

Zoning In Philadelphia

A Step-by-Step Guide

for Small Businesses and Nonprofit Organizations

INTRODUCTION

Zoning governs permitted uses of property and other requirements. It is often a daunting and complicated process. This brochure is designed to provide more information on the zoning process and to help you prepare for your zoning hearing.

For nearly four decades, Community Legal Services, Inc. (CLS) has provided the highest quality legal assistance to those in need, with the ongoing support of the Philadelphia Bar Association and the legal community. Our mission is to help low-income Philadelphia residents with legal problems by providing them with advice and representation in civil matters, advocating for their legal rights, and conducting community education about legal issues.

Philadelphia LawWorks is a project of Philadelphia VIP (Volunteers for the Indigent Program), a volunteer legal services agency. Philadelphia LawWorks is a community economic development program that serves Philadelphia communities. By providing free legal services to non-profits, small businesses and homeowners, LawWorks provides Philadelphia residents with the tools they need to revitalize their communities.

HOW TO USE THIS GUIDE

This Guide is for use by the owners, operators and directors of small businesses and non-profit organizations, as well as individual property owners in Philadelphia, PA. The Guide is divided into 3 major parts: 1) Zoning Overview, 2) The Zoning Application, 3) The Zoning Appeal and Hearing. Each part is explained through a series of frequently asked questions.

The Guide does not provide any specific advice related to specific situations. It should not be used as a substitute for, nor does it constitute, legal advice. Only an attorney who knows the details of your particular situation can provide the kind of advice you need.¹

The goal of this Guide is to give you a basic roadmap to the legal issues you may find while you apply for a zoning or use permit, and to make you aware of your legal rights and responsibilities.

Philadelphia LawWorks would like to thank Colleen Mulhern of Philadelphia VIP, as well as Michelle Westcoat and Donna Johnson Bullock at Community Legal Services, for creating this legal guide.

¹ Philadelphia LawWorks provides training materials and other legal information for the benefit of volunteer attorneys, as well as a resource for non-profits and small business. CLS is a nonprofit legal services organization which helps low income residents through legal representation, advocacy and community education. As laws vary from state to state and are constantly changing, only a lawyer knowledgeable of the details of your situation can provide you with specific advice to rely on. LawWorks is not a law firm, and it does not provide legal advice. These materials are not intended to constitute legal advice, and should not be relied upon by users. No action should be taken in reliance on these materials except after consultation with a lawyer.

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PART I: ZONING OVERVIEW

WHAT IS ZONING?

Zoning is the process of determining how property may be used. Philadelphia has a Zoning Code that divides land into zones and limits what can be done on each property.² The zones include different residential, commercial, and industrial areas.

WHAT ARE THE ZONING RESTRICTIONS?

The Zoning Code tells property owners what they can build on their property. For example, in certain zoning districts only single family residences may be built and others permit multi-family units or commercial storefronts.

The Zoning Code also tells a property owner how they can use their property. For example, while a business may be prohibited from operating in a single family home, commercial zoning districts permit small businesses such as grocery stores, child care centers, dry cleaners or restaurants.

On any particular piece of property, a use may be permitted as a matter of right (by law), permitted but only within certain limits, or not allowed at all. In some instances, there may be additional restrictions in the mortgage or deed on the property. Be sure to research the deed or mortgage for old restrictions that may limit your use of the property.

WHAT ARE ZONING PERMITS?

Zoning permits allow property owners to use their property in a certain way. Zoning permits help ensure that a property stays in compliance with its zoned use.

If what you want to build or the way you want to use your property is not permitted in a particular zone, your request for a zoning permit will be denied. If your request for a zoning permit is denied by the Department of Licenses and Inspections, you will not be allowed to use the property or build on the property in the desired way without further legal steps, such as appealing to the Zoning Board of Adjustment (ZBA).

WHAT IS THE DEPARTMENT OF LICENSES AND INSPECTIONS (L&I)?

The Department of Licenses and Inspections (L&I) is responsible for enforcing the Zoning Code and issuing permits. L&I processes applications, issues permits, and conducts inspections to ensure that the zoning law is being followed.

² The Zoning Code may be found at Title 14 of the Philadelphia Code and Charter. *Philadelphia Code and Charter*, Title 14, § 14-101 *et seq.* Available online at <http://municipalcodes.lexisnexis.com/codes/philadelphia/>.

WHEN DO I NEED A ZONING PERMIT?

