

**CITY OF NEWARK  
DELAWARE  
BOARDS AND COMMISSIONS REVIEW COMMITTEE  
MEETING AGENDA**

**January 26, 2016 – 7:00 PM  
Council Chamber**

1. Call to Order
2. Approval of the Minutes of the November 24, 2015 Boards and Commissions Review Committee Meeting
3. Approval of the November 24, 2015 Evaluation of the Board of Ethics by the Boards and Commissions Review Committee
4. Board of Building Appeals, Property Maintenance Appeals Board and Board of Sidewalk Appeals Presentation
5. Discussion and Potential Action Regarding the Committee Review of the Board of Building Appeals, Property Maintenance Appeals Board and Board of Sidewalk Appeals
6. Public Comment
7. Introduction of New Business
8. Next Meeting Date – February 23, 2016
9. Adjournment

The above agenda is intended to be followed, but is subject to changes, deletions, additions, and modifications, as permitted under the Freedom of Information Act of the State of Delaware. The agenda is posted (7) seven days in advance of the scheduled meeting in compliance with 29 *Del. C.* Section 10004 (e)(2). Copies may be obtained at the City Secretary's Office, 220 South Main Street, or online at [www.cityofnewarkde.us](http://www.cityofnewarkde.us).

**Agenda Posted – January 19, 2016**

Attest:

Sworn by:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Notary Public

(Seal)

**CITY OF NEWARK  
DELAWARE  
BOARDS AND COMMISSIONS REVIEW COMMITTEE  
MINUTES  
NOVEMBER 24, 2015**

Those present at 7:00 p.m.:

Members: Chairperson, Rebecca Powers, At Large  
John Morgan, District 1  
Jo Anne Barnes, District 2  
Christopher Laird, District 3  
Roberta Sullivan, District 4  
Maria Aristigueta, District 5

Absent: M. Howland Redding, District 6

Guest: Councilman Mark Morehead, District 1

Staff: Renee Bensley, City Secretary

**1. MEETING CALLED TO ORDER BY CHAIR REBECCA POWERS AT 7:02 P.M.**

**2. APPROVAL OF MINUTES OF THE OCTOBER 27, 2015 BOARDS AND COMMISSION REVIEW COMMITTEE**

Dr. Morgan had forwarded some changes to the City Secretary the previous evening and the changes had been made.

**MOTION BY MS. BARNES, SECONDED BY DR. MORGAN: TO APPROVE THE MINUTES AS AMENDED.**

**MOTION PASSED UNANIMOUSLY.  
VOTE: 6 TO 0. (ABSENT: REDDING)**

**3. BOARD OF ETHICS PRESENTATION**

Ms. Bensley commenced with the presentation for the Board of Ethics.

Governing Authority: The Board for municipalities in general was empowered by Title 29. Chapter 58 Subsection §5802(4) of the Delaware State Code. This detail could be found as well on the memo submitted by Ms. Bensley. This provided the General Assembly with all County Municipalities and Towns to adopt Code of Conduct Legislation with guidelines at least as stringent as the States Statute. The Board of Ethics for the City of Newark was specifically governed by Sec. 2-97, 2-97.1, 2-97.2, 2-97.3.1, 2-97.4, and 2-97.19 of the City Code.

Qualifications: The qualifications for the Board of Ethics are that members shall be residents of the City.

Orientation/Training: There was currently no training and orientation offered for Board members. Ms. Bensley reported the current Board members had been members of the Board for an extensive period of time. It is possible there may have been training when they initially started. There was currently one vacancy. It was expected a new Board member will be added in the near future and training would be offered then.

Rules of Procedure: The Code stated the chair and secretary were to be selected annually from among the board members. Since the Board had not met on a regular schedule, this had not taken place. The chair of the Board of Ethics recently resigned due to health reasons. The next time the board met they would need to select a new chair. The Rules of Procedure for a hearing of the Board were outlined in Sec. 2-97.3.1 of the City Code. This specifically outlined the Rules of Procedure in the case of a complaint being filed that the Board needed to evaluate.

Activity Level: The activity level of the Board of Ethics has historically correlated with the number of ethics complaints filed. The committee meets on an as needed basis. They have met two times in the last five years, once in 2012 for a complaint filed and once in 2015 to provide an advisory opinion that was requested. There were currently four members on the Board with one vacancy. Members were appointed for five year terms and were required to be residents of the City. There was no compensation for this committee.

Reporting: The committee was required to keep minutes under Delaware FOIA and Section 2-97.2 of the City Code. However, Section 2-97.3.1 of the City Code noted that a written complaint shall constitute the minutes of the Board of Ethics with respect to the matter. The committee had up-to-date minutes which were kept by the City Secretary's Office staff. The hearing officer for the Board had traditionally been either the City Solicitor or Deputy City Solicitor and was appointed by the Board at the beginning of the hearing. The decisions had been posted on the City's website since 2015.

Stakeholder Viewpoints: With regard to stakeholder viewpoints, all Board members were contacted by mail to solicit comments for the review and none submitted any suggested changes. Ms. Bensley stated she had very limited experience with the Board. She reported she had been with the City for the last three years and the Board had met only once. However, Ms. Bensley stated she did find the Board members very conscientious in their efforts.

She stated training by the City Solicitor on the Newark Code of Ethics may be beneficial for the Board and should be implemented. It was her opinion the Board could be more active; specifically this Board may want to consider setting a standard to meet on a regular basis (biennially) at the end of the legislative session in order to update the City's Code to reflect any changes on the state level. Since there had not been a set schedule, the Ethics Code should be updated to adhere to State standards. It had not been updated since 1997 and was a very time consuming process.

Necessity: The Board of Ethics has a narrow scope of duties. It is only responsible for the duties outlined in Sec. 2-97.3, aiding in the implementation of the Code of Ethics for

public officers and employees. It does provide a fair and impartial arbiter for the implementation of the City's Code of Ethics.

Staff recommendations were that the Boards and Commissions Review Committee submit a recommendation to Council to update Sec. 2-97.2 to reflect that the Board of Ethics shall meet at least biennially to provide Council with recommendations regarding the updating and maintenance of the City Code of Ethics. Additionally, staff recommended that training be instituted for members for the Board of Ethics in the form of a meeting with the City Solicitor for new members.

The Chair opened the floor to questions from the table.

Dr. Aristigueta asked how conflicts of interest were addressed. Ms. Bensley stated it was addressed in the larger City Code of Ethics. Ms. Bensley stated it was the duty of Committee to address this matter as it pertains to the Board of Ethics not the entire Ethics Code for the City of Newark.

Ms. Bensley reported the City does have a provision for conflict of interest

Ms. Sullivan asked if the terms of office were staggered. Ms. Bensley confirmed they were. In addition, she reported since being a member of the Board of Ethics did not require a lot of time commitment, it was not uncommon for members to seek reappointment for multiple terms.

Ms. Sullivan asked how the Board members were appointed. Ms. Bensley replied that they were all at-large appointments nominated by the Mayor and confirmed by Council.

Mr. Laird asked what the process was when a matter needed to go before the Board of Ethics. Ms. Bensley stated the matter would be brought before Council as a recommendation of the Board. Council would then be given the opportunity to indicate whether they would like the recommendation to move further. If they did so, then the matter went to the Board of Ethics to be considered. Once the Board of Ethics considered it, the matter would then go to the State Public Integrity Commission. They, in turn would make comments and the revised version based on their comments would return to Council in ordinance form to be considered.

Dr. Morgan stated he had reviewed the material on the two issues that had come before the Board in the past few years. It was his opinion that during the past few years, all members of Council including the Mayor had been very scrupulous in paying attention to conflicts of interest. He recalled that in September 2014, the Mayor and another member of Council recused themselves because they were members of Newark Natural Foods when there was an issue about a Special Use Permit pertaining to them.

However, he believed there was some manner of circularity with the appointments of the Board as the Mayor was the sole individual responsible for the appointments. He believed it would be better going forward to have a seven person Board of Ethics with one member nominated by the appropriate Council member for each of the six districts; and

one at-large member nominated by the Mayor. Then, there would be no question raised about partiality or impartiality. He would like to ask the Boards and Commission Review Committee to consider making the recommendation as such.

Ms. Powers suggested Dr. Morgan reiterate this request at the appropriate time and limit his comments currently to any questions he may have about Ms. Bensley's presentation.

Ms. Barnes confirmed the meetings were public. Ms. Bensley replied that they were, however public comment was not permitted.

