ability for new development of similarly sized lots within the near neighbor circle as financially viable. The Applicant came back before the RCO Voting meeting with a modified proposal providing two 5-foot side yards, one on each end of the 3 proposed houses. The modified proposal did not change the 20'-20'-20' equal division of the combined 60' total frontage of [REDACTED]. Therefore, the variance requested remained unchanged after the modification. The modified proposal addressed some but not all concerns of neighbors. Some neighbors were receptive to 3 houses if there were assurances about the proposed setbacks. In a discussion with the attorney, it was concluded there was no way to provide this assurance in the requested subdivision-only zoning application.

CONCLUSIONS

The Applicant did not demonstrate unnecessary hardship necessitating subdivision into 3 lots. Subdivision into 3 lots does not demonstrate least possible modification to provide relief if hardship had been established. Therefore, after the presentation and discussion at the October 3rd meeting, and faced with only the choice of 2 lots versus 3 lots with no assurances of setbacks, a vote was taken. The near neighbors voted in opposition to the variance, with the majority of the neighbors in attendance voting in non-support as well.

NEXT STEPS

The neighbors expressed interest in 3 parcels with two 5' side yards at each end. EMAN would be willing to facilitate a follow-up meeting between the Applicant and Neighbors to discuss the proposal further if the ZBA can provide guidance on a mechanism for assuring 5' side yards can be included as a requirement into this variance request, which is strictly for zoning subdivision. Neighbors could then reconsider the proposal, with assurance these agreed-upon setbacks would be mandatory and enforceable, based on the variance being requested. EMAN supports asking for a continuance, preferably with a relatively quick rescheduled hearing date, in order to meet with the Applicant and Neighbors to further work through issues brought up at both meetings.

Along with this letter, I am including EMAN's project review for this proposal.

Sincerely,

Sierra M. Bretz
Executive Director

EAST MOUNT AIRY NEIGHBORS

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