A zoning permit is needed before making physical changes to or changing the use of your property. For example, zoning approval is required for all new construction, for the relocation of lots, and for new signage. It is also required for a new proposed use of the property, such as changing a building from use as a storefront to use as an apartment.

WHAT IF WHAT I WANT TO DO IS NOT PERMITTED?

If your request for a zoning permit is denied, you can appeal to the Zoning Board of Adjustment (the “ZBA”). The ZBA may sometimes allow exceptions to zoning code limitations. The ZBA has the power to hear appeals to decisions of the Department of Licenses and Inspections. Upon hearing the appeal, the ZBA may offer relief in one of three forms:

Variance – provided where the use is normally prohibited, but enforcing the code would result in “unnecessary hardship” to the property. To obtain a variance, the applicant must prove that 1) the grant of the variance is in the spirit of the ordinance and will not adversely affect public health, welfare or safety; 2) the conditions are unique to the property; and 3) the applicant did not create the need for the variance. Variances run with the land, not with the owner.³

Certificates – either a “special use exception” or “conditional use” is issued with approval of the ZBA. The applicant is not required to prove “unnecessary hardship,” but must persuade the ZBA that the use is a certified use and satisfies the specific requirements of the ordinance.⁴

Special Use Permit – typically triggered by a referral for parking uses in certain districts and for telecommunications uses. The applicant has the burden of proving that the use falls within the special use permit categories and must produce the additional required materials.⁵

More information about appealing to the ZBA is provided below.

³Philadelphia Bar Institute, *Zoning Law & Practice in Philadelphia* 3 (1998).

⁴ *Id.* at 4-5.

⁵ *Id.* at 5.

PARTII: THE ZONING APPLICATION

WHERE DO I PICK UP AN APPLICATION?

The application can be found online at www.phila.gov/lit (go to “Forms” on the left side of the page, then scroll down to “Zoning/Use Permit Application”). You may also pick up the application in person at the Permit Issuance Desk of the Municipal Services Building, 1401 John F. Kennedy Boulevard, Philadelphia, PA 19102.

WHAT INFORMATION DO I NEED?

The application will require the following information:

1. Current use of property
2. Proposed use of property
3. Signs – description, plot plans, photos of existing signs
4. Plot plan for any new construction
5. Owner’s name, address and phone number
6. Authorization from the owner, Agreement of Sale and/or Lease Agreement (if someone besides the current record owner is filling out application)
7. Signature(s) of applicant(s)

WHERE DO I SUBMIT THE APPLICATION?

The application may NOT be submitted online or through the mail. When submitting the application, plan to arrive early and to spend 2-5 hours. You must submit the application to L&I in person at:

MSB Concourse Level
Permit Issuance Desk
Municipal Services Building
1401 John F. Kennedy Boulevard
Philadelphia, PA 19102

WHEN WILL I GET A DECISION?

An examiner will review your application to determine if it complies with the zoning code. Most small business uses are issued a decision the same day you submit your application. More complicated applications, such as those that require construction, may take several weeks and you will be called or sent a letter when a decision is made. If your application will take longer to review, you may pay an additional fee for an accelerated review. In some cases, you may be asked to resubmit the application with more information.

WHAT WILL THE DECISION BE?

1. **Zoning/Use Registration Permit** –your application has been approved because it conforms to the Philadelphia Zoning Code. Your permit will be typed before you leave.

2. **Referral to the Zoning Board of Adjustment** – your application has been referred to the Zoning Board of Adjustment because your project requires that a public hearing be held. In order to proceed, you must present your application before the Zoning Board. You may also choose to abandon your application or revise your plans to fit within the Zoning Code requirements.
3. **Refusal** – your application has been denied because your project does not conform with the Zoning Code. See below for your options.

PART III: THE ZONING APPEAL AND HEARING

WHAT ARE MY OPTIONS IF I RECEIVE A NOTICE OF REFUSAL?

If you receive a Notice of Refusal, you have three options. You can:

- 1) Accept the decision and make no changes to the property.
- 2) Change the plans to meet Zoning Code requirements and re-submit.
- 3) File a Petition of Appeal to appear before the Zoning Board of Adjustment (ZBA) and request a variance to the Zoning Code.

HOW DO I FILE AN APPEAL TO THE ZBA?

