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COUNCIL OF THE CITY OF PHILADELPHIA

3

COMMITTEE ON RULES

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Room 400, City Hall
Philadelphia, Pennsylvania
Wednesday, March 11, 2009
10:15 a.m.

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PRESENT:

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COUNCIL PRESIDENT ANNA C. VERNA

COUNCILMAN DARRELL L. CLARKE

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COUNCILMAN FRANK DiCICCO

COUNCILMAN W. WILSON GOODE, JR.

11

COUNCILMAN WILLIAM GREENLEE

COUNCILMAN CURTIS JONES, JR.

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COUNCILMAN JAMES F. KENNEY

COUNCILWOMAN DONNA REED MILLER

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COUNCILWOMAN BLONDELL REYNOLDS BROWN

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BILL 080954 - An ordinance to amend the
Philadelphia Zoning Maps by changing the
zoning designations of certain areas of land
located with an area bounded by Broad Street,
15th Street, Oxford Street and Cecil B. Moore
Avenue...

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BILL 080952 - An ordinance amending Chapter
14-1800 of The Philadelphia Code, entitled
"Zoning Board of Adjustment," to prohibit
accessory uses...

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V A R A L L O Incorporated

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Litigation Support Services

Eleven Penn Center

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1835 Market Street, Suite 600

Philadelphia, Pennsylvania 19103

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215.561.2220 215.567.2670

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COUNCIL PRESIDENT Verna: Good

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morning, everyone. This is a public

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hearing of the Committee on Rules.

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I would ask Mr. McPherson to

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please read the title of Bill No. 080952.

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MR. McPHERSON: An ordinance

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amending Chapter 14-1800 of The

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Philadelphia Code, entitled "Zoning Board

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of Adjustment," to prohibit accessory

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uses in connection with a principal use

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authorized by variance, under certain

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terms and conditions.

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COUNCIL PRESIDENT Verna: Thank

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you.

16

Good morning, Mr. Kramer.

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Please identify yourself for the record.

18

MR. KRAMER: Good morning,

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Council President Verna and members of

20

the Rules Committee. I am William

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Kramer, Division Director of the

22

Development Division of the Philadelphia

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City Planning Commission. I am here

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today to testify on Bill No. 080952,

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which was introduced into City Council on

1 3/11/09 - RULES - BILLS 080952 and 080954
2 December 11, 2008.

3 Bill No. 080952 will amend the
4 Philadelphia Zoning Code by amending
5 Chapter 14-1800 of the Zoning Code. The
6 proposed amendment will prohibit
7 accessory uses in connection with a
8 principal use of a property that has been
9 permitted by the grant of a variance by
10 the Zoning Board of Adjustment unless
11 specifically authorized by the Zoning
12 Board.

13 The Philadelphia City Planning
14 Commission considered Bill No. 080952 at
15 its meeting of January 20, 2009 and
16 recommended that the bill be tabled in
17 order to allow the staff of the
18 Commission to work with the sponsoring
19 Councilman in order to address some of
20 the concerns regarding the provisions of
21 the bill.

22 As initially written, the bill
23 would have the unintended impact of
24 adding a significant number of cases
25 requiring an action by the Zoning Board.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 This is because not every applicant to
3 the Board has a complete business plan
4 that anticipates all eventualities and
5 would result in several hearings before
6 the Board for the same business.

7 The staff of the Commission
8 worked in connection with Councilman
9 O'Neill and his staff and in coordination
10 with representatives of the Department of
11 Licenses and Inspections in order to
12 address these concerns. I respectfully
13 submit an amendment to Bill No. 080952
14 which was the result of those meetings.
15 It is believed that this amendment will
16 address the concerns of the Planning
17 Commission and the Department of Licenses
18 and Inspections while at the same time
19 addressing the concerns of the
20 Councilman.

21 The Planning Commission will
22 consider Bill No. 080952 at its meeting
23 of March 17, 2009 and the staff will be
24 recommending approval of the bill as
25 amended.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 That is the conclusion of my
3 testimony. I'd be happy to answer any
4 questions of the Committee at this time.

5 COUNCIL PRESIDENT VERNA: Thank
6 you, Mr. Kramer.

7 Do I understand you to say that
8 all of the interested parties, including
9 Councilman O'Neill, agreed to the
10 amendment?

11 MR. KRAMER: That is my
12 understanding. There was a last-second
13 change in language by the Law Department,
14 which was submitted late yesterday
15 afternoon to his staff, but it is my
16 understanding that they were okay with
17 that. It was not a substantive change to
18 the amendment.

19 COUNCIL PRESIDENT VERNA: Thank
20 you.

21 Are there any questions?

22 The Chair recognizes Councilman
23 Greenlee.

24 COUNCILMAN GREENLEE: Thank
25 you, Madam President.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 Mr. Kramer, could you just go
3 over in lay language, as much lay
4 language as possible, the difference --
5 like the reason for the amendment, why
6 you did it, you changed the language,
7 what it does, what that change is.

8 MR. KRAMER: This bill, as I
9 understand it, has been explained to me
10 as a result of the -- of an individual
11 applicant applying for an accessory use,
12 in this case a swimming pool, outside of
13 the structure on a building that was the
14 subject of a grant of a variance by the
15 Zoning Board of Adjustment. By the
16 nature of a swimming pool, a swimming
17 pool is not considered a structure
18 because they're in-ground. As a result,
19 they did not -- as the Department of
20 Licenses and Inspections, a permit was
21 granted as a matter of right.

22 The Councilman was concerned
23 that then this swimming pool has
24 generated issues and concerns from the
25 neighbors, with result to actions at that

1 3/11/09 - RULES - BILLS 080952 and 080954
2 pool, rightly or wrongly. The Councilman
3 then believed that his way to address
4 this would be to require that any such
5 accessory use would have to go back to
6 the Zoning Board of Adjustment, and
7 that's what is the nature of why this
8 bill was drafted the way it was.

9 As originally drafted, it would
10 have meant that if you had, let's say, a
11 pizza place and wanted to store boxes on
12 the second floor and hadn't mentioned
13 that at the Zoning Board of Adjustment,
14 you'd have to go back to the Zoning Board
15 to make that legal.

16 What we were trying to do in
17 meeting a compromise with the Councilman
18 is create it so that if a variance was
19 granted on a property, if you were going
20 to do something that required an outside
21 or an impactful action, such as a
22 swimming pool, that it would require
23 Zoning Board approval before you went and
24 had that approval done. That's the
25 nature in as lay language as I can

1 3/11/09 - RULES - BILLS 080952 and 080954
2 probably do it.

3 COUNCILMAN GREENLEE: I got
4 you. And you're saying Councilman
5 O'Neill is agreeable to this language?

6 MR. KRAMER: That's --

7 COUNCILMAN GREENLEE: Because I
8 got the impression he wanted it wider,
9 but maybe I'm wrong. Maybe he was okay
10 with making it tighter.

11 MR. KRAMER: He would have to
12 address that. I don't want to speak for
13 the Councilman.

14 COUNCILMAN GREENLEE: I don't
15 want you to speak for him either, but if
16 he's okay, all right.

17 Councilman Clarke is saying
18 what is "impactful." How do you
19 determine that?

20 MR. KRAMER: By my
21 definitions -- and it is my
22 definitions -- impactful would be
23 something that happens outside the main
24 walls of the structure. For example, if
25 you're storing pizza boxes on the second

1 3/11/09 - RULES - BILLS 080952 and 080954

2 floor, no one is going to know or care,
3 or if you have an accessory office inside
4 the building, what difference does it
5 make. However, if you're going to have
6 trash storage or if you're going to put
7 an addition on a building that extends
8 another 20, 30 feet outside your
9 building, those are things that I would
10 consider something that would have more
11 of an impact than something that's done
12 inside as a use variance.

13 COUNCILMAN GREENLEE: And it
14 would be L&I that would -- it would be
15 the examiner to make that determination?

16 MR. KRAMER: They would have to
17 make that determination, yes.

18 COUNCILMAN GREENLEE: And you
19 think that this language is clear enough
20 to them that they're not --

21 MR. KRAMER: We have believed
22 that to be. They were at the table with
23 us when we discussed this.

24 COUNCILMAN GREENLEE: Okay.

25 Thank you, Madam President.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCIL PRESIDENT Verna:

3 You're welcome.

4 The Chair recognizes

5 Councilwoman Brown.

6 COUNCILWOMAN BROWN: Good

7 morning.

8 Good morning, Mr. Kramer. My
9 particular interest rests with the
10 childcare community, who already has to
11 pursue what is viewed by many of them as
12 an onerous process, and a couple of bills
13 have already been passed in Council
14 around zoning to remove some of the
15 impediments that come with those who want
16 to provide childcare services.

17 So to what extent has there
18 been consideration to making sure that
19 this bill does not impact the childcare
20 community, number one, and will the
21 anticipated amendment remove any
22 potential impediments for that particular
23 community?

24 MR. KRAMER: To answer the
25 first part of that, at the time of

1 3/11/09 - RULES - BILLS 080952 and 080954
2 discussions with the Department of
3 Licenses and Inspections, myself and the
4 Councilman, I don't think that the issue
5 of daycare entered into it specifically
6 and was not intended to present any
7 additional hurdles or, conversely, to
8 remove any hurdles. It was sort of a
9 non-entity in that regard.

10 My experience, having sat at
11 the Zoning Board for ten years as the
12 Planning Commission representative, I can
13 tell you that many of the items for
14 daycare are very well vetted when
15 presented to the Zoning Board of
16 Adjustment, such that I would not believe
17 that a typical case going before the
18 Zoning Board is something that's going to
19 not have addressed all the accessory use
20 concerns that a daycare would have.
21 Usually the questions all revolve around
22 where are the children going to play.
23 It's a matter of ingress, egress, how
24 many ways out of the building do you
25 have.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 The questions that I've heard
3 from the Zoning Board generally are
4 geared towards maintaining public safety
5 for the children in these centers and
6 they're trying to put on the record those
7 kinds of concerns and making sure that
8 they're adequately being dealt with.

9 This bill, to an extent, has
10 the potential if someone doesn't throw
11 out there that they're going to have a
12 play yard in the outside, it is possible
13 that that could be used to send it back
14 to the Zoning Board. Most of the time
15 that the conflicts that daycare has with
16 the Zoning Board tends to be along the
17 line of increasing the number of children
18 within the center, and that has a
19 two-fold prong, because on one hand, from
20 the City's perspective, it's numbers, but
21 then there's also state regulations that
22 kick in above a certain number. A lot of
23 people when they're coming in with
24 daycare are not necessarily fully aware
25 of all those ramifications.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCILWOMAN BROWN: Which is
3 part of the concern of this bill, because
4 the process is already daunting and now
5 we are offering, imposing potentially a
6 new regulation.

7 So your answer to the question,
8 that has been -- you've had that kind of
9 dialogue with members of the childcare
10 community to know that it will not impact
11 them negatively or is this based on your
12 experience there in the department?

13 MR. KRAMER: It is based on my
14 experience. I would say that the Zoning
15 Board generally tends to ask them
16 questions with regard to play areas, so
17 it is on the record, for example. The
18 one I can think of that would normally
19 jump out as something that would kick in
20 this particular regulation would be a
21 play area outside of the building. My
22 experience says that the Zoning Board
23 generally is asking you where are the
24 children playing, and if you're saying
25 they're playing in the yard and this is

1 3/11/09 - RULES - BILLS 080952 and 080954
2 where we're going to do it, I've been
3 there in some instances, the answer to
4 that is, We take them around the corner
5 to a playground.

6 It depends on the operator and
7 the applicant, but generally speaking,
8 the question itself is put on the record
9 at the Zoning Board, and I would tend to
10 believe that that would negate the
11 requirement to send it back for a further
12 variance request.

13 COUNCILWOMAN BROWN: As a
14 matter of record, what type of lessons,
15 instructional sessions do you offer to a
16 particular community when it comes to the
17 Zoning Board process? Because as a rule,
18 childcare providers are not as
19 sophisticated, if you will, on the zoning
20 laws and the process. So what do you do
21 to arm them of what they need to know so
22 that they are indeed following the rules
23 as it relates to zoning?