After discussion the following changes were made to the evaluation form:

Governing Authority: Areas of Strength: Ms. Powers stated in her opinion it was sufficient, or not even applicable in this category. Areas for Improvement: Dr. Morgan stated it was his opinion there were areas for improvement by using plainer more easily comprehensible language in the City Code, where appropriate. So "lay people" who are on the Board of Ethics can easily understand what exactly the City Code of Ethics is meant to say.

Qualifications: Aspects: Ms. Powers said she agrees with Dr. Morgan's idea the Board should expand and allow nominations to the Board from each Council members district. Ms. Barnes concurred with Dr. Morgan and Ms. Powers. Dr. Morgan suggested the following change. He believed it would make sense to increase the Board to seven members. He suggested the following: The Boards and Commissions Review Committee recommends that the City of Newark Board of Ethics be reconstituted so that it is composed of seven members with one member being nominated from each of the six districts into which the City has been divided for election purposes by the respective Council member and one member being nominated on at-large basis by the Mayor, with all members being approved by a majority of Council. Dr. Aristigueta suggested staggering the terms. Ms. Barnes was in favor of a five year staggering term.

Ms. Bensley stated if the committee elected to adopt this, she would recommend considering changing Sec. 2-97.2 regarding meetings, their frequencies and their quorum. The quorum was currently specified as three.

Ms. Sullivan stated it was her opinion the members dedication and desire to continue (despite the lack of activity) on the Board could be considered as areas of strength.

- Areas for Improvement: Expanding the Board of Ethics membership.

Orientation/Training: There was none.

- Areas for Improvement: Training should be provided. It was decided that an initial training by an attorney (City Solicitor) should be followed by a broader

ethics training.

#### Rules of Procedure:

- Selection of Officers: Annual election of a chair and secretary when the annual meeting is scheduled.
- Areas for Improvement: It was decided to strike the section the "Board should meet more often" as this was referencing the process of how often to schedule a "regular" meeting and how to elect Board members when the frequency of meeting is so unpredictable given the fact that years can go by between hearings.
- Meeting Procedures: The hearing procedures were outlined in City Code. Ms. Bensley stated they have not met outside of hearings. Therefore, no procedures outlined for meeting outside of hearings was sufficient. Ms. Bensley stated that for advisory opinions there was a slight amendment for the Rules of Procedure for complaint hearings to follow a similar structure (even though it was not specifically tailored for the advisory opinion)

Reporting: It was decided to have an election for a chair every two years. It will have to be changed in the City Code.

- Areas for Improvement: After discussion, it was determined that the written decision of a complaint as outlined in City Code was sufficient reporting of the meeting.
- Compliance with existing reporting requirements: There was nothing to change as it was agreed that reporting is in compliance.
- Appeal process for the decisions of the body: It was decided to look at other jurisdictions and perhaps make a change based (with the City Solicitor's input) on the information found.

#### Stakeholder Viewpoints

- Views of members of the body being evaluated: No member had offered any opinion.
- Views of department heads who work with the body: Ms. Bensley had offered information via memo (entered into the record)
- Views of the public who interact with the body:

Dr. Morgan believed that in order for there to be a violation of ethics there could be a violation of either the City Code or the State Code. It was his opinion the State Code was long and complicated with legal definitions. He wished to address financial interest/private enterprise.

Ms. Bensley reported there would be a Board of Ethics meeting scheduled in early 2016.

Ms. Powers suggested the Board be encouraged to clarify various issues at hand (i.e. the public or private view on UD).

Necessity: Scope of duties. Areas of strengths: narrow as outline in City Code. Areas of improvement: Dr. Morgan suggested referencing subsection D to propose revisions of the Code of Ethics to assure its continuing pertinence and effectiveness. No other changes were noted. Similarity to other bodies. No changes were added.

Activity Level:

- The Board was required to meet as needed.
- In the last five years, the Board had met 2 times (October 1, 2015 and March 21, 2012)
- Are the minutes complete and up to date: yes
- How many members are on this committee: 5
- How many vacancies are currently on this committee: 1
- How long is committee member's term on the committee: 5 years
- Is City residency a qualification for membership on this committee? Yes
- How long is the committee chair's term on the committee? 1 year
- How is the Chair selected for this committee? Elected by committee

The final recommendations were as follows:

- Changes in composition of the committee
- Changes in frequency and format of meeting
- Training for all and/or new members
- Consider defining appeal process
- Strike electing secretary

Dr. Morgan expressed concern about being able to appeal an "opinion." If there was a "decision" then there could be an appeal. If there was a complaint, then the burden of proof was on the complainant and if there had not actually been a violation of the City Code or of state law, the Board of Ethics had no choice other than to say they could not sustain the complaint. Under those circumstances, he said he was not certain what could be done other than file with Superior Court.

**4. PUBLIC COMMENT**

There was no one present from the public that wished to speak.

**5. INTRODUCTION OF NEW BUSINESS**

There was no new business.

**6. NEXT MEETING DATE**

The next meeting is scheduled for Tuesday, January 26, 2016 at 7:00 p.m.  
Ms. Barnes would complete the evaluation forms for the upcoming meeting.

7. **THE MEETING WAS ADJOURNED AT 9:12 P.M.**

Renee K. Bensley  
City Secretary

/TAS

DRAFT



**BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT**

Name of Board/Commission/Committee: Board of Ethics  
 Representatives Present For Review: Renee Bensley (staff)

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Governing Authority	City Code and/or resolutions governing the body	State and City codes sufficient regarding the Board of Ethics.	Possible improvements could include the use of plainer, more easily comprehensible language in the City Ethics Code, recognizing that Council cannot change the State Ethics Code.	
Qualifications	Are the required qualifications appropriate for the body?	Only qualification is City residency. Dedication of members and their desire to continue on the Board despite a lack of activity is a strength.	Consider expanding the Board to seven members (one from each Council district and an at-large member) to avoid the appearance of a conflict of interest in having all of the nominees be at-large appointees.	

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Orientation/ Training	Existing orientation and/or training for the body		Training should be provided both by the City Solicitor and as part of a broader ethics training such as the UD IPA courses.	
	Level of participation by members of the body in the above training	N/A	N/A	
Rules of Procedure	Selection of chair and other officers		Election of chair should be every two years instead of every year. No secretary should be elected since staff fills that function.	
	Meeting procedures	Hearing procedures outlined in City Code.	No procedures outlined for meeting outside of hearings.	
Activity Level	Amount of active participation by members	Sufficient for limited number of meetings.	Board should meet yearly, alternating years between training and evaluating the Ethics Code to provide update recommendations to Council.	

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Reporting	Existing reporting requirements	DE FOIA. City Code.		
	Compliance with existing reporting requirements	Reporting is in compliance with requirements.		
	Appeal process for decisions of the body		Appeals process from other jurisdictions should be reviewed and potential changes should be considered based on that information	
Stakeholder Viewpoints	Views of members of the body being evaluated			Unfortunately, no members submitted comments.
	Views of department heads who work with the body			See Renee Bensley's memorandum.
	Views of the public who interact with the body			No public comments.

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Necessity	Scope of duties	Narrow as outlined in City Code 2-97.3		
	Similarity to other bodies	N/A		

**Activity Level**

1. When is this board or commission required to meet?  Monthly  Quarterly  Annually  As Needed  Other (Explain) \_\_\_\_\_
2. In the past five years, this board or commission has met 2 times. Its last two meetings were on October 1, 2015 and March 21, 2012.
3. Do the minutes of this board or commission maintained by the City appear to be complete and up-to-date?  Yes  No  
If no, identify any apparent deficiencies: \_\_\_\_\_
4. How many members are on this committee? 4
5. How many vacancies are currently on this committee (number and percentage)? 1

**Board Membership**

6. How long is a committee member's term on this committee?  1 year  2 years  3 years  Other (Explain) 5 years
7. Is City residency a qualification for membership on this committee?  Yes  No
8. If City residency is not a requirement, does this committee have any members who are not City residents?  Yes  No

9. How long is the committee chair's term on this committee?  1 year  2 years  3 years  Other (Explain) \_\_\_\_\_

10. How is the Chair selected for this committee?  Volunteer  Elected by Committee  Appointed by Mayor

**Compensation**

11. How much is the compensation for this committee? None

**Final overall recommendations of the Boards and Commissions Review Committee:**

**SUMMARY STATEMENT:** The Board of Ethics appears to be well-organized and functioning under current leadership. We see the following areas that need review or clarification.

1. TRAINING NEEDED

While many members of the Board of Ethics have been long-serving, the Committee feels that a formalized training program both in the Newark Ethics Code specifically and on ethics generally would be beneficial to members of the Board.