To appeal to the ZBA, you need to:

- 1) Complete a Petition of Appeal form.
 - The Petition of Appeal form will be mailed with your Notice of Refusal or Notice of Referral.
 - List your attorney's information. Corporations must be represented by an attorney and the Zoning Board of Adjustment often encourages individuals to also seek legal counsel.
 - It must be submitted within 30 days after receiving refusal from L&I. Late appeals will not be accepted. If you miss the deadline, you will have to resubmit your zoning application.
- 2) Pay the required appeal filing fee.
 - The required appeal fee will be on your refusal or referral.
 - Checks and money orders should be made payable to the "City Of Philadelphia"

- 3) Mail or bring the Petition of Appeal, the **original copy** of the Notice of Refusal and fee to:
Department of Licenses and Inspections
Zoning Board of Adjustment
1401 John F. Kennedy Boulevard
Municipal Services Building, 11th floor
Philadelphia, PA 19102
Phone: (215) 686-2430

WHEN WILL I GET MY HEARING DATE?

After you submit your Petition of Appeal and the appropriate fee, a copy of the Petition of Appeal will be returned to you with a hearing date and time posted at the top. The Petition of Appeal will also have your case calendar number and the location of the hearing.

The orange posters and other important documentation will also accompany the Petition of Appeal and hearing date. Be sure to keep these documents and follow the instructions together with this guide.

WHAT DO I NEED TO RESCHEDULE MY HEARING?

If you are unable to attend your hearing, do not have an attorney (if needed) or otherwise are not prepared for your hearing, you should request a “continuance” in writing as soon as possible. This request can be made to the Zoning Board of Adjustment at the address listed on page 5.

WHAT SHOULD I DO TO PREPARE FOR MY ZBA HEARING?

Below is a suggested time line of “dos” and “don’ts” to help you prepare for your hearing. Depending on the details of your application you may have to adjust this time line or complete additional tasks to be better prepared for your hearing.

At Least Eight Weeks Before the Hearing:

- ✓ **Do obtain a lawyer** if you are a corporation or non-profit organization. The zoning code requires that corporations and non-profit organizations have a lawyer. It is important that you do this as soon as possible, as lawyers require adequate time to prepare your case. **Please note:** If your corporation or non-profit organization is in need of a lawyer, you may contact LawWorks at (215) 523-9550 or CLS at (215) 981-3700.
- ✓ **Do obtain an architect** if your plans are too complicated for you to describe on your own. Because an architect is not a lawyer, he or she is not permitted to represent you. He or she may, however, accompany you to the podium and speak if the ZBA asks him or her questions about the plans.
- ✓ **Do not hire an unlicensed expeditor** or anyone else besides a lawyer to represent you. If you decide to use the services of an expeditor, be sure to ask the expeditor if he or she is licensed. A licensed expeditor can be helpful with the zoning application process and with connecting you with other resources. However, they may not represent you at the hearing.

Four to Six Weeks Before the Hearing:

- ✓ **Do begin gathering the documents** you will need to present at the hearing. These include but are not limited to:
 - The deed, lease agreement, and/or written authorization from the property owner;
 - Current licenses and inspections reports; and
 - Architectural plans for property.
- ✓ **Do circulate petitions** and gather signatures from your immediately adjacent property owners and generally throughout your neighborhood so that you can demonstrate community support for the intended use of your property.
- ✓ **Do obtain letters of support** for your project. It is strongly encouraged to have adequate support from community development corporations, civic associations, City Council representatives, community watch groups and/or block captains before the ZBA will

approve the intended use of your property. Below is a list of contact information for these organizations.

- community development corporations and civic associations: <http://www.pacdc.org>
- city council representatives: <http://www.phila.gov/citycouncil/index.html>
- community watch groups: <http://www.phila.gov/townwatch/services.html>
- block captains: www.phila.gov/streets/pmbc_clean_block_officers.html

- ✓ **Do meet with community organizations.** If your community organization holds meetings or if your neighbors have expressed opposition, plan to meet with them to address their concerns and make any changes to your plans to avoid any opposition.

Two Weeks Before the Hearing:

- ✓ **Do post your orange zoning sign.** A person must be able to see and read the sign from the sidewalk, without having to step on your property. You must have one sign for each side of the street that the property faces. For example, a corner property must have two orange zoning signs posted.
- ✓ **Do take pictures of the posted zoning sign.**
- ✓ **Do take pictures of the property to bring to the hearing.** Make sure the property is clean and free of debris and graffiti. Show all exterior sides of the property. Also take pictures of the interior, using a flash. Pictures must be 4x6 inches or larger. On the back of the picture, write the date of your hearing, your name, address of the property, and the date the picture was taken.
- ✓ **Do request assistance if you are English is not your first language or if you are disabled.** Call to 215-686-2429 to request an interpreter or assistance for your special needs.