24 MR. KRAMER: There is no
25 specific class that we offer or no

1 3/11/09 - RULES - BILLS 080952 and 080954
2 specific --

3 COUNCILWOMAN BROWN: Is there a
4 pamphlet, a booklet, a website?

5 MR. KRAMER: No, ma'am, there's
6 not. However, me and my staff -- or
7 myself and my staff do answer questions
8 repeatedly from all the different
9 applicants, and if we see an application
10 coming in -- and, unfortunately, we don't
11 always get enough time to do this,
12 because the procedures being what they
13 are and the caseload being what it is, we
14 don't get the time we'd like to have to
15 like reach and call some of these people
16 and say, What's going on here. Many
17 times those outreach issues are handled
18 by representatives of the District
19 Council offices.

20 COUNCILWOMAN BROWN: I see.

21 MR. KRAMER: In particular,
22 Mrs. Johnson from Marian Tasco's office
23 is famous at the Zoning Board for doing
24 just that. And my staff and I will
25 certainly answer questions all the time,

1 3/11/09 - RULES - BILLS 080952 and 080954
2 not just for daycare but any application
3 going to the Zoning Board of Adjustment.
4 We're there to answer questions at any
5 time.

6 COUNCILWOMAN BROWN: Well,
7 thank you for your testimony. I look
8 forward to hearing from the other
9 witnesses.

10 Thank you, Madam Chair.

11 COUNCIL PRESIDENT VERNA:
12 You're welcome.

13 Councilman Clarke, did you have
14 any questions?

15 COUNCILMAN CLARKE: No, Madam
16 President. I was actually going to ask
17 similar questions along the line as
18 Councilman Greenlee about an example, and
19 you referenced the particular case, the
20 swimming pool versus the pizza boxes and
21 interior offices. So primarily my
22 understanding, this, first of all, will
23 deal with exterior issues, and then at
24 the point when there has to be some
25 determination as to whether or not it

1 3/11/09 - RULES - BILLS 080952 and 080954
2 requires a zoning hearing or variance,
3 that will be determined by the L&I
4 inspector or examiner?

5 MR. KRAMER: Yes, sir.

6 COUNCILMAN CLARKE: But it
7 sounds like there's some level of
8 flexibility, and the only question I
9 would have is, will there be some
10 guidelines within the department?
11 Because every examiner can have a
12 different sense of what is,
13 quote/unquote, impactful. So I would be
14 a little concerned about that.

15 MR. KRAMER: I would hope that
16 they would develop those guidelines, but
17 that's a different department and I
18 cannot speak for them.

19 COUNCILMAN CLARKE: All right.
20 Mr. Haigler, is that your department,
21 sir?

22 (Witness approached witness
23 table.)

24 COUNCIL PRESIDENT VERNA: Good
25 morning. Please identify yourself for

1 3/11/09 - RULES - BILLS 080952 and 080954
2 the record.

3 MR. HAIGLER: Good morning,
4 Madam President. I'm Otis Haigler, Jr.,
5 Director of Legislative Affairs for the
6 Department of Licenses and Inspections.

7 I heard your question, and,
8 yes. Matter of fact, our Deputy
9 Commissioner of Development, Mr. Fink, as
10 well as the Chief of the Zoning Unit have
11 already developed a policy that if in the
12 future any issue that was decided by the
13 Board, if there was to be any kind of
14 change to the main use or situation that
15 was decided by the Board, it would have
16 to go back to the Board for
17 administrative review and approval.

18 I don't know if you quite -- I
19 don't know if I was quite clear on that.

20 COUNCILMAN CLARKE: All right.
21 Well, I'll ask the question.

22 Would it be possible prior to
23 the final passage of the bill to provide
24 whatever guidelines, be it draft form,
25 whatever, so --

1 3/11/09 - RULES - BILLS 080952 and 080954

2 MR. HAIGLER: We can do that.

3 COUNCILMAN CLARKE: --

4 questions like Councilwoman Brown has
5 about the daycare center and other issues
6 can be better defined as we cast our
7 final vote?

8 I'm a little concerned about an
9 examiner or somebody having the
10 flexibility to say, No, that's impactful;
11 No, that's not impactful.

12 MR. HAIGLER: Well, the
13 amendment is somewhat explicit really,
14 because it says outside uses for storage,
15 utilities, sheds and fences. So anything
16 outside of that would be subject to go
17 back to the Board for an approval.

18 COUNCILMAN CLARKE: Okay. So
19 that's going to be it?

20 MR. HAIGLER: It's in the
21 amendment.

22 COUNCILMAN CLARKE: I
23 understand that. I just want to make
24 sure, because the testimony was a little
25 different. It gave the impression that

1 3/11/09 - RULES - BILLS 080952 and 080954

2 there was going to be some flexibility.

3 MR. HAIGLER: It's not really
4 that flexible. It's already in the
5 amendment.

6 COUNCILMAN CLARKE: So this is
7 it? Okay.

8 All right. I'm fine.

9 COUNCIL PRESIDENT VERNA: Thank
10 you.

11 Are there any other questions
12 from members of the Committee?

13 (No response.)

14 COUNCIL PRESIDENT VERNA: Thank
15 you very much.

16 MR. HAIGLER: Thank you.

17 COUNCIL PRESIDENT VERNA: I
18 would like the record to reflect that we
19 do have a quorum. To my extreme left is
20 Councilwoman Brown, Councilman Clarke,
21 Councilman Greenlee. To my extreme right
22 is Councilwoman Miller, Councilman Goode,
23 Councilman Kenney and Councilman DiCicco.

24 Do we have anyone else to
25 testify on this bill?

1 3/11/09 - RULES - BILLS 080952 and 080954

2 MR. MCPHERSON: Yes. The next
3 witness is Bart Blatstein.

4 COUNCILMAN GREENLEE: That's
5 the other bill.

6 MR. BLATSTEIN: I'll ask a
7 question.

8 COUNCIL PRESIDENT VERNA: Do we
9 have anyone else to testify on Bill No.
10 080952?

11 Please approach the witness
12 table.

13 (Witness approached witness
14 table.)

15 COUNCIL PRESIDENT VERNA:
16 Kindly identify yourself for the record
17 and proceed with your testimony.

18 Good morning, members of the
19 Council. My name is Rasheedah Phillips.
20 I'm an attorney from Community Legal
21 Services.

22 My testimony is prepared for
23 the original ordinance as it was
24 proposed, not with the amendments that
25 were presented today.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 As I said, I'm an attorney at
3 Community Legal Services in the Community
4 Economic Development Unit working on
5 something called the Child Care Law
6 Project. The Child Care Law Project was
7 established at CLS to address the legal
8 needs of Philadelphia's childcare
9 community. I provide legal advice and
10 representation to low-income non-profit
11 and for-profit childcare providers. I
12 also represent a few non-profit
13 organizations that serve as a resource to
14 the childcare community, such as SEPECC,
15 which is a regional group of early
16 childcare and education providers,
17 experts and advocates working together to
18 exchange information and coordinate
19 advocacy and support for early childcare
20 and education.

21 The purpose of the proposed
22 ordinance is to ensure that businesses
23 granted a zoning variance for one
24 specific purpose do not use their
25 businesses for other illegitimate

1 3/11/09 - RULES - BILLS 080952 and 080954
2 purposes. The bill seeks to accomplish
3 this by prohibiting all accessory uses
4 connected with a variance where these
5 uses are typically permitted by right
6 where a variance is granted by the ZBA.
7 While the bill before the Committee today
8 does not directly address childcare in
9 its language, the bill in its breadth
10 could nevertheless have an unintended,
11 detrimental impact upon childcare
12 providers. It is also my understanding
13 that the impetus for this bill arose out
14 of an isolated incident that occurred in
15 the 10th Council District. Although this
16 bill may be intended to address the
17 particular issue that took place in that
18 particular district, its actual effect
19 will be much more widespread and, as
20 written, is dangerously overbroad.

21 Zoning is the entry point for
22 all childcare providers, many of whom are
23 first-time business owners and most of
24 whom are low-income residents of
25 Philadelphia. These clients have often

1 3/11/09 - RULES - BILLS 080952 and 080954
2 recently come off of welfare or out of
3 dire financial circumstances and are
4 attempting to create a business that can
5 be both economically viable and fulfill a
6 communal need. Philadelphia childcare
7 providers are also small community
8 organizations and religious-based
9 organizations seeking to provide a safe
10 space in the community for children to
11 learn and play while their parents go to
12 work. For providers wishing to develop
13 their businesses, zoning is often a
14 hurdle in the process that serves to
15 frustrate their purposes rather than
16 further them.

17 Before opening a properly
18 licensed daycare in Philadelphia,
19 providers must apply for and be granted a
20 zoning permit that will allow them to
21 proceed to the next step in the process.
22 Some providers are able to obtain
23 over-the-counter permits by way of right.
24 However, because the Zoning Code does not
25 encompass all of the different childcare

1 3/11/09 - RULES - BILLS 080952 and 080954
2 options upon which the families and the
3 economy of Philadelphia depend, many more
4 providers are refused permits and must
5 appeal their cases before the ZBA in
6 order to obtain a variance to open their
7 daycare. In addition to relying on
8 variances, these same providers rely on
9 permissible accessory uses that are
10 necessary to carry out their daycare
11 businesses. Such accessory uses include,
12 but are not limited to, accessory
13 preparing and serving of food, adding
14 meeting rooms, setting up a small office
15 to carry out administrative work, adding
16 hardwired smoke detectors for group
17 daycares and setting up outdoor play
18 stations for children.

19 Another category of childcare
20 providers whom this bill is likely to
21 affect are churches, schools and
22 recreation centers that run daycare and
23 after-school programs. As it stands,
24 schools, churches and recreation centers
25 are presently permitted to run daycare

1 3/11/09 - RULES - BILLS 080952 and 080954
2 programs as an accessory use in
3 residential districts with approval from
4 the ZBA. Under this proposed ordinance,
5 however, these programs will be required
6 to revisit the ZBA in order to make small
7 renovations to their buildings, such as
8 additional bathrooms or other
9 improvements needed to accommodate
10 building accessibility codes or state
11 regulations. Currently, these programs
12 are able to make these additions as part
13 of their accessory use right without
14 requiring additional approval from the
15 ZBA.

16 Unfortunately, most of our
17 childcare providers are not well-versed
18 in zoning law and are often unable to
19 navigate through the technical language
20 found in the Code on their own. They
21 also tend to be low income and often are
22 unable to afford to hire an attorney to
23 assist in navigating the Code. Although
24 they have access to free resources such
25 as Community Legal Services and One Stop

1 3/11/09 - RULES - BILLS 080952 and 080954

2 Shop for Child Care Licensing, there are
3 those who fall under the radar and who
4 must stand before the ZBA pro se,
5 ill-prepared and without adequate
6 representation.

7 These are the providers who
8 this bill will affect most. These
9 providers will not understand that they
10 must specify an accessory use in their
11 zoning application, such as preparing and
12 serving of food on the premises or the
13 addition of a playground in their
14 backyard. These same providers will then
15 be at risk of having unauthorized
16 accessory uses on the premises of their
17 business or will be made to go back in
18 front of the ZBA for minor improvements,
19 taking additional time and resources out
20 of their pockets and away from their
21 childcare programs.

22 The bill in its current form
23 also undermines the mandate of the Zoning
24 Code Commission, whose goal is to make
25 the Philadelphia Zoning Code more user

1 3/11/09 - RULES - BILLS 080952 and 080954
2 friendly and accessible to its residents
3 and to cut down on the number of appeals
4 heard before the ZBA. This bill, if
5 passed, would only work to significantly
6 increase the redundant and burdensome
7 appeal pressure on the ZBA, who already
8 faces a staggering workload of nearly
9 1,500 variance requests per year.

10 As an advocate for the
11 childcare community, I would like to
12 offer my time and assistance in helping
13 to redraft the bill so that it includes
14 language that will provide adequate
15 protection to the childcare community. I
16 believe that the language in the bill
17 should be narrowed to specific accessory
18 uses, or language should be included to
19 protect the childcare providers who rely
20 on accessory uses to carry out necessary
21 business functions.

22 COUNCIL PRESIDENT VERNA: Thank
23 you very much.

24 Have you seen a copy of the
25 amendment?

1 3/11/09 - RULES - BILLS 080952 and 080954

2 MS. PHILLIPS: I did just this
3 morning, yes.

4 COUNCIL PRESIDENT Verna: And
5 how do you feel about the bill with the
6 amendment?

7 MS. PHILLIPS: Well, I haven't
8 had time to really look over it in
9 detail. I mean, I feel like it does
10 address some of the concerns that I have,
11 but probably not all of them.