2. EXPANSION OF THE BOARD OF ETHICS

In order to avoid the appearance of impropriety in having all members nominated by the same person, the Committee recommends that Council consider expanding the Board of Ethics to seven members with one appointed from each Council district and one appointed as an at-large member.

3. CHANGES IN THE FREQUENCY AND FORMAT OF MEETINGS

Currently, the Board of Ethics does not regularly meet. The Committee recommends that in addition to meeting when a complaint is filed, the Board meet at least once a year. These annual meetings should alternate between a review of the Ethics Code to forward recommendations for updates to Council and training opportunities.

4. CONSIDER DEFINING THE APPEAL PROCESS

It was unclear to the Committee the process for appealing a decision of the Board either in a complaint situation or in the case of an advisory opinion. It is recommended that research be done on the appeals processes for other jurisdictions and consider clarifying the appeals process for Newark's Board of Ethics.

5. REMOVE THE REQUIREMENT FOR ELECTING A SECRETARY

As staff members serve as secretary to the Board, the Committee recommends striking that requirement from City Code.

Approved by the Boards and Commissions Review Committee on \_\_\_\_\_, 2016.

Vote: \_\_ to \_\_.

Attest:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Chairperson  
Boards & Commissions Review Committee

**For Office Use Only:**

**Date Submitted to Council:** \_\_\_\_\_, 2016

**Action Taken by Council:**

DRAFT

**CITY OF NEWARK  
DELAWARE**

**January 19, 2016**

**TO: Boards & Commission Review Committee Members**

**FROM: Renee Bensley, City Secretary** *RUB*

**VIA: Carol Houck, City Manager  
Maureen Feeney Roser, Planning & Development Director  
Tom Coleman, Public Works & Water Resources Director  
David Culver, Code Enforcement Manager**

**CC: Mayor and Council**

**SUBJECT: Board of Building Appeals, Property Maintenance Appeals Board and  
Board of Sidewalk Appeals Review Information and Staff  
Recommendation**

Governing Authority

The Board of Building Appeals is governed by Section 7-1(d) of the Newark City Code (attached). The Property Maintenance Appeals Board is governed by Section 111 et seq. of the 2009 International Property Maintenance Code (IMPC) (attached) as adopted in Section 17-1 of the Newark City Code (attached). The Board of Sidewalk Appeals is governed by Sections 26-27 and 26-28 of the Newark City Code (attached).

Qualifications

City Code provides that members of the Board of Building Appeals shall be "a licensed professional engineer or architect; or a builder or superintendent of building construction with at least ten years experience, five of which shall have been in responsible charge of work. Not more than two members shall be from the same profession or occupation, and at least one professional engineer shall be a structural or civil engineer with architectural engineering experience." (Section 7-1(d)(4))

The 2009 International Property Maintenance Code provides that members of the Property Maintenance Appeals Board shall be "qualified by experience and training to pass on matters pertaining to property maintenance and who are not employees of the jurisdiction. The code official shall be an ex-officio member but shall have no vote on any matter before the board." (Section 111.2)

The Board of Sidewalk Appeals has no specific qualifications for members outlined in City Code.

Orientation/Training

Currently no training for board members is provided.

### Rules of Procedure

The Board of Building Appeals is charged with adopting its own rules of procedure (Section 7-1(d)(1)). To the knowledge of staff, that has never been formally done.

The chair for the Property Maintenance Appeals Board is to be selected annually by the membership (2009 IMPC Section 111.2.2). However, since the Board has not met annually, this has not occurred. The secretary for the Board is designated by the chief administrative officer (2009 IMPC Section 111.2.4). The hearing procedures are outlined in Sections 111.3 through 111.6 of the 2009 IMPC.

The Board of Sidewalk Appeals has a "designated chairman" from the membership (Section 26-27). Hearing proceedings are outlined in Section 26-28 of City Code.

### Activity Level

The activity level of all three boards has historically correlated with the number of appeals filed. These committees meet on an as needed basis. The Board of Building Appeals has met 3 times in the last five years, in 2012, 2014 and 2015 to hold hearings for complaints filed. There are currently three members and one alternate on the Board with two vacancies. Members are appointed for five year terms. Members are required to be residents of the City. There is no compensation for this committee.

The Property Maintenance Appeals Board has not met since 2000. There are currently five members and no alternates on the Board with two alternate vacancies. Members are appointed for five year terms. Members are required to be residents of the City. There is no compensation for this committee.

The Board of Sidewalk Appeals has not met since 2005. There are currently five members on the Board, however one has indicated that he would like to be replaced when a new member can be found. Members are appointed for two year terms. Members are required to be residents of the City. There is no compensation for this committee.

### Reporting

Currently, the boards are required to keep minutes under the State of Delaware Freedom of Information Act. and Section 2-97.2 of the City Code. Additionally, the Property Maintenance Appeals Board is required to keep minutes as outlined in Section 111.6.1 of the 2009 IPMC. The committees have up-to-date minutes which are kept by the Code Enforcement Division staff for the Board of Building Appeals and the Property Maintenance Appeals Board and the City Secretary's Office staff for the Board of Sidewalk Appeals. None of the three boards have minutes posted on the City's website.

### Stakeholder Viewpoints

All Board members were contacted by mail to solicit comments for the review. The following members and staff submitted comments:

### Board of Building Appeals

Jeff Bergstrom submitted his comments via phone call. He noted that he felt the Board of Building Appeals was functioning well and that the qualifications of the members were very helpful in considering the appeals. When asked his thoughts on consolidation of the three boards being reviewed, he stated that as long as the membership qualification standards were the more stringent standards of the Board of Building Appeals, he thought that would be fine.

Maureen Feeney Roser is the Director of Planning and Development for the City and works with the Board of Building Appeals. She noted that the Board has met a couple of times over the last couple of years and provide a vital role in the building/construction process. In her opinion, the Board members are extremely knowledgeable and effective and she could not point to any areas needing improvement. She noted that the vacancies should be filled by an engineer or construction manager, someone not only familiar with Codes, but with construction practices. She thought it was important to have their purpose be focused on the appeals to Building Code interpretations, but that the best move may be to have them handle all appeals to provisions in Chapters 7, 14 and 17 of the City Code as a Board of Building, Fire and Property Maintenance Appeals.

David Culver is the Code Enforcement Manager for the City and works with the Board of Building Appeals. He noted that he has only had one contact with the Board of Building Appeals in his time with the City and he thought they were very professional and conducted a proper meeting. He agreed with Ms. Feeney Roser's statement regarding the possible consolidation of boards.

### Property Maintenance Appeals Board

Robert Detwiler submitted his comments via the form sent to him in the mail (attached). He noted that during the time of his appointment, the Board has never met. He felt the Board was underutilized and that the Board should be a step in the appeals process before going to the Court. He stated the need for education of Board members.

John Kalmer submitted his comments via email. He noted that since the Board meets so infrequently that it would be helpful in an outline could be put together for all Boards as a guide on how to conduct their meetings.

As noted in the earlier comments on the Board of Building Appeals, Ms. Feeney Roser noted that the appeals heard by the Property Maintenance Appeals Board could be heard by a consolidated Board of Building, Fire and Property Maintenance Appeals. She stated that the Board has not met in her time as Planning and Development Director.

### Board of Sidewalk Appeals

Robert Detwiler submitted his comments via the form sent to him in the mail (attached). He noted that since his original appointment, the Board has only met twice. He felt members should be utilized in policing all existing sidewalks and overseeing new work. He felt the Board was underutilized and that members should be "eyes on conditions within [the] City." Staff expressed concern regarding Mr. Detwiler's suggestions

on a more active policing role for the Board as they would not be able to serve as both the enforcers and an impartial appellate mechanism for that enforcement.

Tom Coleman is the Director of Public Works and Water Resources for the City. He noted that the Board has not met in his time as Director. He supported the idea of consolidation of the Board of Sidewalk Appeals into a joint board that would cover Building, Fire and Property Maintenance Appeals as he felt there were no issues related to sidewalks that would not be able to be considered by someone with Building Code experience.

#### Necessity

All three Boards have narrow, but thematically related duties. The Boards are similar to each other in that they are appeals boards that relate to property issues, whether construction or maintenance. A board to hear appeals is necessary, however, separate boards for each issue are not.

#### Recommendations

Staff recommends that the Boards and Commissions Review Committee submit a recommendation to Council to consolidate the Board of Building Appeals, Property Maintenance Appeals Board and Board of Sidewalk Appeals into a new Board of Building, Fire and Property Maintenance Appeals. Qualifications for members of the newly consolidated board should mirror the current qualification requirements for the Board of Building Appeals. Additionally, a training in parliamentary procedure should be offered for all boards and commissions members in 2016. An introductory training by the City Solicitor similar to what is offered for other boards may also be helpful to new members.