The Day of the Hearing:

- ✓ **Do bring all documents relating to the property.** You must bring proof of legal interest in the property (deed, lease, agreement of sale, Sheriff sale receipt or a written authorization of corporation and/or other persons named on the deed), pictures, plans, and a written authorization of all persons whose name is on the deed (including your spouse, children or other relatives). You should also bring letters of support, petitions and other support documents with you.
- ✓ **Do bring photo identification with you.** A photo ID may be required to enter the building.
- ✓ **Do request interpreting services.** You may make this request at your hearing or in advance. If you made this request in advance of the hearing, remind the law clerk before the hearing begins. The ZBA will secure an in-person interpreter or connect with an interpreting service on the telephone.

WHERE ARE THE ZBA HEARINGS HELD?

Zoning hearings are held on the 18th floor of 1515 Arch Street, which is at the corner of 16th and Arch Streets.

WHAT WILL THE HEARING BE LIKE?

At the ZBA hearing you will have the opportunity to present the reasons why the variance or use permit should be granted by describing the hardship to the property.

Remember that this is like going before a judge, and you should treat it accordingly. Dress nicely, be prepared, and arrive on time. Remember to turn your cell phone off and do not talk while the hearings are in session.

As you arrive you will notice people sitting at the front of the room. They are the Zoning Board members. The Chairperson of the Board usually sits in the center and will be most active in asking questions. The Planning Commissioner also attends and sits in front of the ZBA. A stenographer sits to the right of the Planning Commissioner and records the hearings in writing. The ZBA Clerk sits to the left. The public is invited to attend and may sit in the rows of chairs facing the ZBA members. You will also sit in any of these rows of chairs until your address is called.

Although your appeal will be scheduled for a certain time, there is a chance that it will not be heard until much later. Wait patiently—if your hearing has been scheduled for that day, it will be heard, even if it is heard very late.

When it is your turn, the Planning Commissioner will call you to the front by calendar number and address of the site for which you are bringing the appeal. You should then move to the front of the room and stand behind the table that is directly in front of the Zoning Board. If you have an attorney, architect, interpreter or other witnesses they may accompany you. A representative from your city council person's office, a civic association and any other supporters or Protestants may also be present.

The applicant and any witnesses will be asked to state their name and address for the record. Applicants must state their home address. You will then give the Planning Commissioner any exhibits you brought with you (pictures, etc.) You or your attorney may then give a short presentation of your request. The Zoning Board members will then ask you questions about your property. If there are any other interested parties in support or Protestants, they will also be given the opportunity to testify.

WHAT ARE THE POSSIBLE OUTCOMES OF THE HEARING?

The Zoning Board may make a decision at the hearing, issue provisos, grant a continuance, or take the case under advisement.

If a decision is made, you will receive a Notice of Decision, which will either grant or refuse your variance. If your variance is granted, you have been successful at your hearing. However, the notice is not your permit. Make sure the Notice of Decision is accurate and bring it to the Municipal Services Building to have the actual permit typed. This must be done within one year of the ZBA's decision.

If you receive a notice of refusal, your permit has been denied. To pursue your case further, you must appeal the decision to the Court of Common Pleas of Philadelphia County. This may be time-consuming and costly. You still have the option to abandon your application or revise your plans to satisfy any objections and submit a new application.

Even if your variance was granted, the permit may have restrictions or conditions called “provisos”. Typical provisos include air conditioning, commercial trash pick up or garbage disposals. There are also provisos that are specific to certain uses and businesses, like take-out restaurants and child care centers.

A continuance is granted when the ZBA feels as though they do not have enough information to make a decision. They will tell you what information you need and schedule a new hearing date. Sometimes the applicant or Protestants may request a continuance for additional time to prepare or to address community concerns.

WHAT'S NEXT?

Remember zoning is just the beginning of the process for properly licensing a new business or nonprofit service in the City Of Philadelphia. You will also need to obtain a Certificate of Occupancy for the new use of the property, building permits for new construction, and a Business Privilege License. Many businesses may also have to seek health department approval or a license specific to the industry, such as a child care license. For more information about the licenses and permits required for your business in the City of Philadelphia, visit Licenses and Inspections at the Public Concourse Level of 1401 John F. Kennedy Boulevard or call the License Issuance Hotline at 215-686-2490.

Some businesses may also be regulated by a state agency or required to get a state license, such as barbers and beauticians.