12 COUNCIL PRESIDENT Verna: Thank
13 you.

14 Mr. Haigler, do you mind taking
15 the witness table again, please.

16 (Witness approached witness
17 table.)

18 COUNCIL PRESIDENT Verna: I do
19 believe that you heard very clearly the
20 testimony of this witness. Can you
21 please clarify for us what this bill
22 would do as far as the childcare
23 facilities?

24 MR. HAIGLER: In its present
25 form, before the amendment, the bill had

1 3/11/09 - RULES - BILLS 080952 and 080954
2 a far-reaching effect on not just the
3 childcare facilities, but all facilities,
4 as the witness testified. It affected
5 all accessory uses.

6 Right now the way the bill is
7 written now, it would not have a great
8 impact on childcare, I don't believe. I
9 believe, for the most part, it -- as
10 written now, I don't believe it will have
11 a great impact.

12 COUNCILWOMAN BROWN: Madam
13 President?

14 COUNCIL PRESIDENT VERNA: The
15 Chair recognizes Councilwoman Brown.

16 COUNCILWOMAN BROWN: "Great" is
17 relative, and for those who get it and
18 are able to hire lawyers to aid them in
19 navigating the process, which is
20 intimidating for us so-called
21 well-informed folk, it's compounded for
22 those in the childcare community, many of
23 whom are the working poor who cannot
24 afford attorneys of any type, to come
25 downtown when they have children to take

1 3/11/09 - RULES - BILLS 080952 and 080954
2 care of. And so "great" is relative and,
3 for me, unacceptable as far as supporting
4 this bill in its current form.

5 Thank you, Madam President.

6 COUNCIL PRESIDENT VERNA:

7 You're welcome.

8 Any other questions from
9 members of the Committee?

10 COUNCILMAN GREENLEE: Let me
11 ask a question in another way,
12 Mr. Haigler, if I could.

13 MR. HAIGLER: Yes.

14 COUNCILMAN GREENLEE: You heard
15 the witnesses and the Councilwoman's
16 concerns, and you said it wouldn't have a
17 great impact. What impact would you see
18 it would have? Like could you give an
19 example of what you would still think
20 would be a problem?

21 MR. HAIGLER: Well, as
22 Mr. Kramer had indicated, there are still
23 certain exterior accessory uses that
24 would fall under this category where they
25 would have to go back to the Board. As

1 3/11/09 - RULES - BILLS 080952 and 080954
2 he indicated, play areas that are
3 required as part of a daycare operation,
4 if that was not indicated on the original
5 application for the main use that was
6 approved by the Board and if somebody
7 wanted to come in later on in order to
8 add that use, that use would have to go
9 back to the Board for approval.

10 COUNCILMAN GREENLEE: I guess
11 in fairness, that is something that
12 sometimes is --

13 MR. HAIGLER: It's a great
14 impact. I'm sorry. That may have been a
15 poor choice of words on my part.

16 COUNCILMAN GREENLEE: Okay. It
17 has an impact. I guess it has an impact
18 certainly on the operator. It has an
19 impact possibly on the community too, I
20 guess --

21 MR. HAIGLER: Yes, it does.

22 COUNCILMAN GREENLEE: -- if
23 you're talking an outside --

24 MR. HAIGLER: Yes, it does.

25 COUNCILMAN GREENLEE: Okay.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCIL PRESIDENT Verna: Any
3 other questions?

4 The Chair recognizes
5 Councilwoman Miller.

6 COUNCILWOMAN MILLER: Hi.
7 Thank you, Madam President.

8 How would this impact a
9 doghouse or if someone wants to put a
10 doghouse up?

11 MR. HAIGLER: It's --

12 COUNCILWOMAN MILLER: What are
13 those other uses?

14 MR. HAIGLER: It's an accessory
15 use and it would have to go back to the
16 Board for Board approval.

17 COUNCILWOMAN MILLER: It would
18 have to go to the Zoning Board?

19 MR. HAIGLER: Yes, it would.
20 If it's not indicated on the original
21 application for approval, it would have
22 to go back to the Zoning Board for
23 approval.

24 COUNCILWOMAN MILLER: But if it
25 was on the original application?

1 3/11/09 - RULES - BILLS 080952 and 080954

2 MR. HAIGLER: And it was
3 approved as part of zoning variance
4 process for the original application,
5 then it would be approved.

6 COUNCILWOMAN MILLER: Okay.
7 Similar to the daycare, if I decided to
8 buy some play equipment and put it up in
9 my backyard, how does this bill impact
10 that?

11 MR. HAIGLER: I think I would
12 ask Mr. Kramer to come back to the table.
13 He's more of an expert on that issue.

14 COUNCIL PRESIDENT VERNA:
15 Mr. Kramer.

16 (Witness approached witness
17 table.)

18 MR. KRAMER: Councilwoman, in
19 answer to your question, if you
20 originally built the home and there was
21 no variance required to do that, this
22 bill would have no effect on that
23 whatsoever. If, on the other hand, your
24 home required a variance, let's say,
25 for -- you need a 16-foot setback and you

1 3/11/09 - RULES - BILLS 080952 and 080954
2 went for an eight-foot setback, the
3 variance requirement then if you did not
4 have a doghouse, the accessory use would
5 then become something that you would have
6 to take back to the Board. But this is
7 only affecting cases for which a Zoning
8 Board of Adjustment approval is required
9 in the first place. So it's not every
10 property across the board. It is for
11 items that go to the Zoning Board and
12 have a variance. If you then
13 subsequently put an application for an
14 accessory use after that that was not
15 included in the original variance
16 request, this would take the matter back
17 to the Board.

18 COUNCILWOMAN MILLER: So if I
19 have a daycare center -- I'll just use
20 that -- and I'm just opening it up, so I
21 fill my paperwork out to go get my
22 variance, if I put play equipment as a
23 part of that, then I would not have to
24 come back?

25 MR. KRAMER: That is correct.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCILWOMAN MILLER: When I --
3 okay.

4 MR. KRAMER: That would be
5 correct. That would be part of the
6 original application and was considered
7 before the Board and was subsequently
8 granted as an entity. It would be
9 someone that went before the Board and
10 said, I'm having a daycare center in this
11 home, and subsequently -- initially they
12 were going to take the children around
13 the corner to a playground. Subsequently
14 that changed, they found that to be
15 unworkable for them, and then wanted to
16 put a play facility in the rear yard. To
17 then subsequently do that play facility
18 in the rear yard, that change would
19 necessitate going back to the Zoning
20 Board of Adjustment based on this bill.

21 COUNCILWOMAN MILLER: Is this
22 bill making life complicated?

23 MR. KRAMER: Life is
24 complicated, I'm sorry to say.

25 COUNCILWOMAN MILLER: Okay.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 MR. KRAMER: Zoning in
3 particular, Madam, I have to tell you.

4 COUNCILWOMAN MILLER: Thank
5 you.

6 Thank you, Madam President.

7 COUNCIL PRESIDENT VERNA:

8 You're welcome.

9 The Chair recognizes Councilman
10 Jones.

11 COUNCILMAN JONES: Thank you,
12 Madam Chairman.

13 I just have one question. Is
14 this also simultaneously being considered
15 by the Zoning Reform Commission? I mean,
16 I know there are two parallel tracks in
17 the world, one that's trying to reform
18 zoning in its entirety and then this
19 bill. Has this also been considered by
20 that group?

21 COUNCIL PRESIDENT VERNA: I
22 have no idea.

23 MR. KRAMER: I was at that
24 meeting earlier this morning and I will
25 tell you this specific, as any specific

1 3/11/09 - RULES - BILLS 080952 and 080954
2 zoning legislation at this time, is not
3 currently being considered by the Zoning
4 Code Commission. They are -- in fact,
5 this morning they received an initial
6 report back from the consultant that gave
7 the first evaluation of our Zoning Code,
8 was presented to the Zoning Code
9 Commission at 8 o'clock this morning.

10 So that it is part and parcel
11 of the evaluation of the Code, but it's
12 not something that's handled separately
13 as an individual item. I guess that's
14 the best I can give you.

15 COUNCILMAN JONES: Thank you,
16 Madam Chairman.

17 COUNCILWOMAN BROWN: Madam
18 Chair?

19 COUNCIL PRESIDENT VERNA: The
20 Chair recognizes Councilwoman Brown.

21 COUNCILWOMAN BROWN: Thank you.

22 And in response to Councilwoman
23 Donna Reed Miller's question regarding
24 play area, procedurally what happens at
25 Zoning? If they have to come back for an

1 3/11/09 - RULES - BILLS 080952 and 080954
2 additional variance, is there an
3 additional cost to that revisit with the
4 Zoning Board?

5 MR. KRAMER: Yes, ma'am, there
6 would be.

7 COUNCILWOMAN BROWN: And that
8 cost would be what? It varies depending
9 on what?

10 MR. KRAMER: There's an
11 application fee involved with filing any
12 application, and then there's -- if you
13 are refused the appeal, to send it to the
14 Zoning Board is a separate fee. The last
15 I remember -- and I could be wrong on
16 this -- it was an \$80 application fee and
17 I believe it was a \$200 fee to send it to
18 the Zoning Board of Adjustment. I may be
19 wrong on the numbers, but that's...

20 MS. PHILLIPS: I think it's a
21 hundred-dollar application fee.

22 MR. KRAMER: Is it up to a
23 hundred now?

24 MS. PHILLIPS: I believe so.

25 MR. KRAMER: Okay.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCILWOMAN BROWN: I would,
3 therefore, add then that further supports
4 my interest in seeking to have a process
5 that does not become another part of the
6 maze that not just childcare providers
7 but small business owners, period, have
8 to endure.

9 Thank you for your testimony.

10 COUNCIL PRESIDENT Verna: Any
11 other questions or comments from members
12 of the Committee?

13 The Chair recognizes Councilman
14 Clarke.

15 COUNCILMAN CLARKE: Yes, Madam
16 President.

17 I'm going to ask a question of
18 a somewhat personal nature. A house,
19 somebody has a house. This property has
20 to get a zoning variance because during
21 the course of the renovation or the
22 development of the house as existing,
23 it's gutted out and there's going to be
24 some additions added to the building
25 during the course of the rehabilitation,

1 3/11/09 - RULES - BILLS 080952 and 080954
2 so it gets a variance. This person moves
3 in the house, lives in the house. This
4 person now wants to go get a storage shed
5 to put in their backyard. They go to
6 Home Depot, put the storage shed in the
7 backyard. They have to get a variance
8 for that?

9 MR. KRAMER: No, sir. Under
10 this particular piece of legislation,
11 they would have to get a zoning permit if
12 they wanted to do it legally, but under
13 the specific provisions of this bill,
14 that accessory storage shed would be
15 exempted and would be allowed as a matter
16 of right.

17 COUNCILMAN CLARKE: So you have
18 to get a permit?

19 MR. KRAMER: Yes. Well, if
20 you're going to follow the law -- a lot
21 of people don't, but, yes, you're
22 supposed to. I'm assuming that you're a
23 law-abiding citizen.

24 COUNCILMAN CLARKE: I'm glad
25 you reminded me.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 MR. KRAMER: Under 120 square
3 feet.

4 COUNCILMAN CLARKE: Not to say
5 that I'm speaking about myself.

6 MR. KRAMER: I understand.

7 COUNCILMAN CLARKE: But there's
8 a possibility that this person may be
9 thinking about getting a storage shed
10 from Home Depot.

11 MR. KRAMER: Well, if it's
12 under 120 square feet, the Department of
13 Licenses and Inspections would not
14 require a permit for it.

15 COUNCILMAN CLARKE: Okay. All
16 right. Thank you.

17 Thank you, Madam President.

18 COUNCIL PRESIDENT VERNA: The
19 Chair recognizes Councilman DiCicco.

20 COUNCILMAN DiCICCO: Thank you,
21 Madam Chair.

22 On that same question -- and
23 you may have answered this earlier. I
24 got here late -- does that apply to a
25 freestanding structure or is there a

1 3/11/09 - RULES - BILLS 080952 and 080954
2 distinction between freestanding and one
3 that is attached to the building as a
4 permanent structure?

5 I know out in, I think, in
6 Jersey and at the seashore, you could put
7 a shed and you won't have to pay any
8 additional taxes, but if it's attached to
9 your property, it also reflects on the
10 real estate tax, because it becomes a
11 permanent fixture.