Thank you for your consideration and please contact me if you have any questions.

/rkb

**Sec. 7-1. - General.**

(d) *Appeals.*

- (1) *General.* Any person shall have the right to appeal the decision of the building/code official regarding the application and interpretation of this code. There shall be and is hereby created a board of building appeals. The board of building appeals shall be appointed by the city council and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.
- (2) *Application for appeal.* Appeals to the board of building appeals shall be in writing and on a form provided by the city. The applicant shall cite and attach the decision of the code enforcement officer from which the appeal is made and give the reason for said appeal. A fee of \$100.00 for residential zoned structures or of \$500.00 for all other structures shall accompany each application for appeal to partially offset the cost of the hearing. Appeals from section 7-19, historic buildings, shall not be heard through this process.
- (3) *Limitations on authority.* An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall not have the authority to waive requirements of this code.
- (4) *Qualifications.* Each member of the board shall be a licensed professional engineer or architect; or a builder or superintendent of building construction with at least ten years experience, five of which shall have been in responsible charge of work. Not more than two members shall be from the same profession or occupation, and at least one professional engineer shall be a structural or civil engineer with architectural engineering experience.

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▪ [SECTION 111 MEANS OF APPEAL](#)

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[111.1 Application for appeal.](#)

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**SECTION 111 MEANS OF APPEAL**

**111.1 Application for appeal.** Any person directly affected by a decision of the *code official* or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

**111.2 Membership of board.** The board of appeals shall consist of a minimum of three members who are qualified by experience and training to pass on matters pertaining to property maintenance and who are not employees of the jurisdiction. The *code official* shall be an ex-officio member but shall have no vote on any matter before the board. The board shall be appointed by the chief appointing authority, and shall serve staggered and overlapping terms.

**111.2.1 Alternate members.** The chief appointing authority shall appoint two or more alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership.

**111.2.2 Chairman.** The board shall annually select one of its members to serve as chairman.

**111.2.3 Disqualification of member.** A member shall not hear an appeal in which that member has a personal, professional or financial interest.

**111.2.4 Secretary.** The chief administrative officer shall designate a qualified person to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the chief administrative officer.

**111.2.5 Compensation of members.** Compensation of members shall be determined by law.

**111.3 Notice of meeting.** The board shall meet upon notice from the chairman, within 20 days of the filing of an appeal, or at stated periodic meetings.

**111.4 Open hearing.** All hearings before the board shall be open to the public. The appellant, the appellant's representative, the *code official* and any person whose interests are affected shall be given an opportunity to be heard. A quorum shall consist of not less than two-thirds of the board membership.

**111.4.1 Procedure.** The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

**111.5 Postponed hearing.** When the full board is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

**111.6 Board decision.** The board shall modify or reverse the decision of the *code official* only by a concurring vote of a majority of the total number of appointed board members.

**111.6.1 Records and copies.** The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the *code official*.

**111.6.2 Administration.** The *code official* shall take immediate action in accordance with the decision of the board.

**111.7 Court review.** Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the chief administrative officer.

**111.8 Stays of enforcement.** Appeals of notice and orders (other than *Imminent Danger* notices) shall stay the enforcement of the notice and order until the appeal is heard by the appeals board.

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Sec. 17-1. - Adoption of Property Maintenance Code.

There is hereby adopted by the city for the purpose of protection of public health, safety and welfare, by establishing minimum maintenance standards for all structures and premises for basis equipment, facilities for light, ventilation, space heating and sanitation, safety from fire, for space, use and occupancy; and for safe and sanitary maintenance of all structures and premises now in existence, the International Property Maintenance Code, hereafter referred to as the International PM Code, of which not less than three copies have been and are now on file in the office of the code enforcement division being in particular of the 2009 International Property Maintenance Code, and all the nationally recognized standards referred to [and] incorporated therein, together with any and all supplements thereto, except such articles and sections as are hereinafter deleted, modified or amended.

(Ord. No. 87-27, 9-14-87; Ord. No. 90-30, Amend. No. 1, 9-24-90; Ord. No. 93-16, Amend. No. 1, 8-9-93; Ord. No. 99-35, Amend. No. 1, 10-11-99; Ord. No. 02-31, Amend. No. 1, 10-28-02; Ord. No. 07-29, Amend. No. 1, 10-8-07; Ord. No. 10-21, Amend. No. 1, 10-25-10)

**Editor's note**— Amend. No. 3 of Ord. No. 07-29 provided for an effective date of Jan. 1, 2008.

Sec. 26-27. - Appointment, composition; terms; meetings of board of sidewalk appeals.

The council shall appoint a committee to serve as a board of sidewalk appeals. The board shall consist of five members, one of whom shall be a designated chairman. The terms of such members shall be for two years from the date of their appointment. The board shall meet when necessary at the call of the chairman.

(Code 1959, Ch. 19, § 19308.1)

Sec. 26-28. - Appeals to board of sidewalk appeals; fees; hearing; authority to affirm, modify or reverse.

- (a) Appeals to the board of sidewalk appeals may be taken by any person aggrieved by any administrative decision based in whole or part upon this article within 30 days after receiving written notice of such decision.
- (b) All appeals shall be submitted to the city secretary in writing and shall not be valid unless the appeal states with particularity the basis therefor and accompanied by ten copies of a detailed plan, drawn to scale, which shows all open spaces, if any, all existing structures and/or proposed improvements to the land in question, if any, and the exact location of the sidewalk in question along with a nonrefundable filing fee of \$50.00.
- (c) After the city secretary receives an appeal, a written report from the city engineer stating the city's position shall be submitted, along with the written appeal and plan, to the board of sidewalk appeals, whose chairman shall fix a time for a hearing within 30 days after the filing of the appeal. At the hearing, the board shall hear all material, relevant and probative evidence, and shall decide the question or questions appealed as promptly as the nature of the question permits.
- (d) In its decision, the board may affirm, modify or reverse the decision of the city engineer and impose such terms and conditions as it deems appropriate in light of the purposes of this article.

(Code 1959, Ch. 19, §§ 19308.2, 19308.3, 19308.4; Ord. No. 84-15, Amend. Nos. 1, 2, 5-29-84; Ord. No. 07-24, Amend. No. 10, 8-13-07)

**CITY OF NEWARK  
DELAWARE  
BOARD OF BUILDING APPEALS  
MAY 24, 2012**

Tevebaugh Associates  
representing the  
University  
of Delaware seeking a  
variance to Chapter 7  
Section 706.2,  
Structural Stability,  
for 550 South College  
Avenue

**Those Present at 3:00 P.M.:**

**Chairperson:** Thomas Brockenbrough

**Members:** Edward Trahan  
Terrance Haskins  
Thomas Cofran  
Jeff Bergstrom

**Staff:** Steve A. Wilson  
Jim Kiesel

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**Chairman: Brockenbrough:** The meeting is called to order. For the sake of members, let me read a little bit in reference of the Board of Building Appeals. I will keep it short but in order to hear and decide the appeal of the decisions or determinations are made by the building official or relative application to this Code. There shall be and is hereby created a Board of Building Appeals. An application for appeals shall be based on a claim that is truly intended to this Code or the rules legally adopted thereunder that have been incorrectly interpreted, the provision of the Code not fully applied, or equally good construction available that they propose. Now we know what our job is here. So just by the way of introductions, if I may a building permit was submitted and turned down by the City and we have an appeal today, so first I think I would like to the let the City supervisor say why they turned it down, and then we will hear the appeal and take any questions from the members of the board.

**Steve A. Wilson:** I'm Steve Wilson; I'm the City's Code Enforcement Supervisor. I will defer the City's presentation to Code Enforcement Officer, Jim Kiesel at this time.

**Jim Kiesel:** The architects submitted a set of plans to separate an existing building into two buildings. By definition in the Code to create two separate buildings they must be structurally independent. The way the existing building is built it is not possible to do that structurally. So I had to deny the permit based on that definition. It is our opinion that they have provided; they are intending to provide, equal for or better protection. So we told them we would have to deny it, but they could go to the Board of Building Appeals to get them to approve you approve you to be able to do this.

