

Registered Community Organizations' Guide to Provisos

What is a proviso for a zoning appeal?

A **proviso** is a condition that the Zoning Board of Adjustment (ZBA) may place on their approval of a zoning case. A violation of a proviso is considered a violation of the zoning permit.

For example, an appellant requests a variance for four-family in for single-family zoned property. A proviso can limit the variance to fewer multi-family units, like two-or-three-family.

What are the basic rules for provisos?

Provisos:

- prevent or minimize negative effects of a proposal, to the surrounding area or public facilities, that are caused by a special exception or variance.
- must be related to the possible negative effects of the variance or special exception requested.
- must be enforceable through License and Inspections (L&I).
- must be related to the size and/or use of development.
- must not discriminate.

What is a Registered Community Organization's (RCO) role in provisos?

As part of your RCO activity, your organization may want more restrictions than are listed on the refusal or referral. To do so, you may attach a request for proviso(s) to your recommendation to the ZBA. If one or more of your requested provisos is adopted by the ZBA, the proviso becomes part of the rules for the use and size of buildings on that property.

A proviso, like a variance or special exception, is attached to the land, not to the property owner. A variance or special exception does not change the zoning of a property. It only changes specific rules. Rezoning is a separate process that requires City Council legislation.

What can the City enforce?

As an administrative board, the Zoning Board does not enforce anything. L&I and other City agencies inspect properties and enforce rules when they receive complaints. If a requested proviso is unenforceable, your community may be supporting a development that is not what you intended.

Enforceable items include:

- Use:
 - Number of dwelling units (below what is requested)

- No household living units in the basement
 - The type of business
 - Specifying a use within a broader category (e.g. limiting “Personal Services” to a hair salon)
 - Stating that specific use types are prohibited (e.g. excluding “Personal Credit Establishment” from the requested category “Financial Services”)
 - Roof decks, decks, balconies (elimination of)
 - Parking (no parking)
 - Limiting a use to a particular location on the property (e.g. floor, suite, etc.)
 - Hours of operation for a business or hours of signage illumination (although difficult to enforce and is reliant on Inspector availability)
 - Location of trash storage (interior, rear yard, etc.)
 - Location of mailboxes and mail storage (interior)
 - Making the variance/special exception for use temporary
- Dimensions:
 - Height
 - Rear, side, and front setbacks
 - Setbacks for third stories
 - Architectural elements *as shown on a revised plan stamped by ZBA and listed in the stamped proviso plan form* (mansard roofs, cornice lines, etc.) and materials (brick, stucco, etc.).

What are some examples of provisos that the City cannot enforce?

(RCOs sometimes place these into Community Benefits Agreements)

- Affordable housing units outside of a Zoning Code requirement or bonus.
- Compelling the applicant to donate to a City-owned or privately owned park or playground
- Agreeing to hire people from the neighborhood for the job site or business.
- Agreeing not to apply for a liquor license (regulated by the Commonwealth)
- Giving the RCO the power to approve a restaurant’s menu
- Promising the RCO free or discounted use of space in a building
- Promising the RCO approval over future business tenants
- Anything discriminatory, such as restricting the type of religious organizations that can rent the space, promising not to rent to people with disabilities or to people with substance use disorders, or prohibiting rental units (conflicts with local, State and Federal law)
- Expiration of a variance/special exception when the owner sells the property or when a tenant leaves (there is no legal mechanism to allow this)
- Making a variance for dimensions temporary
- Construction hours or techniques (Hours of construction are already in the Philadelphia Code).
- Installation of lighting or security cameras
- Restricting potential future uses unrelated to the current application
- Providing the contact information (owner, management company, etc.) to the RCO.

- Requiring that management company's contact information is displayed at the property.

Can a proviso address affordable housing?

The City can only enforce affordability if there is a contract between the developer and the City, which is done through the Mixed Income Housing Bonus or the Mixed Income Zoning Overlay. Agreements to rent or sell units at a lower price, or to accept housing vouchers, are not enforceable.

What's the best way to make sure a proviso is applied?

The more specific provisos are, the better they are understood by plans examiners. Clarity ensures plan examiners can uphold the intention of the proviso. For example, if the proviso states "new front wall consistent with adjacent property," the plans examiner doesn't know if the setback is meant to match, the materials should be similar, or if the bay window should match.

What if development plans change?

If development plans are updated between receiving a refusal/referral from L&I and being heard at ZBA, the plans that the ZBA sees are different from the plans that L&I reviews. If the ZBA grants a variance based on the revised plans, their proviso should reference ZBA stamped plans. The appellant is required to indicate all changes that were made to the plans on a "Revised Proviso Plans Form" that is stamped by the ZBA along with the revised plans.

What else should I know?

- Some changes cannot be made through revised plans and may require an amended zoning permit application or a new application. The ZBA's attorney will advise an applicant if proposed changes cannot be made through revised plans.
- If an application did not involve plan review by L&I, the ZBA cannot stamp revised plans. For example, if the application is to change the use of a property from single-family to multi-family only, the application cannot be changed to add an addition, a roof deck, or other elements before the ZBA reviews it. Those changes require review by L&I.
- The ZBA will not adopt as a proviso a community benefits agreement or letter from an RCO listing certain conditions that have been agreed to. These are private agreements, and L&I does not enforce private agreements. Provisos adopted by the ZBA will be listed on the Notice of Decision.

What if I still have questions?

You may reach out to the Philadelphia City Planning Commission staff by email at planning@phila.gov or by phone at (215) 683-4615 (TTY: 215 683 0286).

You can also reach out to the ZBA's attorney at BoardCounsel@phila.gov. One of the responsibilities of the ZBA's attorney is to work with the Board members to draft proviso language and advise them what provisos are enforceable.