12 MR. KRAMER: Well, the one that
13 would be attached to your home would
14 increase your square footage of your
15 building and subsequently would affect
16 your taxes. One that's an accessory
17 storage shed that's under a criteria
18 level would not be considered -- it's an
19 accessory storage shed and they're rather
20 disposable. That would not.

21 This does not -- it's -- that
22 would be considered a temporary structure
23 and would not necessarily require -- we
24 wouldn't acknowledge its existence,
25 basically.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCILMAN DiCICCO: I just

3 want to be clear on it. Thank you.

4 COUNCIL PRESIDENT VERNA: Thank

5 you.

6 Any other questions or

7 comments?

8 (No response.)

9 COUNCIL PRESIDENT VERNA: Thank

10 you very much.

11 Do we have anyone else that

12 would like to testify?

13 (Witness approached witness

14 table.)

15 COUNCIL PRESIDENT VERNA: Good

16 morning. Welcome. Please identify

17 yourself for the record.

18 MR. BELLER: Yes. My name is

19 Joseph Beller. I'm an attorney with

20 Offit Kurman in Philadelphia. I've had

21 the pleasure of appearing here on more

22 than one occasion, but for this

23 particular one, I'm going to do something

24 that -- I'll blush while I'm doing it,

25 but I'll have to admit that I've been

1 3/11/09 - RULES - BILLS 080952 and 080954
2 doing land use and zoning work for more
3 years than many of the people in this
4 Chambers are alive. That's over 40
5 years. I was about to say 47, but I
6 don't want to get you that close to my
7 real age.

8 Up until now, there's been a
9 lot of talk about daycare, except for
10 some of the really excellent questions
11 from the panel. I believe obviously that
12 this bill was engendered by a perceived
13 problem with a daycare center in the
14 particular district of the Councilman who
15 introduced this bill. I suggest to you
16 that this bill, if you want to correct a
17 problem, that this bill is like using a
18 meat axe instead of a scalpel, and I am
19 terribly upset by this as a zoning
20 lawyer, because what's happened is, many
21 a good-meaning bill has passed this
22 Council that later caused problems.

23 As an outset, I will tell you
24 that I can't give you an exact number and
25 nobody in the room could, but I would

1 3/11/09 - RULES - BILLS 080952 and 080954
2 almost bet that you will double the
3 visits to the Zoning Board. And let me
4 give the numbers. I think Mr. Haigler
5 gave them correctly. He always does.
6 But it's \$100 for the application and
7 it's normally \$200 to go to the Zoning
8 Board, except that the most recent poster
9 that I got -- and, as I say, I do this
10 work all the time. The most recent
11 poster I got, which I applied for some
12 weeks ago, the hearing will be on May
13 30-something, May 31st.

14 Now, you recognize that my
15 client went out of his mind and realized
16 he could have paid an extra \$500 and he
17 would have saved about four, maybe six
18 weeks. I can't know that exactly either.

19 So you have -- in my case it's
20 not a daycare center, thank God. It is a
21 businessman who is now going to occupy a
22 vacant store, but he won't even know
23 until May 31st whether he can do that.

24 This Council struggles every
25 day with the budget and with raising

1 3/11/09 - RULES - BILLS 080952 and 080954
2 revenue. And the reason I'm pointing
3 that out is that if you delay or if you
4 disturb or if you take away what has been
5 traditional in zoning, you will cause
6 extra hearings, it will cost money and,
7 in addition, it will discourage people.

8 I'm going to give you one quick
9 example. Some years ago, a Councilperson
10 or two Councilpersons who were concerned
11 about a particular use in their combined
12 district asked you to change "G-2," and
13 you did. And what you did was, you took
14 out of "G-2," which is industrial, you
15 took out parking and auto repair and some
16 other things. Now, let me tell you what
17 havoc that has caused.

18 You can build a chemical
19 biological warfare instrument in a "G-2"
20 legally, but you can't park your car in a
21 parking lot, which means that everybody
22 in the rest of the City went and had to
23 go to Zoning. And I actually took one
24 case through successfully, but because it
25 was appealed, this group of people

1 3/11/09 - RULES - BILLS 080952 and 080954
2 withdrew and walked away from the City
3 and walked away from a substantial
4 investment in a piece of property in
5 Southwest Philadelphia, completely the
6 opposite end of where the Councilman who
7 introduced it comes from.

8 So you have to know that what
9 you're tinkering with here -- and, by the
10 way, I compliment City Planning on trying
11 to make it more livable, but I'm not sure
12 it is more livable. And someone asked a
13 question about a house. Well, there's a
14 rule. If whatever you get is by
15 variance, you must go back. So if that
16 house that you talked about being gutted
17 and ripped out and redone, let's say in a
18 single-family dwelling you need 144
19 square feet in the rear. Now, when they
20 redesigned the house, they came up with
21 138 or 140 square feet. That case would
22 go to the Zoning Board. Later, when you
23 wanted to add something and maybe even a
24 shed, despite what this says, by law,
25 because once having been to the Zoning

1 3/11/09 - RULES - BILLS 080952 and 080954
2 Board, you go back. So your constituent
3 will go back.

4 Let's take a really almost
5 ridiculous example. If you allow a
6 school and you don't specifically say
7 playground, that would run afoul. Why?
8 Because the playground is outside the
9 classroom. The library would be inside,
10 but I would suggest to be safe, you'd
11 have to mention library.

12 Now, I know that sounds silly,
13 but the zoning laws are interpreted very
14 strictly, and it depends on who the
15 examiner is and who the inspector is and
16 who the complaining party is.

17 This bill will undoubtedly
18 cause that kind of havoc. I know -- and
19 this panel probably well knows -- that
20 the problem came from one particular
21 case, which is still pending, so I won't
22 get into the detail of it. I will only
23 say that we have had for all the years I
24 know -- and the Zoning Code was passed, I
25 believe, in 1933, became effective in

1 3/11/09 - RULES - BILLS 080952 and 080954

2 1934. Accessory uses were always those

3 which were ordinarily and customarily.

4 And everybody understands what that is.

5 This is not a whole new use.

6 Now, I would assume obviously

7 everybody up until now was grandfathered

8 in, so it won't correct the ill that

9 somebody is worried about here, but what

10 it will do, it will impact severely. And

11 I will tell you this: I'm very proud

12 that recently I represented a restaurant

13 chain that came into Philadelphia for the

14 first time. They have places in New York

15 and in two or three foreign countries, in

16 addition to elsewhere in the United

17 States, and what they said was this was

18 the toughest Zoning Code problem to get

19 around of any city they're in. Well,

20 obviously personally for me, that was a

21 fee. But that's not what this Council

22 should be worried about, although I would

23 be happy. If I didn't care about what

24 I'm speaking, I would say pass this in

25 the original thing and watch me make all

1 3/11/09 - RULES - BILLS 080952 and 080954
2 the money in the world and some of my
3 colleagues, because you are going to have
4 constituents coming to you, and I think
5 it's going to very severely impact on
6 daycare. I think it's going to severely
7 impact on every other business.

8 An example: Suppose you have a
9 building and there's one -- and since he
10 already has his permit, I can talk about
11 it. He has within his property line a
12 patio. He's a restaurant. He doesn't
13 need a sidewalk sales license. He
14 should, in beautiful weather, be able to
15 take some tables and sit them outside.
16 That's outside the building. I don't
17 know how somebody is going to look at
18 that. Now, I, as a matter of caution,
19 told the Zoning Board when I was there
20 that he would probably be doing that, and
21 I think I got it for him. But suppose a
22 person comes in with a very simple little
23 problem, just that little problem of ten
24 square feet too short in the rear, and
25 they come in without an attorney -- and

1 3/11/09 - RULES - BILLS 080952 and 080954
2 they shouldn't need an attorney. Now,
3 they've paid \$300, they've done
4 something. And now what's going to
5 happen to them when they get their first
6 citation? One of you are going to get a
7 call that they were summoned to go to a
8 hearing before the Municipal Court at 34
9 South 11th Street. There's a pending
10 fine, and they have to go back to the
11 Zoning Board. It's more than another
12 300, because they've got to draw a set of
13 plans and show everything else.

14 My biggest problem with this
15 is, is that it flies in the face of good
16 planning. And I wasn't shocked to hear
17 that the Commission doesn't know about
18 this, but how are they going to consider
19 this? You're being asked to make
20 additions and changes to codes that for
21 70-some years have worked. The accessory
22 use problem has never been a major
23 problem. If you want to take a specific
24 problem and you want to make that a
25 certified case, you can do that. You've

1 3/11/09 - RULES - BILLS 080952 and 080954
2 done it already, and it works. Take-out
3 needs a certificate. Packaged goods
4 needs a certificate. There's nothing
5 wrong with saying certain uses, for the
6 benefit of the neighborhood, should be
7 cases that go, but other than that, as I
8 said, are you going to close down
9 playgrounds and schools?

10 I went to public school at 81st
11 and Lyons. We had a playground. We had
12 recess. We played outside. Technically,
13 if you read that -- and everybody will
14 say I'm being crazy, but if you read this
15 and the School District attorney didn't
16 mention the playground, you'd have a
17 problem. And I think that that is a
18 tragedy, not only for that one industry,
19 but we ought to be encouraging people to
20 come here. And if people know what is
21 customary and ordinary in their business,
22 they know it a lot better than we do.
23 And I think you're going to ask for
24 trouble. You're going to ask for your
25 office to be flooded with people

1 3/11/09 - RULES - BILLS 080952 and 080954
2 complaining, and you're going to cause
3 people to spend money and go back.

4 So I offer that as an attorney
5 who has been doing this work. So thank
6 you.

7 COUNCIL PRESIDENT VERNA: Thank
8 you very much, sir.

9 The Chair recognizes Councilman
10 Greenlee.

11 COUNCILMAN GREENLEE: Thank
12 you, Madam President.

13 Mr. Beller, you gave a lot of
14 examples, but I guess I would agree with
15 your concern before the amendment. I
16 guess I'm not real clear after this
17 amendment. Like you said, well, despite
18 what it says, it might not include sheds.
19 Well, it said sheds right in there. How
20 does it not include sheds?

21 MR. BELLER: What I said was
22 that -- you got to remember, one of the
23 reasons we have this Commission and we're
24 trying to rewrite this is, there is --
25 and I'm sure Mr. Haigler would tell you

1 3/11/09 - RULES - BILLS 080952 and 080954

2 this for the L&I. Once something has
3 been granted by variance, even if it's
4 for something like ten square feet, any
5 change has to go back. Now, there is a
6 doctrine called the Natural Expansion,
7 which is ten feet. So you might have to
8 go back because you didn't mention it.

9 Take a look at what it says.

10 It says that it gives you an exception
11 for those things, except that it doesn't
12 give you an exception if in fact the
13 original variance granted. That's
14 unfortunate. You have to go back. Every
15 time you have something by variance, you
16 must go back for any change. So
17 irrespective of what this says, you would
18 have to go back.

19 COUNCILMAN GREENLEE: I don't
20 get that, irrespective of what it says.
21 It says it.

22 MR. BELLER: I know what it
23 says, but I'm telling you that under the
24 law, the chances are if your first use,
25 which didn't mention any of these things,

1 3/11/09 - RULES - BILLS 080952 and 080954
2 was granted by variance, any change to
3 that use, any change to that use,
4 including anything on this list, might
5 have to go back to the Zoning Board.

6 COUNCILMAN GREENLEE: Okay.
7 And I might want to ask Mr. Haigler to
8 come back up, if he could comment on it.
9 But before you do, you're saying that
10 happens now, before this?

11 MR. BELLER: Yes, sir.

12 COUNCILMAN GREENLEE: Well,
13 then you're saying this doesn't make any
14 difference, then?

15 MR. BELLER: No. This makes a
16 great deal of difference because --

17 COUNCILMAN GREENLEE: Well, if
18 it exists already, Mr. Beller, how does
19 it make a difference?

20 MR. BELLER: Where it makes a
21 difference is that if somebody goes in
22 and doesn't specifically delineate
23 exactly what they are going to do other
24 than this; for instance, a playground, or
25 if they decide to reconfigure the

1 3/11/09 - RULES - BILLS 080952 and 080954
2 playground, they would have to come back
3 to the Zoning Board.

4 COUNCILMAN GREENLEE: Okay.

5 MR. BELLER: That's what I'm
6 saying. And I said, in all fairness, I
7 complimented City Planning on lessening
8 the problem that you might run into.

9 COUNCILMAN GREENLEE: But
10 before Mr. Haigler and Mr. Kramer speak,
11 let me just say, you obviously -- and I
12 know you do -- also represent
13 communities.