**Thomas Brockenbrough:** Thank you sir. Now we are ready to hear the appeal.

**Steve A. Wilson:** If you will please sir, state your name for the record and your position and title.

**William Lenihan, AIA:** My name is Bill Lenihan, I'm an architect with Tevebaugh Associates and I'm the project architect for this Phase 1 project of the Star Campus for the University of Delaware, which is the former Chrysler site. The overall site plan here shows the entire 270 +/- acres. This is South College Avenue along here where we have the existing Administration building and one bay of the original assembly plant here in the front. The area here in blue and green is the College of Health Sciences for the University of Delaware. This blue area here is existing and the Green new proposed construction. The yellow will be other tenants that will be amenities to the College of Health Sciences so they will be things such as Health Studies, and MRI's, and physical therapy and all kinds of other things that want to be associated with the College of Health Sciences; but there will be separate tenants so the ideal spot to have a fire wall was right here where the two occupants would be separated. This original Administration building was a two story building all cast in place concrete and this is a steel frame with the assembly plant so these are trusses that are sixty feet spans, so there is a 120 x 700 feet here. What was happening was, as Jim was explaining, the only way to actually separate these structures would be actually to remove an entire bay of the concrete structure which was not feasible, and would also require removing 80 x 120 feet of this building separated. So what we've done is, after lookup at the requirements of life safety part of the Code was determined that we definitely need to separate the two hour construction so let's do the best possible job that we can do to keep all the life safety measures here and meet the intent of the Code. So we are proposing to construct a wall on the column line that through the first and second floors here, and continue this wall through the assembly area. This is, since it's all cast and place concrete, inherently fire proofed so this is all steel structure. It's not combustible; and we've agreed to spray fire proof all the way back to next column phase, including that column bay there, with two hour spray fire proofing. So that we would have 80 foot wide by 120 foot wide of spray fire proofed, and then the fire wall right down the center of the middle column line there. So the areas work out great and the building is fully sprinkled, so that we will meet all those requirements with the sprinkler and the frontage increase because of the overall area here. We are under the maximum areas for the building type 2b. So we believe this is a very

appropriate solution and it meets the intent of the Code and it fulfills the fire barrier requirements. So because we are trying to use an existing building and not tear down more of the structure than necessary and keep this whole project economically feasible, we are asking you to review this project in that light and we hope that you are in our favor. Yes?

**Terrance Haskins:** There are two floors in the first part of the.....

**William Lenihan:** Correct. This is the two story administration building so this is two stories tall and the new addition is also two stories tall.

**Terrance Haskins:** and the back section right now is one?

**William Lenihan:** It's one story tall. It's 18 feet to the bottom of the trusses and 25 feet to the roof; but it's just one story.

**Terrance Haskins:** Will that become two stories then?

**William Lenihan:** No, it will remain one story. It's an awkward height. It's not high enough to make it two stories, but it's very high for one story. They intend to use a lot of research space back here that needs high base space. Yes?

**Jeff Bergstrom:** So they're not creating a new property line down this part?

**William Lenihan:** The University of Delaware owns all 270 acres, so this is all within their property; but it'll be two buildings. If this was somewhere else yes it would be a property line through the building like that, but since they own all acres there won't be a new property line.

**Jeff Bergstrom:** So with one owner of the land they propose to separate building into two buildings as to oppose to putting in a demising wall in the middle of one building?

**William Lenihan:** The reason for building the fire wall and technically separating into two buildings per the Code is because the overall area of this building is greater than building type 2b would allow. So what would happen is you would have to go up to the next category which is building type 1b. Building type 1b would require spray fire proofing for the entire structure, which is cost prohibitive so technically, as the building was constructed it didn't meet current Code; because it doesn't have spray fire proofing across the whole thing. So we are trying to reuse the existing building and to make it more legal. We could put this fire wall through it make it two buildings, and it will then meet the current Code.

**Ed Trahan:** You said there were no electrical devices in the parting walls there?

**William Lenihan:** Correct.

**Ed Trahan:** Is there any duct work or anything like that either?

**William Lenihan:** No, because it will be two buildings so they will actually have separate utilities and things so we won't have utilities running through the wall. We will have a few door penetrations but they will be fire rated doors. We wanted to make sure that we didn't put any electrical devices in that wall or run any electric through that wall that could possibly be fire hazard, so all those devices would be built in adjacent walls to this fire wall.

**Thomas Brockenbrough:** Questions?

**Thomas Brockenbrough:** Terry?

**Terrance Haskins:** I'm ok.

**Thomas Cofran:** I'm ok.

**Thomas Brockenbrough:** Well if there is no further discussion, the Chair will entertain the motion.

**Jeff Bergstrom:** I'd like to make a motion that we approve the application. Technically it's not a variance, it's an equivalency of the Code.

**Thomas Brockenbrough:** Yes, I guess the words that you want me to pick are....

**Thomas Cofran:** Let me ask one question, has the City looked at this plan and they are in favor of the new plan?

**Thomas Brockenbrough:** Would you like to speak to that?

**Jim Kiesel:** Yes, the City is in favor of this.

**Thomas Cofran:** It is? Ok.

**Steve A. Wilson:** Yes. I'm sorry; I was talking to Mr. Bergstrom. Yes, the City is in favor of this proposal as presented.

**Thomas Brockenbrough:** I believe the words are.....

**Jeff Bergstrom:** I'll try to speak in the microphone.

**Thomas Brockenbrough:** Equally good or better form of construction.

**Jeff Bergstrom:** Yes, an equal. I would like to make a motion that this an equally good or better form of construction than the Code anticipated requiring.

**Thomas Brockenbrough:** Is there a second to the motion?

**Ed Trahan:** Yes, I'll second. Why not?

**Thomas Brockenbrough:** The motion has been made and second. All in favor say "Aye".

**Members:** "Aye"

**Thomas Brockenbrough:** Any oppose? I guess since everyone voted yes, I guess that's everyone's vote. So the motion is clear.

**Vote:** 5-0. Motion Approved.

**Thomas Brockenbrough:** Meeting adjourned.

Respectfully submitted,

Angela D. Conrad  
Secretary to the Board

**CITY OF NEWARK  
DELAWARE  
BOARD OF BUILDING APPEALS**

**AUGUST 5, 2014**

James Landon, representing the Pilgrim Baptist Church seeking a variance to Chapter 7 Section 903.2.4, Automatic Sprinkler Protection. Applicant states the code is being incorrectly interpreted for 1325 Barksdake Road.

**Those Present at 3:00 P.M.:**

<b>Chairperson:</b>	Jeff Bergstrom
<b>Members:</b>	Terrance Haskins Sal Sedita
<b>Staff:</b>	Tim Poole Maureen Feeney Roser Steve A. Wilson
<b>Attorneys:</b>	Bruce Herron, City Solicitor James Paradee, Attorney for Board Members James Landon, Attorney for Pilgrim Baptist

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(Chairman) Mr. Bergstrom: Board of Building Appeals for August 5, 2014 to order. For the record I'm Jeff Bergstrom a member of the Board. Do the other board members want to introduce themselves and get on the mike?

Mr. Haskins: Terry Haskins, Civil Engineer.

Mr. Sedita: Sal Sedita, I'm a real estate broker.

Third party from congregation: Can you speak a little louder 'cause I didn't hear or can't hear, please.

Mr. Paradee: Sure, we'll try to do that. For the record, my name is John Paradee and I'm council to the board. Mr. Bergstrom, the first order of business I believe would be for the board to elect a chair.

Mr. Bergstrom: Ok, for this Board who meets relatively, relatively infrequently, we need to elect a chair. Does anyone, would anyone like to make a motion?

Mr. Sedita: I move Jeff Bergstrom to be named chair.

Mr. Haskins: Second

Mr. Bergstrom: Second. All in favor?

Mr. Sedita and Mr. Haskins: Aye

Mr. Bergstrom: Ok, we'll do this. Um, Mr. Paradee would you like to ugh.

Mr. Paradee: Sure. Congratulations Mr, Chair. Just to give everyone a little bit of a background in terms of basic ground rules for the hearing. First of all, this is a public meeting but it's an appeal hearing. It's not a public hearing in the sense that the public is not a party in interest. So there will not be an opportunity for any public comment. Instead, the City will go first and present their case in support of the decision of the building official and the City will present witnesses and make their argument and then at the conclusion of their case the appellant will have the opportunity to make whatever statement they care to make or call or make whatever statement they care to make, call whatever witnesses they care to call and make whatever arguments they care to present. The Board members will have an opportunity to ask questions of council and witnesses at any time and there will be opportunity for each party to cross examine or rebut any testimony or evidence that has been presented along the way; so it would be fairly loose in that regard but I did want to make it clear up front that it is not a public hearing in the sense that it's not open to public comment. So gentleman and ladies if there are any further questions about procedure then Mr. Chairman, I believe it would be appropriate to open the public hearing and allow the City to present their case and chief.