14 MR. BELLER: Absolutely.

15 COUNCILMAN GREENLEE: Now, you
16 gave an example of the tables added to a
17 restaurant. I would think, if I'm in
18 that community, I would want to know. If
19 I didn't know before they were doing
20 outside seating, I would want to know.
21 So I don't think that's a bad idea. And
22 it would seem like this amendment or this
23 ordinance with the amendment would do
24 that.

25 So, you know, I'm not -- I

1 3/11/09 - RULES - BILLS 080952 and 080954
2 don't think that's a bad thing. Now, I
3 think we have to be careful of protecting
4 things like Councilwoman Brown talked
5 about, and I guess we could debate, and
6 I'm not going to get into a debate with
7 you, Mr. Beller, because I can't stay
8 here until midnight, but I guess we could
9 debate what the language is. And you've
10 been at this a lot longer than me, but I
11 still understand English and it still
12 seems to address a lot of that.

13 MR. BELLER: I said it does
14 address something and it did lessen it,
15 but I assure you that you could get
16 caught on that little thing I talked
17 about. That's number one. And, number
18 two, I was talking about a patio well
19 within the property lines, and that
20 normally would have been something
21 different than trying to get out on the
22 street where Council would have to get in
23 and pass an ordinance to allow it or you
24 would have to get something. But we're
25 talking about something that's set back

1 3/11/09 - RULES - BILLS 080952 and 080954
2 from the public walkway, not something
3 that would interfere.

4 COUNCILMAN GREENLEE: But,
5 again, I don't want to get in a long wind
6 on that, but if it was not told before
7 the people were going to be sitting
8 outside, then I think the community
9 should know that folks are sitting
10 outside.

11 MR. BELLER: Well, what I said
12 to you --

13 COUNCILMAN GREENLEE: So I
14 don't think that's a bad thing. If this
15 ordinance does that, I'm okay with it.

16 MR. BELLER: Exactly. And what
17 I said to you is that that probably ought
18 to be a certificate use, not a variance
19 use. What you may be doing is, you're
20 elevating certain things to a variance
21 which should be a certificate. I said
22 before, this Council requires for
23 packaged goods to have a certificate.
24 And that's the same thing. You want to
25 make that a -- and it should -- make that

1 3/11/09 - RULES - BILLS 080952 and 080954
2 a certificate use, fine, because there
3 it's not a question of showing a
4 hardship. It's showing that it won't
5 harm the community. And you're right, we
6 work on the same side for communities, so
7 you know I'm sensitive to that.

8 COUNCILMAN GREENLEE:

9 Sometimes.

10 MR. BELLER: Sometimes.

11 COUNCILMAN GREENLEE:

12 Sometimes.

13 Mr. Haigler, do you have a
14 comment on this? I mean, I know there
15 was a lot said, so I don't know what I'm
16 asking you to comment on at this point.

17 MR. HAIGLER: I think you might
18 need to repeat your question.

19 MR. KRAMER: If I may, I think
20 the question you had was if an item is
21 the subject of a zoning variance, does an
22 expansion of that property require a
23 revisit back to the Zoning Board. And
24 that is correct. There are, as
25 Mr. Beller pointed out, there are certain

1 3/11/09 - RULES - BILLS 080952 and 080954
2 parameters in which you can get an
3 expansion, but if a property is the
4 subject of a zoning variance to start
5 with, generally an expansion of that use
6 would require you to go back to the
7 Board.

8 COUNCILMAN GREENLEE: But that
9 exists already.

10 MR. KRAMER: That exists
11 already. And what this would address is,
12 there are also things that would be a
13 matter of right that would have been
14 allowed to go and normally would have
15 been processed. For example, this
16 property with the daycare, if it was an
17 adult daycare and they got an accessory
18 use for a permit for a swimming pool for
19 basically two reasons: One, it's not
20 considered a structure and it is
21 considered accessory to this particular
22 use. It was not considered an expansion
23 and, therefore, did not require a revisit
24 to the Zoning Board of Adjustment.
25 However, if you went and put an expansion

1 3/11/09 - RULES - BILLS 080952 and 080954
2 on the building that expanded the
3 particular use that was granted in the
4 first place, that would have triggered a
5 zoning variance and would have just gone
6 through that process.

7 This bill would now take
8 something like the swimming pool that
9 would have been granted normally across
10 the board and send those to the Zoning
11 Board as well. That's the purpose of
12 this.

13 COUNCILMAN GREENLEE: I guess
14 then the debate is whether that should
15 come before the Zoning Board, something
16 like a swimming pool, something like
17 additional seating. And just off the top
18 of my head, I would tend to agree that it
19 should, but I guess we can debate that.

20 MR. KRAMER: And this is -- not
21 only is life complicated, there's a lot
22 of subtleties in zoning, and in this
23 instance, the subtlety is going to go
24 whether it's a variance or a certificate,
25 which is more a matter of the level of

1 3/11/09 - RULES - BILLS 080952 and 080954
2 proof that you have to provide, which is
3 really the difference between the two.

4 COUNCILMAN GREENLEE: Okay.
5 All right. I guess I got an answer.
6 Thank you.

7 MR. BELLER: I wasn't telling
8 you a fib. I told you the truth.

9 COUNCILMAN GREENLEE: No, but
10 I'm not sure I still agree with what you
11 said, Mr. Beller. I think a lot of it is
12 still -- I don't think this is
13 necessarily a bad thing that on a lot of
14 things we have to go before the Zoning
15 Board, and I said a lot of times it might
16 depend on which side of the table you're
17 on at the Zoning Board whether you agree
18 with me or not, but I just -- I think it
19 makes some sense. I think it was way too
20 broad originally. I think we all agree
21 on that. But I think this tightening up
22 is a good thing. I think it's a good
23 thing, and I think there's some
24 protection for the community in here and
25 I don't -- I think that's okay. That's

1 3/11/09 - RULES - BILLS 080952 and 080954

2 okay.

3 End of my speech. Thank you.

4 COUNCIL PRESIDENT VERNA: Thank
5 you.

6 The Chair recognizes
7 Councilwoman Brown.

8 COUNCILWOMAN BROWN: Thank you,
9 Madam Chair.

10 Thank you for your testimony
11 and explanation. That's part of zoning
12 101, which many of us are not familiar
13 with. So now for my understanding,
14 explain the difference between variance
15 use versus certificate use, number one,
16 and, number two, have you had a chance to
17 read the amendment?

18 MR. BELLER: I'll say yes to
19 the second one first, I have read the
20 amendment. This morning is the first
21 time I saw it. So I haven't really
22 studied it, as the young lady who was the
23 attorney from CLS said. Lawyers like to
24 look at these things more than once. But
25 my first reaction was that City Planning

1 3/11/09 - RULES - BILLS 080952 and 080954
2 had done a good job in at least limiting
3 it.

4 But let's go back to Question
5 No. 1 of zoning 101. The major
6 difference between a variance and a
7 certificate is as follows: In a
8 variance, you would have to show what
9 they call hardship. Now, that doesn't
10 mean financial hardship. What it means
11 is hardship to the property, that the
12 property cannot be used for that which it
13 is zoned. Now, the prime example is --
14 we have it in every district in
15 Philadelphia -- where a place was built
16 originally as a warehouse and the overall
17 zoning is residential. Well, nobody is
18 going to live in a warehouse where
19 there's no heat, where there's maybe no
20 toilet and that sort of thing. So you go
21 and you say, Well, this is a hardship to
22 this building to make us use it for
23 residential. It was used to warehouse
24 and now we want to use it for offices
25 or -- not offices, but some other thing

1 3/11/09 - RULES - BILLS 080952 and 080954

2 like warehousing, some other benign use.

3 In a certificate, the
4 difference is, you don't have to show
5 hardship. What you have to show is that
6 it won't be harmful, that it's the kind
7 of use that can fit there. These are the
8 cases that come up often where people
9 say, There are too many of these things
10 in our neighborhood, beer distributors,
11 for instance, so forth. Now, it is a
12 commercial use, so it belongs in
13 commercial. Even though you have a
14 commercial zoning, you would still have
15 to go to get the certificate. And that's
16 what I was trying to say to Councilman
17 Greenlee, that there may be a list of
18 things that -- God knows there's already
19 a list of a hundred things. Make it 101.
20 You could put down things that would
21 protect the community with a certificate,
22 because the issue there is, is it harmful
23 to the community.

24 Now, that's not just my
25 opinion, your opinion. The Zoning Board

1 3/11/09 - RULES - BILLS 080952 and 080954
2 has to listen to that. But that is to me
3 the right way to do it. It pinpoints it.
4 It would get everybody out to see it.
5 Some people might object to a shed, which
6 is now excluded and could be there,
7 because it would cut their light or air
8 or whatever it is. But if you go back to
9 101, the certificate case is one where
10 the Zoning Board would have to act on it,
11 but it wouldn't have to declare that this
12 place couldn't be used without it, which
13 is nonsense because it's an accessory
14 use, such as -- we keep saying it, but
15 it's the obvious one -- playground for a
16 daycare, playground for a school,
17 playground even -- listen, many condos
18 are built where they put in a tennis
19 court outside or a walking path. That
20 would have to be given in the original
21 variance.

22 COUNCILWOMAN BROWN: I see.

23 Now, for small businesses, what
24 is the price, what is the cost, admin
25 cost, for a certificate to secure a

1 3/11/09 - RULES - BILLS 080952 and 080954

2 certificate from the --

3 MR. BELLER: Same price.

4 COUNCILWOMAN BROWN: And in
5 terms of process, does anyone take longer
6 than the other?

7 MR. KRAMER: Same. They're the
8 same.

9 MR. BELLER: Well, I'm going to
10 disagree a little bit, because the Zoning
11 Board is now trying something called
12 "fast track." Those things which don't
13 appear to be a problem for the community,
14 don't appear to be a problem for the
15 Councilperson, they put on a fast track,
16 and if nobody objects, they just hear it
17 in a few moments instead of a regular
18 drawn-out case.

19 So I don't know how that's
20 going to work, but Councilman Greenlee
21 and I have one that was on the fast track
22 that's no longer on the fast track.

23 COUNCILWOMAN BROWN: So you
24 fast track for both variance and
25 certificates?

1 3/11/09 - RULES - BILLS 080952 and 080954

2 MR. BELLER: No.

3 COUNCILWOMAN BROWN: Strictly
4 for?

5 MR. BELLER: Yes. Actually, I
6 think yes. Yes. Yes.

7 COUNCILWOMAN BROWN: For
8 variance and certificate?

9 MR. BELLER: But certificates
10 can be looked at on a special list and an
11 easier list, because, again, the measure
12 of proof is different than the measure of
13 proof would be for a variance. You
14 shouldn't get hung up for hours on a
15 certificate case.

16 COUNCILWOMAN BROWN: And for
17 small businesses that come before the
18 Zoning Board, is there some place in the
19 prep process where they learn the
20 difference between a certificate and a
21 variance prior to coming before you to
22 make a case?

23 (Mr. Beller shaking head in the
24 negative.)

25 COUNCILWOMAN BROWN: Ultimately

1 3/11/09 - RULES - BILLS 080952 and 080954
2 it becomes a discovery for them after
3 they show up that if they have someone to
4 give them good advice that this
5 particular case is better suited for a
6 certificate than it is for variance; is
7 that fair to say?

8 MR. BELLER: Well, the examiner
9 in L&I checks it off. You get your paper
10 that says refusal, referral or special
11 use. The referral is a certificate case.
12 And I know that most of the examiners are
13 very nice people and they will explain
14 that to somebody. I don't think they'll
15 give them the quantum of proof that you
16 have to have, and that's where you have
17 to rely on lawyers or community groups.

18 COUNCILWOMAN BROWN: I see.

19 Would you like to comment
20 further?

21 MR. HAIGLER: No. I agree.

22 COUNCILWOMAN BROWN: You agree.

23 Madam President, could we
24 please ask the representative from
25 Community Legal Services to come back to

1 3/11/09 - RULES - BILLS 080952 and 080954

2 the table.

3 (Witness approached witness
4 table.)

5 COUNCILWOMAN BROWN: Okay. To
6 the sentence in your paragraph where you
7 say, "The bill, if passed, would only
8 work to significantly increase the
9 redundant and burdensome appeal pressure
10 on the ZBA," in your view, given the
11 limited time you've had to examine the
12 amendment and based on what we've just
13 heard from the representative from the
14 Zoning Board, where do you believe this
15 is a better fit, a variance or a
16 certificate, or what's your perspective,
17 what's your reaction to this new
18 information that a certificate use may be
19 more suitable?

20 MS. PHILLIPS: I think -- well,
21 the bill as it stands now with the new
22 language, I think it does limit some of
23 the cases that could come before, but it
24 sounds to me that it would be better
25 suited as a certificate as opposed to a

1 3/11/09 - RULES - BILLS 080952 and 080954

2 variance for the reasons that --

3 COUNCILWOMAN BROWN: For this
4 particular industry?

5 MS. PHILLIPS: Yes, I think so.

6 COUNCILWOMAN BROWN: Thank you,
7 Madam President.

8 Thank you.

9 MS. PHILLIPS: Thank you.

10 COUNCIL PRESIDENT VERNA: Thank
11 you.

12 Are there any other witnesses?

13 Please approach the witness
14 table.

15 (Witness approached witness
16 table.)

17 COUNCIL PRESIDENT VERNA: Good
18 morning. Kindly identify yourself for
19 the record.

20 MS. LOYAN: Good morning. My
21 name is Ayeta Loyan (ph) and I am the
22 person who started all this, the swimming
23 pool. So today I will speak as the owner
24 of an adult daycare and child daycare
25 facility, and I would like to also speak

1 3/11/09 - RULES - BILLS 080952 and 080954
2 as a businesswoman about how cumbersome a
3 process could actually be.

4 I would like to first start
5 with L&I when you come down to apply.
6 The people at the counter are very, very
7 knowledgeable. They know what an
8 accessory use is and what isn't an
9 accessory use. So the judgment that they
10 make at the counter is heavily weighed
11 before they issue a certificate to you.
12 It is not as simple, they go back, they
13 speak to the supervisor. So right there
14 I would not say that the accessory uses
15 are taken lightly. They're issued with a
16 lot of thought.

17 Second, in regard to my
18 swimming pool, the reason I did it is
19 because I wanted kids not to be on the
20 road during the summer in these yellow
21 school buses taken God knows to which
22 swimming pools, and God knows how many
23 daycares are in these swimming pools,
24 with one or two lifeguards. And I felt
25 it would be safer since I had a bigger

1 3/11/09 - RULES - BILLS 080952 and 080954

2 backyard. Hindsight, it was not a great
3 business decision, because the pool cost
4 me three times the amount that I thought
5 it would cost me. And as a
6 businesswoman, I went back to get -- by
7 the time I was done with construction, I
8 went back to the bank three times. Now,
9 you can imagine my loan.

10 Now, that's hindsight.

11 However, now that it is there, it is a
12 much safer environment for the children
13 that do use and will use the swimming
14 pool, because I can control the amount of
15 kids that are in there. They're not
16 bussed anywhere. They're not burnt,
17 because they can come inside after half
18 an hour of use as opposed to these City
19 parks or whatever where they have nowhere
20 to hide themselves from the sun after
21 they've swam. And I can't imagine that
22 this whole hoopla is over a swimming pool
23 that benefits children.

24 Secondly, I would like to talk
25 about the City of Philadelphia. I am

1 3/11/09 - RULES - BILLS 080952 and 080954
2 elated by our recent President. I am
3 full of hope with this President that we
4 currently have. And the reason I raise
5 this, it is -- when I first started about
6 nine years ago, started my business, the
7 odds of success were one to ten. That
8 means one success, nine failures. That
9 was nine years ago. What are the odds
10 right now of a business succeeding?
11 You'd have to be out of your mind to
12 start a business right now.

13 When I first started a
14 business, it cost -- you were required to
15 put 10 percent down. Now it's 20
16 percent. Who has 20 percent to put down
17 to start a business?

18 So what is our President asking
19 us to get us out of this hole? To
20 reinvent ourselves. Me as a
21 businesswoman, to reinvent myself to
22 create more jobs. It's asking the banks
23 to lend. It's asking the City to open up
24 the process of business to make it easier
25 so we can employ. Unlike other huge

1 3/11/09 - RULES - BILLS 080952 and 080954
2 businesses that have opened up and sent
3 their jobs to China, India and God knows
4 where, I employ John Doe, Harry, Jane
5 that stay in the City. I currently have
6 13 employees, 13 families who are not on
7 welfare and who are not getting
8 unemployment benefits.

9 These accessory uses to these
10 other businesses, whom the President is
11 asking to reinvent themselves, may employ
12 and will -- not may, will employ people,
13 will keep families afloat. I'm asking
14 Philadelphia to do exactly what our
15 leader today is asking. Do not make this
16 process a cumbersome process. Lend a
17 hand to this reinvention of us, the
18 businesspeople, us creating jobs.

19 What is an accessory use? An
20 accessory use is something that goes
21 along with the business. It's not a
22 daycare that wants to put, I don't know,
23 a trucking facility right there. We're
24 talking about a swimming pool that was a
25 great idea for the business and for the

1 3/11/09 - RULES - BILLS 080952 and 080954
2 kids. And another business -- and as a
3 result, I've employed people to build it.
4 There will be lifeguards. I mean, this
5 is something that keeps jobs in
6 Philadelphia, creates jobs. Another
7 business will open up something else
8 that's part of accessory.

9 So instead of going in circles
10 and explaining what I feel so dear about,
11 I think for me this is a no-brainer.
12 Make this process simpler, not more
13 stringent.

14 Thank you.

15 COUNCIL PRESIDENT VERNA: Thank
16 you. Would you remain at the table,
17 please.

18 The Chair recognizes Councilman
19 Greenlee.

20 COUNCILMAN GREENLEE: Thank
21 you, Madam President.

22 Just very briefly, ma'am. And
23 I understand a lot of what you're saying
24 and I agree with your whole cumbersome
25 argument, but with all due respect on

1 3/11/09 - RULES - BILLS 080952 and 080954
2 this specific issue that you talked
3 about -- and that's why I think this bill
4 has some merits -- that pool you put in
5 might be great and certainly might be
6 great for your business and for the kids,
7 but it could have an impact. I'm not
8 familiar with your particular situation.
9 It could have an impact on your
10 surrounding neighbors. So in all
11 fairness, I think they are affected by
12 it, too. And you could have made great
13 arguments to them and say, Well, you
14 know, it will be well protected and we're
15 going to have the proper supervision and
16 all like that, and you might have
17 convinced them, but I have to tell you,
18 if I lived next door to some place and it
19 didn't have a swimming pool and then one
20 was put in, I'd want to weigh in on that
21 a little bit. I'd like to know something
22 about it, and I think that's what we're
23 talking about here.

24 Now, the whole cumbersome
25 process, I mean, that's a way wider

1 3/11/09 - RULES - BILLS 080952 and 080954
2 discussion than we're getting into here,
3 but I think -- and I think that -- I'm
4 not here to make Councilman O'Neill's
5 arguments, but I think there's some merit
6 to that. I think there's some merit
7 to -- I don't think any accessory use
8 should just be, well, it's an accessory
9 use to the business. Well, it could have
10 an effect, and at that time when you
11 first got that, you didn't have the
12 swimming pool, so it wasn't an issue to
13 the neighbors, because it wasn't there.
14 So once that swimming pool was put in, I
15 think it is fair that in some manner --
16 and we can talk about variance vis-a-vis
17 certificate, but I think in some manner,
18 I think the community should be made
19 aware of that and should have a say in
20 that, because they are affected by it,
21 particularly if you live nearby.

22 MS. LOYAN: If I may,
23 everything that happens in the City
24 affects someone. It affects someone
25 positively and affects someone

1 3/11/09 - RULES - BILLS 080952 and 080954
2 negatively. And it may not have a
3 positive or negative effect, but
4 nonetheless even a neutral effect is an
5 effect. And what I want to say is,
6 you're speaking of the neighbors. I have
7 two neighbors. I have one that has a
8 swimming pool, a lovely gentleman. He
9 supports me in everything I do. I have
10 the second one -- a second neighbor who
11 is starting all this, and the reason
12 behind it is not the swimming pool.
13 There's another issue, and we're not
14 going to go into it.

15 However, in the scheme of
16 things, this particular swimming pool
17 influences so many kids who are safe, so
18 many families who are safe because their
19 kids are not being bussed all around and,
20 A, they're on the roads, hazard; B,
21 they're in the swimming pools that are
22 overcrowded, under the sun, nowhere to
23 hide.

24 So, yes, there are benefits
25 and, yes, there are some that may not

1 3/11/09 - RULES - BILLS 080952 and 080954

2 feel that they're so benefited, but in
3 the long run, in the scheme of things,
4 this was a positive thing for the
5 community and for the kids and for the
6 parents and for the families.

7 COUNCILMAN GREENLEE: Again,
8 I'm not speaking just specifically about
9 that, but you used it as an example. I'm
10 just saying that I think there are times
11 where you have to -- and I'm not going to
12 get into your specific case because I
13 don't know about it, but I think there
14 are areas where maybe things have been
15 added that are not positive to the
16 community. I'm not talking about your
17 pool at this point. And I think that has
18 some point. So, I mean, I hear what
19 you're saying.

20 MS. LOYAN: I understand what
21 you're saying. When I first applied, I
22 didn't even think of a pool. That came
23 later. Oh, you know, that's a great
24 thing.

25 I wouldn't want my kids in the

1 3/11/09 - RULES - BILLS 080952 and 080954

2 summer to be bussed like my kids were,

3 constantly burned. I mean, issues with

4 the transportation, issues right there.

5 And I thought, Oh, my God, this would be

6 a great thing. And I called the pool

7 company. They actually are the ones who

8 went in and submitted for the

9 application.

10 COUNCILMAN GREENLEE: I

11 understand. Thank you.

12 MS. LOYAN: And if I may

13 address just one more thing, if I may,

14 the cumbersome process. What I meant by

15 that is another business coming in and

16 having an accessory use that would allow

17 them to, A, stay afloat; B, a good idea;

18 and, C, employ people, that's what I

19 meant.

20 COUNCILMAN GREENLEE: No. I

21 understand.

22 COUNCIL PRESIDENT VERNA: Thank

23 you.

24 MS. LOYAN: Thank you very

25 much.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCIL PRESIDENT Verna: Just
3 a moment, please.

4 Councilwoman Brown, did you
5 want --

6 COUNCILWOMAN BROWN: No, thank
7 you.

8 COUNCIL PRESIDENT Verna: Any
9 other questions or comments?

10 (No response.)

11 COUNCIL PRESIDENT Verna: Thank
12 you very much. Thank you.

13 MS. LOYAN: Thank you.

14 COUNCIL PRESIDENT Verna: Do we
15 have any other witnesses to testify?

16 Please approach the witness
17 table.

18 (Witness approached witness
19 table.)

20 COUNCIL PRESIDENT Verna:
21 Please identify yourself for the record.

22 MS. BROWN: Good morning. My
23 name is Marion Brown. I work with One
24 Stop Shop for Child Care Licensing
25 Information in Philadelphia and I also am

1 3/11/09 - RULES - BILLS 080952 and 080954
2 the Chair of the Zoning Subcommittee of
3 the Southeastern Pennsylvania Early
4 Childhood Coalition, and I just wanted to
5 first thank you for an opportunity to
6 speak to these issues. There are several
7 things that have come up in relation to
8 childcare and zoning, and I wanted to
9 just clarify a couple of things.

10 Because zoning is such a big
11 issue for our providers, we have taken a
12 proactive approach, and for several years
13 now we have been doing our own zoning
14 seminars for people in the childcare
15 community. These seminars have been very
16 effective. We have an attorney who does
17 the presentation. We share announcements
18 about the seminars with the City Council
19 offices. We usually go in individually
20 personally and share the new flyer. We
21 invite representatives from the City
22 Council offices to come to our seminars
23 and to share with providers what they
24 feel is important in terms of their
25 district and zoning. Councilman Clarke's

1 3/11/09 - RULES - BILLS 080952 and 080954
2 person, Zenobia Harris, has come to our
3 seminars. Marion Johnson, of course, has
4 come. From Councilman DiCicco's office
5 last week we had Diane Galluccio at our
6 seminar.