Mr. Bergstrom: and we just did so.

Mr. Herron: Mr. Chairman, members of the Board, my name is Bruce Herron, I am the City Solicitor. This is an appeal filed by the Pilgrim Baptist Church pursuant to Section 7-1(d) of the City Code. The appeal challenges the code official's application and interpretation of the Code provision which requires automatic sprinkler for any existing structure which undergoes renovations at any time to 50% or more of its interior area. Here we have no dispute that the new construction is substantially larger than the existing church area. The City contends that this project, the new project, is a renovation to an existing structure. Renovation is defined in the Code as the change strengthening or addition of load bearing elements. You will hear from the Code Official, Tim Poole, who has been directly involved with the project since its inception four years ago. He will testify that the new addition is not separate, not independent, not distinct but is in fact connected to and shares load bearing elements with the existing structure. It's all one building, it's all one structure therefore automatic sprinkler is required for the entire facility. Very briefly the City, it is also the City's position that the terms addition and renovation are not the church's counselor suggest mutually exclusive terms in addition and also be a renovation and therefore the characterization of the plans on the building permit and improvements as an addition does not

mean it's not renovation. Here we have an addition to and a renovation of an existing structure and at the end of hearing we will ask that the board affirm the code official's decision to acquire automatic sprinkling of the existing, of the entire church facility. In front of you are the binders that we have prepared and contains documents that will be referred to by both sides during the hearing for your convenience. With that I would ask the Code Official come to the podium, Timothy Poole.

Mr. Landon: If I may real quick, my submission I submitted of plans on 8 ½ x 11. I do have larger plans.

Mr. Herron: Excuse me, can you come to the podium, I want to make sure this is recorded.

Mr. Landon: I apologize. My submission to the board contained plans for this project on 8 ½ x 11, if the board would like I have larger copies so the board can easily review, if the board would like.

Mr. Paradee: Mr. Chairman, if I may, would suggest ah that we proceed as follows, I want to ask both council is there an agreement can we stipulate that the binder that Mr. Herron has submitted is admitted into the record?

Mr. Bergstrom: I have no objections to that.

Mr. Paradee: Okay, and likewise Mr. Herron would you have any objection to admission of the record of the documents Mr. Landon proposes to introduce?

Mr. Herron: No objections.

Mr. Paradee: Okay, thank you very much.

Mr. Landon: One more quick question, my submission does the board have copies of that, I have copies as well of the actuals.

Mr. Paradee: So you can submit those at the appropriate time?

Mr. Landon: Absolutely, the only reason I ask at this time is that I know Mr. Poole may be referencing the plans so for easier review, I offered the....

Mr. Paradee: To reference

Mr. Landon: To reference for review.

Mr. Paradee: Do you want to submit them now?

Mr. Landon: Sure.

Mr. Paradee: Okay.

Mr. Bergstrom: Mr. Poole, would you approach?

Mr. Paradee: Let's wait for the testimony until we have all the exhibits and then we you are ready to represent testimony Mr. Herron we'll have to swear in your witness and I will be happy to do that.

Mr. Paradee: Just for record, I am going to indicate that Mr. Herron has presented a binder/notebook with several documents as exhibits and Mr. Landon has submitted two sets of documents one being a letter on the letter head of Morris James LLP, dated June 26, 2014, with five exhibits labeled A-E and second packet of construction documents. So those documents will constitute part of the record.

Mr. Landon: If I may clarify real quick the plans are actually Exhibit E to the submission.

Mr. Paradee: Ok, thank you very much. Mr. Herron, if you are ready to call your first witness I would ask that he state his name, and raise his right hand.

Mr. Poole: Timothy Poole.

Mr. Paradee: I'm sorry what's the last name, could you spell that?

Mr. Poole: P-O-O-L-E

Mr. Paradee: Thank you, Mr. Poole and do you swear the testimony you present here today will be true and correct to the best of your knowledge?

Mr. Poole: I do.

Mr. Paradee: Okay, you may proceed Mr. Herron, thank you.

Mr. Herron: Thank you, Mr. Poole, what is your position with the City?

Mr. Poole: I'm a Code Enforcement Officer.

Mr. Herron: and how long have you been with the city?

Mr. Poole: Just over eight years.

Mr. Herron: Just briefly, what are your job duties in that position?

Mr. Poole: To enforce the codes and standards as adopted by the mayor and council. Specifically in this case to enforce the provisions of the 2009 International Building Code.

Mr. Herron: Approximately, when did you first become involved with the plans, new construction at the Pilgrim Baptist Church?

Mr. Poole: My first interaction with the representative of the church and building team was in March 2010. Our first meeting with the group on March 22, 2010.

Mr. Herron: At those, initial meeting was there any discussion regarding the issue of sprinkling the facility.

Mr. Poole: Yes, at that time it was explained to the group that was present which includes the design team and representative from church that due to the size of the renovation and addition that automatic sprinkler protection will be required for the entire building and addition.

Mr. Herron: Who was present at that meeting?

Mr. Poole: At that meeting was Desmond Baker, the Chief Engineer and Design team leader for the church. I believe Mr. Robert Shorts, the Building Committee Chair for the church was present. There were several other design team professionals that I don't recall names of all at this time.

Mr. Poole: For the city, myself and Steve Wilson were present.

Mr. Herron: Was the project described to you or did you have any plans at that time?

Mr. Poole: There were some very preliminary plans that were shown at that time that basically gave pretty much only building outline to my recollection and discussion of the overall design concept.

Mr. Herron: What was the basis for your determination at that time that the entire facility needed sprinkled?

Mr. Poole: The basis was just the size of the increase the size of the building increased 267% of the original structure and the occupant load is increased to 142%. As the existing structure is 6,500 square feet and the addition is 17,356 square feet. The existing occupancy load by design is 395 persons, the additional occupant load of the addition is 562 people which brings the total to 962, I believe. It's in the review, which is the package.

Mr. Herron: Subsequent to that the initial meeting did you receive or were you copied on an email from Mr. Baker in June of 2010?

Mr. Poole: Yes, of June 1, 2010, Mr. Baker sent an email to Matt Schumacher who was the City Fire Marshal at the time, requesting who in the city they should contact for water flow calculations in order to provide the sprinkler system for the existing building and addition.

Mr. Herron: Members of the board I believe that was four pages in from the binder and Mr. Poole, if you could please refer to that email in your binder? Can you just read the last sentence of the email? This again is per Mr. Baker.

Mr. Poole: The new addition and existing sanctuary and facility building will be sprinkled. Which is again is a follow-up of the meeting that we had where we explained to them what the city code requires in respect that they proposed?

Mr. Herron: Was there any indication to you at that time or the next several years that there was any questions as to the timing of the sprinkling of the existing facility.

Mr. Poole: At that time there was not. There was an email I received on August 20, 2012, which was again from Mr. Baker. Stated that the existing building was to be sprinkled in Phase 2, it was not mentioned in this email that Phase 2 was not proposed to be part of this project. No time line was given as to what was included in the scope Phase 1 or scope of work Phase 2 or any of the timing of those. So I just assumed it was a construction timeline rather than it would not be included in the project.

Mr. Herron: Mr. Poole have you been to the site during the construction?

Mr. Poole: I have been to the site many times. At regular intervals as the building progressed to verify code compliance and plan compliance of the construction.

Mr. Herron: Do you recall approximately when you visited the site most recently?

Mr. Poole: Most recently? I believe it was in April as this process was beginning.

Mr. Herron: In the appeal, that has been submitted to the board. The church's counselor asserts that the new construction is separate, distinct and independent from the existing structure. Do you agree with that statement?

Mr. Poole: I disagree with that statement.

Mr. Herron: Can you tell the board why you disagree?

Mr. Poole: It's an expanded, it's an expansion of their use and occupancy. It's an expansion of the existing building. The buildings are interconnected the buildings are an accessory to each other. As the existing building houses the sanctuary and some existing other accessory uses. The addition includes a fellowship hall and education classes and some other meeting rooms. Again accessory to the existing building and it was reviewed in that manner. The review reflects that, but there is no separation there. It was identified early in the process that this was not separated in the first plan review which I completed on September 4 of 2012. Once the plans had been submitted and reviewed. There were numerous issues with the design concept and it was identified that the type of construction was not consistent with what the existing construction was. But that the entire building would become one structure by sprinkling the existing type 3B building which has certain requirements of one of which is type 3 does not require rated exterior walls. The existing building does not have rated exterior walls and that is a requirement of type 3A construction which is what the building is to be considered now. Where the automatic sprinkler protection eliminates the one hour exterior wall requirements of the existing structure. Of the type 3A structure. Which is consistent with the way the original building was constructed.