7 We believe -- we do not have
8 hard statistics, but we believe that this
9 basic educational process -- we do three
10 or four seminars a year. We believe this
11 basic educational process has cut down on
12 the appeals to the Zoning Board of
13 Adjustment substantially. I believe that
14 when I looked at the list of zoning
15 hearings four or five years ago, in just
16 about every session there would be two or
17 three childcare-related cases. When I
18 looked at it last week, we got the
19 listing for the appeal hearings listed
20 for March, April, May and June, for about
21 14 or 15 weeks, and I counted about 18
22 childcare hearings listed. So we've gone
23 from two or three a day to one or two a
24 week, and I think one of the big reasons
25 for that change has been our educational

1 3/11/09 - RULES - BILLS 080952 and 080954
2 approach.

3 So the first point is that we
4 would strongly encourage the City to look
5 at this model and see that if a small
6 investment in education for -- especially
7 for people who are low income or are pro
8 se -- would be one way to cut down on the
9 burden to the Zoning Board of Adjustment.
10 I believe that based on our experience,
11 it would be very worth replicating.

12 Second is, I believe the
13 present bill will impact childcare and
14 will cause an increase of appeals to the
15 Zoning Board of Adjustment. One of the
16 main areas where it will impact, I think,
17 will be in outdoor play space. This has
18 already been discussed several times.
19 The state requires identified gross motor
20 play space for childcare centers and for
21 childcare groups. It does not require it
22 for family daycare, but it does for
23 groups and for center. So when people
24 refer to going to the park across the
25 street, that is fine, and providers can

1 3/11/09 - RULES - BILLS 080952 and 080954
2 and will and should continue to use
3 resources at the park across the street.
4 However, the state will not license you
5 on the basis of the park across the
6 street, because that is not property that
7 you have control over. The exception
8 will be if you can get a dedicated space
9 and verification of that, for instance,
10 from a city playground that says, Every
11 afternoon from 3:00 to 4:00, your daycare
12 can have dedicated use of Lot A. That
13 would satisfy the state, but anything
14 short of that would not satisfy the
15 state.

16 So there are certainly cases
17 where people come to the Zoning Board
18 with all the best intentions, often
19 representing themselves for a group or a
20 small center childcare, and nothing may
21 be on the application about using their
22 side yard for a playground. I mean, to
23 us it seems obvious, and it's very
24 understandable it doesn't get mentioned,
25 and I think this bill is going to send

1 3/11/09 - RULES - BILLS 080952 and 080954
2 them back to the Zoning Board again to
3 increase the burden on the Zoning Board.
4 And I just question if this makes sense
5 at this current time when we have the
6 Zoning Code Commission meeting. And if
7 the issue is a swimming pool, maybe you
8 want to just look at something that says
9 accessory use does not allow swimming
10 pools rather than make it this broad
11 thing that affects many other issues.

12 COUNCIL PRESIDENT Verna: Thank
13 you very much.

14 Any questions or comments from
15 members of the Committee?

16 (No response.)

17 COUNCIL PRESIDENT Verna: Thank
18 you again for coming in to testify.

19 Do we have any other witnesses
20 to testify on this bill?

21 (No response.)

22 COUNCIL PRESIDENT Verna:
23 Seeing no one, I would ask Mr. McPherson
24 to please read the title of Bill No.
25 080954.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 MR. MCPHERSON: An ordinance to
3 amend the Philadelphia Zoning Maps by
4 changing the zoning designations of
5 certain areas of land located within an
6 area bounded by Broad Street, 15th
7 Street, Oxford Street, Cecil B. Moore
8 Avenue, and amending Section 14-1402 of
9 The Philadelphia Code, entitled "Parking
10 in Residential Districts."

11 (Witness approached witness
12 table.)

13 COUNCIL PRESIDENT VERA:
14 Mr. Kramer.

15 MR. KRAMER: Good morning,
16 Council President Verna and members of
17 the Rules Committee. I am William
18 Kramer, Division Director of the
19 Development Division of the Philadelphia
20 City Planning Commission. I am here
21 today to testify on Bill No. 080954,
22 which was introduced into City Council
23 December 11, 2008.

24 Bill No. 080954 amends several
25 sections of The Philadelphia Zoning Code

1 3/11/09 - RULES - BILLS 080952 and 080954
2 as well as amending the Philadelphia
3 Zoning Maps in order to facilitate the
4 development of a block bounded by Broad
5 Street, Cecil B. Moore Avenue, 15th
6 Street and Oxford Street. The proposed
7 amendments will allow for the
8 construction of a high-rise apartment
9 building for student rentals adjacent to
10 the Temple University campus. The
11 proposed building will be approximately
12 12 stories in height and provide rooms
13 for 1,100 students as quad apartments.
14 To accommodate the proposal, the bill
15 does several things.

16 First, it rezones a portion of
17 this block from its current zoning
18 designation of "C-2" Commercial to a
19 designation of "C-4" Commercial.

20 Secondly, Bill No. 080954
21 amends Section 14-305 of the Zoning Code
22 by permitting parking garages on this
23 block and exempting such garage from the
24 need to obtain a special use permit.
25 Court requirements for legally required

1 3/11/09 - RULES - BILLS 080952 and 080954
2 windows have been amended. Additionally,
3 the base floor area ratio for this block
4 has been raised to 600 percent of the
5 area of the lot.

6 Bill No. 080954 amends this
7 section of the Code by specifically
8 identifying this block as an area where a
9 single family is defined as no more than
10 four persons unrelated by blood, marriage
11 or adoption in order to permit the
12 apartments to house four students per
13 unit.

14 Bill No. 080954 also amends
15 Section 14-1402 of the Zoning Code by
16 removing the requirement for new
17 dwellings to provide off-street parking
18 at a one-space-per-unit ratio.

19 Lastly, Bill No. 080954 amends
20 Section 14-1602 by removing this block
21 from the Avenue of the Arts North
22 controls of the Zoning Code. This allows
23 the provisions of the "C-4" and "C-5"
24 Commercial sections of the Code to
25 control the development of this site.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 The Planning Commission staff
3 has been working with the development
4 team in order to draft amendments to this
5 bill that will facilitate the proposed
6 development. I would add that these
7 amendments have been vetted through the
8 Law Department and have been submitted to
9 the Clerk earlier today. I respectfully
10 submit them now for your consideration.

11 The Philadelphia City Planning
12 Commission considered Bill No. 080954 at
13 its meeting of February 17, 2009 and
14 recommended that Bill No. 080954, as
15 amended, be approved.

16 That is the conclusion of my
17 testimony. I'd be happy to answer any
18 questions of the Committee.

19 COUNCIL PRESIDENT VERNA: Thank
20 you, Mr. Kramer.

21 One of the purposes of this
22 bill is to allow the construction of a
23 garage without a special use permit; is
24 that correct?

25 MR. KRAMER: That is correct.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCIL PRESIDENT VERNA: Is
3 the garage solely for the use of the new
4 building for the student residents, and
5 can you tell us how many parking spaces
6 will be provided?

7 MR. KRAMER: Let me explain it
8 this way: The bill calls for the removal
9 of the requirement. The way this is
10 actually working out -- and the
11 development team can probably explain
12 this better than I, but what is going on
13 here is, there's an existing structure
14 along Broad Street, which is the movie
15 theatre and whatever. Adjacent to that
16 is proposed this new 12-story structure.
17 There is existing parking behind that.
18 I'm not sure of the specific number of
19 parking spaces, but it is in connection
20 with the existing commercial use that's
21 there.

22 The proposal is not to provide
23 additional parking than what already
24 exists, but they're not removing any of
25 the parking that's already there, because

1 3/11/09 - RULES - BILLS 080952 and 080954
2 the Code would have required them to put
3 in parking one per one. That's the one
4 reason it is. And if you do put in a
5 parking garage, a special use permit
6 would have been required.

7 The initial and existing
8 development that is there is a function
9 of a Zoning Board of Adjustment variance
10 that was granted for the construction of
11 what's there now, which is, at a minimum,
12 movie theatre as well as one-story retail
13 along Broad Street right at Cecil B.
14 Moore Avenue.

15 COUNCIL PRESIDENT VERNA: Your
16 testimony is that the bill will allow for
17 an increase in the base floor area ratio
18 for this block to 600 percent. What is
19 currently allowed?

20 MR. KRAMER: Currently, under
21 "C-4" and "C-5," "C-4" would allow you a
22 base of 500 percent. As my
23 understanding, this development would
24 come in at about 580 percent, give or
25 take one or two, and to play it safe, we

1 3/11/09 - RULES - BILLS 080952 and 080954
2 went with 600 percent so that we wouldn't
3 send them to the Board again for a
4 variance.

5 COUNCIL PRESIDENT VERNA: Am I
6 correct to deduct from your testimony
7 that this will be approximately 25
8 resident quad units on each floor of the
9 building and that there will be four
10 students per unit?

11 MR. KRAMER: That is correct.

12 COUNCIL PRESIDENT VERNA: Will
13 the University own the building and limit
14 it to the student occupancy?

15 MR. KRAMER: No, ma'am, it will
16 not be owned by the University. It will
17 be owned and operated by Tower
18 Investments as a four-unit quad unit, and
19 given its proximity to Temple University,
20 it's anticipated that these will be
21 student-occupied buildings. I don't
22 believe that there's any requirement that
23 you have to be a student, but I'll let
24 Mr. Blatstein answer that.

25 COUNCIL PRESIDENT VERNA: Fine.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 Are there any questions from
3 members of the Committee?

4 (No response.)

5 COUNCIL PRESIDENT VERNA: Thank
6 you, Mr. Kramer. You'll remain?

7 MR. KRAMER: Yes, ma'am.

8 COUNCIL PRESIDENT VERNA: Thank
9 you.

10 Our next witness.

11 MR. McPHERSON: Mr. Bart
12 Blatstein.

13 (Witnesses approached witness
14 table.)

15 MR. PRIMAVERA: Good morning,
16 Madam Chair, members of the Committee.

17 COUNCIL PRESIDENT VERNA: Good
18 morning.

19 MR. PRIMAVERA: Carl Primavera.
20 I'm the attorney for Tower Investments.
21 Jim Templeton from H2L2 is going to set
22 up the boards. He's the architect. And
23 I'd like to introduce Bart Blatstein.

24 MR. BLATSTEIN: Good morning,
25 Madam President, members of Council.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCIL PRESIDENT VERNA: Good
3 morning.

4 Mr. Blatstein, you can proceed.

5 MR. BLATSTEIN: Yes. The
6 intent here is to build over the existing
7 parking lot a 14-story building to house
8 approximately 1,100 students in
9 approximately 300 units. There currently
10 exists a severe housing shortage at
11 Temple and the kids are actually fanning
12 out into the neighborhoods. This will
13 help alleviate the problem, but not solve
14 the problem.

15 Temple has become a very
16 popular school. There are more students
17 living at Temple now than at University
18 of Pennsylvania. And by creating the
19 density along Broad Street where it
20 belongs, it's consistent with density
21 along Broad Street. So the designation
22 as a garage is only because we're
23 building the building over the existing
24 parking lot. We're not building a
25 garage.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCIL PRESIDENT Verna: What
3 is on the first floor?

4 MR. BLATSTEIN: The first floor
5 of the new building or the first floor of
6 the --

7 COUNCIL PRESIDENT Verna: The
8 new building.

9 MR. BLATSTEIN: The new
10 building is a parking lot and a lobby.

11 COUNCIL PRESIDENT Verna:
12 That's the parking lot that's enclosed?
13 Can somebody explain the drawing, please.

14 MR. BLATSTEIN: Should I
15 approach?

16 COUNCIL PRESIDENT Verna:
17 Please.

18 MR. PRIMAVERA: As Bart
19 approaches, the existing part is already
20 developed as a commercial development,
21 and that's really, we'll call it, the low
22 or shorter version in the front, and then
23 the high rise is in the back.

24 MR. BLATSTEIN: We've already
25 developed the site in the front, which is

1 3/11/09 - RULES - BILLS 080952 and 080954
2 the Pearl Movie Theatre and the Shops at
3 Avenue North, which is along Broad
4 Street. This is Oxford. This is Cecil
5 B. Moore, this being Broad.

6 We developed behind it the Edge
7 at Avenue North, which is student housing
8 for 1,200 students. The new building
9 would be situated right here, right
10 behind the existing retail, and in
11 between the buildings is the former
12 Carlisle Street.

13 Moving over to here, this is an
14 existing building, again, the Pearl
15 Theatre and the shops and restaurants at
16 Avenue North, and the new building with
17 the entranceway. This building sits over
18 the parking lot. And this is the
19 entranceway, the lobby and entranceway of
20 the new building along Cecil B. Moore.