Mr. Herron: Mr. Poole, can you refer to the diagram which I think is about five pages in the binder of documents. Does that eliminate or clarify your position that the regarding the intra-connectedness of the two

Mr. Poole: These two plans that are shown are part of the plans that you have before you. There are just full size copies of the 2'x3' foot plan that was submitted copies of pages S7 which is structural seven and S9 which is structural nine which is in section five of S7 it shows the attachment of the rafters of the corridor that connects the two buildings where they bear on the existing masonry wall by a continuous slope steel angle and the attachments to that wall showing it's bearing on S9 in section one it shows where in another section of the building where the bathroom was attached where there's a new rafter for the new roof of the ladies bathroom area that is again fastened to that existing masonry wall showing that they are sharing that common structural element.

Mr. Herron: When you say they're sharing – are you referring to the new construction in the existing building?

Mr. Poole: Yes, the existing building roof system bears on the S7 cut. The end of the gable end roof bears on that wall. I'm not positive whether if it has a gable end truss that is above the masonry wall or if it's just a plate that bears on that masonry wall that supports the roof load at the end of beyond the last truss. The building on Section 1S9 that existing masonry wall where that joists is attached with an embedded epoxy anchor is where the existing roof trusses of the building bear. So both of the roofs bear at that location as well.

Mr. Herron: The construction plans and the building permit that are part of the binder submitted to the board references to the new construction as an addition. Did that description make any difference or have any bearing on you determination that sprinklering of the existing church is required?

Mr. Poole: No, the addition is just a type of renovation. The use and building of this part of the existing building, small portion of the existing building was renovated and the addition renovation which is where the bulk of the construction activities were is again shared. It's one continuous use and one continuous building.

Mr. Herron: So can this be considered both an addition and renovation?

Mr. Poole: Yes

Mr. Herron: If you look six pages in to the binder, there is a document titled Plan Review record.

Mr. Poole: Yes, this is a copy of my original building plan review. That was submitted that was dated September 4, 2012.

Mr. Herron: Is that your handwriting on the document.

Mr. Poole: Yes it is.

Mr. Herron: Can you explain what that document is?

Mr. Poole: That's our standard plan review record. Which indicates some specifics of what the building is. The first is just a statement that the Certificate of Completion is required. That is required when there is significant renovation or addition. The second is a standard comment about separate permits for fire protection, elevators, plumbing, mechanical, and electrical. The third is an identification of the covered parking and how it is classified as an open parking garage. The fourth comment is again has to do with the way it is considered part of the existing building as an open parking garage cannot be constructed as type 3A construction by code. They have to be type 1 or 2 construction. The fifth comment which again is significant in this case. Again, identified that the entire building is required to be sprinklered provide sprinkler coverage for existing building area.

Mr. Herron: Did you receive a response to that plan review record correction list from a representative from the church?

Mr. Poole: Yes, on December 14, 2012, I received a response letter from Mr. Desmond Baker, again the leader of the design team.

Mr. Herron: Okay, and that's I believe page seven of the binder, is that correct?

Mr. Poole: Yes.

Mr. Herron: There is a specific response to your comment number five.

Mr. Poole: Yes, it says existing building sprinkler. Sprinkler system is provided for the existing building. The sprinkler system is designed and sized to accommodate the new addition and the existing system.

Mr. Herron: Is there any indication on that document as to difference in timing of the existing building and the new construction with regard to the sprinkler?

Mr. Poole: No.

Mr. Herron: Go all the way to the, I think this is page eleven of the binder approximately. The actual building permit that was issued in this case. Do you see that in the binder?

Mr. Poole: Yes.

Mr. Herron: What is the date of that?

Mr. Poole: The permit was issued on April 1, 2013.

Mr. Herron: Does the building permit make any reference of the sprinkling requirement?

Mr. Poole: Yes, it does. In this, where it says this contract subject to the following conditions. Under the classification the building, it says the herein attachment exhibit A shall be made part of this permit. The Exhibit A is again the next document in the binder. Which again is a copy of the revised plan review record based on the design revisions of the design team.

Mr. Herron: The, I believe the second page of Exhibit A has another updated, I suppose plan review record is that correct?

Mr. Poole: Yes, that again revised based on the design changes that was submitted after the first review.

Mr. Herron: Number three if I may read from this exhibit states the entire building shall be provided with automatic sprinkler protection. What is your understanding of that?

Mr. Poole: That again that is one entire structure and one use its continuous should be provided with the automatic sprinkler protection as required by code. Including the existing section.

Mr. Herron: I have nothing more for Mr. Poole at this time.

Mr. Paradee: Thank you Mr. Herron, do any members of the board have any questions of this witness?

Mr. Bergstrom: Just to clarify, Mr. Poole, the at the point of attachment of the breezeway or whatever the interconnection between the two buildings is that wall is a masonry wall?

Mr. Poole: Yes, it's a masonry wall with numerous openings.

Mr. Paradee: I have a follow-up to that. Is it your opinion that it's a load bearing wall?

Mr. Poole: Yes

Mr. Paradee: For the both existing building and the addition?

Mr. Poole: Yes

Mr. Paradee: Okay

Mr. Bergstrom: I think that's clear.

Mr. Haskins: Do we have two load bearing walls each side of the breezeway?

Mr. Poole: No, that would be a fire wall. This is simply an existing masonry wall that supports the existing roof construction and part of the new roof construction.

Mr. Haskins: So you are talking about the rear wall of the existing building?

Mr. Poole: Yes.

Mr. Haskins: How about the next wall or the new wall of the new building?

Mr. Poole: The far north wall of the new building is that existing wall they are interconnected to that point. Again they share load bearing element that supports both parts of the structure.

Mr. Haskins: What is supported by the wall of the new building?

Mr. Poole: The corridor roof again in Section 5S7 shows the attachment of the corridor roof framing. At onto a steel angle which is epoxy bolted to that existing masonry wall supporting that corridor roof.

Mr. Haskins: I'm talking about the other wall. The new wall that had just been constructed.

Mr. Poole: There is no new wall at that location. That bears on that existing wall

Mr. Bergstrom: It looks to be supported by a wide eighteen pound piece of steel. Isn't it?

Mr. Poole: The roof, yes.

Mr. Bergstrom: The other end of it.

Mr. Poole: At the other end?

Mr. Bergstrom: Yes, away from the masonry wall, the other end of that corridor

Mr. Poole: It's part of the steel structure

Mr. Bergstrom: It's part of the steel for the building.

Mr. Poole: Which again supports wall above that.

Mr. Sedita: I'm not sure if I'm saying this correctly. But if you took the roof off the breezeway, there would be two independent, two separate structures? Is that true?

Mr. Poole: There would be two distinct buildings that would be separated by the space of the corridor, yes

Mr. Sedita: Would they both be structurally sound?

Mr. Poole: Would they? No, because as you can see, the front wall of the second story of that is supported on that joist that is supported at the one end by the existing masonry wall. That whole side of that building would probably fail.

Mr. Sedita: The side of the new building

Mr. Poole: Yes, The northern most side. Again, per these plans and constructed.

Mr. Paradee: Any other questions to this witness by the board? I would now ask Mr. Landon if he would like to ask the witness any questions.

Mr. Landon: So your testimony, is that the breezeway is removed, the roof of the breezeway, that you don't believe that the even though you called them the two independent buildings.

Mr. Poole: I did not call them two independent buildings.

Mr. Landon: You just did. You are saying that they are not structurally sound without the breezeway?

Mr. Poole: I'm saying that the wall, that is supported.

Mr. Landon: The question is pretty simple. If I remove the roof from the breezeway are those two buildings will they fall down?

Mr. Poole: Part of them both will fall down.

Mr. Landon: We're going to have the design professionals and structural engineers testify to this. I'm going to go out of order with my stuff so, forgive me. Since we touched something so fresh in our mind. If I may approach and hand out the hand out?

Mr. Paradee: Sure, let the record reflect that Mr. Landon is approaching and handing the members of the board document that I will identify shortly. Thanks, for the record, this appears to be a copy of the plan review record dated September 4, 2012. That's the first page, the second page, is a copy of a letter from Desmond A. Baker & Associates dated December 14, 2012, and the third document or the third page is a plan review record dated March 28, 2013, I believe copies of these documents are in Mr. Herron's binder as well.