21 COUNCIL PRESIDENT VERNA: So
22 that the theatre will remain?

23 MR. BLATSTEIN: The theatre
24 remains, and I'm happy to say that we're
25 20 percent above last year.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCIL PRESIDENT Verna: Good.

3 And you feel that there will be ample
4 parking for both the theatre and the
5 students?

6 MR. BLATSTEIN: Yes, because
7 written in our lease -- this is a student
8 housing building, not a standard
9 apartment building, and written in each
10 and every lease is that they cannot have
11 cars. It worked successfully for the
12 building the Edge at Avenue North behind
13 there. Temple also has a 1,200-car
14 garage across the street, which remains
15 mainly empty most of the year.

16 MR. PRIMAVERA: This also has
17 been identified by the Planning
18 Commission as a transit-oriented
19 development, because we have bus and
20 subway and it's really -- to answer your
21 initial question, universities are now
22 looking for private developers to spend
23 the money to build the dormitories, but
24 under our definition of the Zoning Code,
25 I think Bill Kramer will tell us that you

1 3/11/09 - RULES - BILLS 080952 and 080954

2 have to be a university to develop a
3 dormitory. You can't have a private
4 dormitory. So this is really an attempt
5 to have a partnership with Bart, who has
6 been, I think, on the board of Temple,
7 and he's aware of the crisis in housing,
8 so he's doing the University's work for
9 them so that they can put money back into
10 education rather than to housing.

11 COUNCIL PRESIDENT VERNA: The
12 Chair recognizes Councilman DiCicco.

13 COUNCILMAN DiCICCO: Thank you.

14 Do you lease back to the
15 University or do you manage it? You're
16 going to develop it and build it?

17 MR. BLATSTEIN: We manage it.
18 In the past with the Edge at Avenue
19 North, we leased several floors to the
20 University, so they had three or four
21 different floors. Now, I don't have a
22 formal agreement with Temple regarding
23 the new building. I am sure that they'll
24 come to us and say, We need this or a
25 floor or more floors. And Temple, of

1 3/11/09 - RULES - BILLS 080952 and 080954
2 course, being the bargain education that
3 it is, it's a wonderful education for the
4 money, it's just going to get more and
5 more popular to attend and live at
6 Temple.

7 MR. PRIMAVERA: And they're
8 moving the new Art School from Elkins
9 Park, the Tyler School of Art. So
10 there's more activities and more students
11 coming actually into the North
12 Philadelphia campus.

13 COUNCIL PRESIDENT VERNA: If
14 this were approved, when would
15 construction begin?

16 MR. BLATSTEIN: What time is
17 it?

18 COUNCIL PRESIDENT VERNA: That
19 quickly?

20 MR. BLATSTEIN: I mean,
21 fortunately, we are still developing.
22 We're the most active developers in the
23 City right now, and we would move along
24 as quickly as possible. Our plans are
25 being completed now and we're anxious to

1 3/11/09 - RULES - BILLS 080952 and 080954
2 get started.

3 COUNCIL PRESIDENT Verna: What
4 will be the cost?

5 MR. BLATSTEIN: Probably around
6 \$50 million.

7 COUNCIL PRESIDENT Verna: Any
8 questions from members of the Committee?

9 COUNCILWOMAN BROWN: Yes, Madam
10 President.

11 COUNCIL PRESIDENT Verna: The
12 Chair recognizes Councilwoman Brown.

13 COUNCILWOMAN BROWN: Yes.

14 You mentioned Carlisle Street
15 over here. Are there any neighbors
16 currently that might have to be displaced
17 or is there any impact on neighbors,
18 smaller streets?

19 MR. BLATSTEIN: No. We don't
20 displace any neighbors, and Carlisle
21 Street was stricken several years ago, so
22 it's a private street.

23 COUNCILWOMAN BROWN: Okay. And
24 the surrounding community is what? Are
25 they other Temple buildings or

1 3/11/09 - RULES - BILLS 080952 and 080954
2 neighborhoods, or what?

3 MR. BLATSTEIN: Across the
4 street is -- across Broad Street is
5 Temple buildings. Across Cecil B. Moore
6 are Temple buildings. Across Oxford it's
7 the Rite Aid. It's a commercial building
8 and a catering facility.

9 COUNCILWOMAN BROWN: Okay. All
10 right.

11 Thank you, Madam Chair.

12 COUNCIL PRESIDENT Verna: The
13 Chair recognizes Councilman Clarke.

14 COUNCILMAN CLARKE: Thank you,
15 Madam President.

16 Good morning. Is there going
17 to be any physical connection between the
18 new residential structure and the
19 existing commercial entity?

20 MR. BLATSTEIN: Excellent
21 question.

22 COUNCILMAN CLARKE: Will there
23 be access?

24 MR. BLATSTEIN: No. There will
25 not be a direct connection.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCILMAN CLARKE: You said in
3 the prior leases of the Edge building
4 that in the lease there was no
5 authorization to have vehicles?

6 MR. BLATSTEIN: That's correct.

7 COUNCILMAN CLARKE: And that
8 will be the same here?

9 MR. BLATSTEIN: That's correct.

10 COUNCILMAN CLARKE: So we can
11 say based on history that none of the
12 individuals, to our knowledge or your
13 knowledge, have vehicles that are
14 currently residing in the Edge?

15 MR. BLATSTEIN: That's correct.

16 COUNCILMAN CLARKE: Will the
17 additional pedestrian traffic, frankly
18 speaking, which I love to support the
19 commercial corridor, be taken into effect
20 as it relates to the sheer congestion of
21 that intersection?

22 MR. BLATSTEIN: Will it --

23 COUNCILMAN CLARKE: The
24 traditional pedestrian flow, like kids
25 all come out, go to class in the morning.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 MR. BLATSTEIN: Well, it does
3 add a significant amount of pedestrian
4 traffic, which is good, which will help
5 support not only our shops here but the
6 rebuilding of Progress Plaza across the
7 street. So this density is much needed
8 for the life and vitality of the progress
9 of Broad Street.

10 COUNCILMAN CLARKE: All right.
11 With respect to parking, because we need
12 more parking up in that area fortunately
13 as a result of the activity going on,
14 have you started any type of formal or
15 informal conversations with Temple
16 University about the extended hours of
17 operation for that parking lot across the
18 street? For some reason they kind of
19 close this thing off during the weekend
20 hours.

21 MR. BLATSTEIN: Yes, I have,
22 and they acknowledge that they don't use
23 the parking lot on nights and weekends,
24 and they have -- we have been in
25 preliminary discussions about use of that

1 3/11/09 - RULES - BILLS 080952 and 080954
2 parking lot. I believe they'll make some
3 kind of accommodation.

4 COUNCILMAN CLARKE: Okay. Are
5 you going to be looking for any exterior
6 signage?

7 MR. BLATSTEIN: I'd like to
8 cover the entire facade with an LED
9 billboard. I'm only kidding. I'm only
10 kidding. Is Mary Tracy here?

11 COUNCILWOMAN BROWN: Is it
12 green?

13 MR. BLATSTEIN: No, no
14 building.

15 COUNCILMAN CLARKE: I mean, you
16 know I obviously support that type
17 activity.

18 MR. BLATSTEIN: I know. We've
19 discussed that.

20 COUNCILMAN CLARKE: Thank you.
21 Thank you, Madam President.

22 COUNCIL PRESIDENT VERNA: Thank
23 you.

24 Any other questions or comments
25 from members of the Committee?

1 3/11/09 - RULES - BILLS 080952 and 080954

2 Councilwoman Brown.

3 COUNCILWOMAN BROWN: Is it
4 going to be a green building?

5 MR. BLATSTEIN: We are striving
6 for LEED certification on this building.
7 And by the nature of the fact that we're
8 putting in 1,100 students here, it
9 reduces the carbon imprint so that it
10 becomes more of a walkable community, so,
11 again, less need for cars, emissions and
12 everything else.

13 COUNCILWOMAN BROWN: What level
14 of LEED are you seeking?

15 MR. BLATSTEIN: Well, we're
16 seeking initially LEED certification, and
17 we'll go from there.

18 COUNCILWOMAN BROWN: Got it.
19 Thank you.

20 Thank you, Madam Chair.

21 COUNCIL PRESIDENT VERNA:
22 You're welcome.

23 Thank you. Do you want to
24 add --

25 MR. PRIMAVERA: Thank you. We

1 3/11/09 - RULES - BILLS 080952 and 080954

2 have nothing further. Thank you.

3 COUNCIL PRESIDENT Verna: Thank
4 you.

5 MR. PRIMAVERA: We also are in
6 support of the amendments as well. So we
7 have no objection to them. They were
8 just clarifications. We've been working
9 with the staff of the Planning
10 Commission. Also, we've been working
11 with the Planning Commission to develop
12 the facade, and I believe that they've
13 been supportive of all aspects.

14 COUNCIL PRESIDENT Verna: Thank
15 you.

16 Do we have any other witnesses
17 to testify?

18 (No response.)

19 COUNCIL PRESIDENT Verna:
20 Seeing none, this will conclude our
21 public hearing.

22 COUNCILMAN CLARKE: Bart, did
23 you want to say something?

24 MR. BLATSTEIN: No. Am I
25 supposed to? Thank you, Madam President.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCILMAN GREENLEE: Be quiet
3 while you're ahead.

4 COUNCILWOMAN BROWN: Madam
5 President?

6 COUNCIL PRESIDENT Verna: Just
7 a moment.

8 We will now go into our public
9 meeting.

10 The Chair recognizes
11 Councilwoman Brown.

12 COUNCILWOMAN BROWN: Thank you,
13 Madam President. Given the number of
14 additional questions and discoveries
15 learned around Bill No. 080952, I will
16 not be supporting this bill in its
17 current form or the amendment. So my ask
18 would be that we consider holding it in
19 the Committee until we've had ample time
20 to get back with the sponsor and seek to
21 make sure that the small businesses,
22 period, but in particular the childcare
23 industry, is held harmless.

24 COUNCIL PRESIDENT Verna:
25 That's a motion?

1 3/11/09 - RULES - BILLS 080952 and 080954

2 COUNCILWOMAN BROWN: I make a
3 motion, sure.

4 COUNCIL PRESIDENT Verna: Is it
5 seconded?

6 (Duly seconded.)

7 COUNCIL PRESIDENT Verna: All
8 in favor will say aye.

9 (Aye.)

10 COUNCIL PRESIDENT Verna: Those
11 opposed?

12 (No response.)

13 COUNCIL PRESIDENT Verna: The
14 ayes have it. The motion carries.

15 The Chair recognizes Councilman
16 Clarke regarding Bill No. 080954.

17 COUNCILMAN CLARKE: Thank you,
18 Madam President.

19 Madam President, I make a
20 motion for an amendment on Bill No.
21 080954.

22 (Duly seconded.)

23 COUNCIL PRESIDENT Verna: It
24 has been moved and seconded that the
25 amendment be adopted.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 All in favor will say aye.

3 (Aye.)

4 COUNCIL PRESIDENT VERNA: Those
5 opposed?

6 (No response.)

7 COUNCIL PRESIDENT VERNA: The
8 ayes have it and the motion carries.

9 The Chair recognizes Councilman
10 Clarke.

11 COUNCILMAN CLARKE: Thank you,
12 Madam President. I move that Bill No.
13 080954, as amended, be reported out of
14 Committee with a favorable recommendation
15 and a request for rules suspension as to
16 allow reading at the next session of
17 Council.

18 (Duly seconded.)

19 COUNCIL PRESIDENT VERNA: It
20 has been moved and seconded that Bill No.
21 080954 be reported out of Committee with
22 a favorable recommendation, as amended;
23 further, that the rules of Council be
24 suspended so as to permit consideration
25 at our next session of Council.

1 3/11/09 - RULES - BILLS 080952 and 080954

2 All in favor will say aye.

3 (Aye.)

4 COUNCIL PRESIDENT VERNA: Those
5 opposed?

6 (No response.)

7 COUNCIL PRESIDENT VERNA: The
8 ayes have it, the motion carries, and
9 this concludes our public hearing.

10 Thank you.

11 (Committee on Rules concluded
12 at 11:55 a.m.)

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CERTIFICATE

I HEREBY CERTIFY that the
proceedings, evidence and objections are
contained fully and accurately in the
stenographic notes taken by me upon the
foregoing matter on March 11, 2009, and that
this is a true and correct transcript of same.

MICHELE L. MURPHY
RPR-Notary Public

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