Mr. Landon: That is correct, and this is for ease of demonstration and the first is exactly that. Both of the first two documents are Mr. Herons' letter attached to my correspondence and the third document is actually from the building permit itself. What I ask the board to do is to lay them flat next to each other so we can compare them. Mr. Poole, can you please read number five on page number one? Which we identified as the plan review record? If I could actually back up and can you tell what date that is on the top?

Mr. Poole: That's from September 4, 2012, again that is my preliminary plan review from the first submission of the plans.

Mr. Landon: If you could read number five for me.

Mr. Poole: Entire building is required to be sprinklered provide sprinkler coverage for existing building area.

Mr. Landon: Okay, so we have two separate sentences, correct?

Mr. Poole: Yes.

JL: So entire, building is contained in sentence number one. Correct?

TP: Yes

Mr. Landon: and the term existing building separately contained in sentence number two. Correct?

Mr. Poole: I don't see a period there, but it could be just from the copy.

Mr. Landon: But they are different. Entire building, existing building, Correct?

Mr. Poole: No, it's one comment.

Mr. Landon: I'm asking you what the words say.

Mr. Poole: They're all different words.

Mr. Landon: The entire building separate from existing building. Correct?

Mr. Poole: The existing building is a clarification of the entire building, yes.

Mr. Landon: It's a clarification of the entire building.

Mr. Poole: It's a clarification that as part of the entire building the existing building area is provided in that.

Mr. Landon: Okay, so then and it actually says provide sprinkler coverage for existing building, correct?

Mr. Poole: Yes

Mr. Landon: It doesn't say, it does not say supply sprinklers, says sprinkler coverage, correct?

Mr. Poole: Again, this is the -

Mr. Landon: I'm simply asking what the word says

Mr. Poole: That's what the words say, yes.

Mr. Landon: Okay, so in response to that Mr. Baker, sends a letter which I asked him to put in middle document and it says if you can read the second sentence of number five.

Mr. Poole: The sprinkler system is designed in size to accommodate the new addition and the existing system.

Mr. Landon: okay.

Mr. Poole: Which again?

Mr. Landon: I just asked you to read it. Thank you. So then in response to all this, we go move over to the actual building permit itself, correct? Number three looks an awful lot like the first sentence in number five, correct?

Mr. Poole: Yes.

Mr. Landon: Okay, there is a sentence missing.

Mr. Poole: Due to...

Mr. Landon: Is there a sentence missing?

Mr. Poole: No.

Mr. Landon: I'm sorry.

Mr. Poole: It's not a separate sentence, it's all part of the same comment.

Mr. Landon: Okay, is there part of the sentence missing?

Mr. Poole: Yes.

Mr. Landon: and that part of the sentence includes the word existing building, correct?

Mr. Poole: Can I make a statement?

Mr. Landon: No, I did not ask that.

Mr. Paradee: Heron can ask if the witness wants to rehabilitate or supplement his testimony. When Mr. Landon is done. Are you done?

Mr. Landon: Okay, thank you Mr. Paradee. If we could move on. Did you recently stop the work at the church?

Mr. Poole: No.

Mr. Landon: So all work at the church is allowed to move forward?

Mr. Poole: Yes.

Mr. Landon: Okay

Mr. Poole: The only thing that I would not allow them to do is cover up the ceiling in the kitchen where the sprinkler pipe that would be required that they stated would be installed for the existing building area.

Mr. Landon: Okay, so when I asked you if you stopped the work at the church, do you want to rephrase your answer?

Mr. Poole: No, I did not stop the work, I simply told them that work in that area could not progress until such time as the work had been completed in that area.

Mr. Landon: Okay. When you say that the, you made a statement that the walls bear other walls? So the roofline is born by the wall. You made that statement?

Mr. Poole: That's not how I stated it. Could you clarify what you were saying?

Mr. Landon: Okay, you said that the diagram that you showed us said that the roof joists bears the roof joist.

Mr. Poole: Yes.

Mr. Landon: By bear, do you mean to connect?

Mr. Poole: No, I mean support

Mr. Landon: Support the roof?

Mr. Poole: Yes, they support the roof the existing masonry wall supports the roof, yes.

Mr. Landon: The roof of the breezeway?

Mr. Poole: It's not a breezeway. A breezeway is I believe is an unconditioned outside space where as open to the elements where this is a corridor that is simply the section of the addition that attaches the addition to the existing section of the building. It is not a breezeway.

Mr. Landon: Okay, so this hallway, so that's the roofline we are talking about?

Mr. Poole: That's one of the roofs we that we are talking about, there's also the roof of the existing building at the gable end and there's the roof of the ladies restroom.

Mr. Landon: Okay, but the roofline.

Mr. Poole: Yes.

Mr. Landon: : Okay, so this, the idea of the shared load bearing elements, the idea of the shared load bearing elements making up the renovation. When did you first come up with that theory?

Mr. Poole: I don't really understand.

Mr. Landon: So your, what I mean is your base is that this is one building, has it always been because they are shared loading elements or that the buildings just connect?

Mr. Poole: There's really not an independent there, it's I take into account the entire construction and use and the buildings shared load bearing elements and are connected they are both.

Mr. Landon: Okay.

Mr. Poole: So again I review a plan completely, not just part of a plan.

Mr. Landon: Okay, if we look at the code. Do you have a copy of the code?

Mr. Poole: Yes

Mr. Landon: Section 7.1, this is what we are going to talk about all night. Can you show me in here where it defines a renovation as opposed to an addition because of shared load bearing elements?

Mr. Poole: Not for what is in front of me.

Mr. Landon: So the phrase load bearing elements, does not show up in the code, correct?

Mr. Poole: I can't say that, again I don't have that section.

Mr. Landon: You can look in the code.

Mr. Poole: Which?

Mr. Landon: Here you go.

Mr. Poole: Which section of the code are you referring to?

Mr. Landon: I'm asking you.

Mr. Poole: But, no...

Mr. Landon: I'm not being facetious, you're testimony is that an addition becomes a renovation because of load shared bearing elements. I'm asking you in the definitions in the code does it say that?

Mr. Poole: Addition is an extension or an increase in floor area on height of a building or structure. Renovations is defined as the chain strengthening or addition of load bearing elements and/or the refinishing, replacement, bracing, strengthening, upgrading or extensive repair of existing materials, elements, components, equipment and/or fixtures. Renovation involves no

reconfiguration of spaces. Interior and exterior painting, are not considered refinishing for purposes of this definition, and are not renovation.

Mr. Landon: So in other words, the phrase shared load bearing elements is not show up in those two definitions?

Mr. Poole: No, it says addition of load bearing elements.

Mr. Landon: I said shared load bearing elements.

Mr. Poole: No, it does not say shared.

Mr. Landon: Okay, would you admit that every page of the plans refer to this as an addition?

Mr. Poole: I would have to review that.

Mr. Landon: I can hand that to you if you'd like.

Mr. Landon: I apologize I know there's a lot of pages.

Mr. Poole: Yes, every page of this plan states project title building addition phase 1 - 2010 Pilgrim Baptist Church.

Mr. Landon: Thank you. Can you also show me where if at all any work to be done to the existing building?

Mr. Poole: Sure. Here on page A1.1 in the lower left corner is where the handicap area of the ladies room and diaper changing area is renovated in the existing portion of the building.

Mr. Landon: Okay,

Mr. Poole: Well actually that's changed from an office to that, but...

Mr. Landon: Okay, is there a fire protection plan?

Mr. Poole: No, that would be submitted separately.

Mr. Landon: There's no fire protection plan drawing in these plans?

Mr. Poole: I would have to...

Mr. Landon: Have you reviewed these plans?

Mr. Poole: Yes

Mr. Landon: Okay

Mr. Poole: Yes, two years ago.

Mr. Landon: I will submit to you that is in there. I did mark it if you would give me one of them has marked.

Mr. Poole: Yes

Mr. Landon: Did you find it?

Mr. Poole: Yes, it's FP 1.1, FP 1.2, FP 1.3, yes.

Mr. Landon: Thank you. Does the fire protection plan show sprinklering in the existing building?

Mr. Poole: No.

Mr. Landon: Okay,

Mr. Poole: But those plans on the reviewed permit are not marked as approved because they would be submitted separately and approved by the fire marshal's office.

Mr. Landon: Okay, so are you telling me that approved the building permit with not complete plans?

Mr. Poole: No, I'm saying that those plans are submitted separately to the fire marshal's office for review and approval.

Mr. Landon: Okay, what I'm trying to get at is you're saying your understanding was the existing building was not going to be sprinklered. Well I'm showing you plan after plan after plan that shows that the complete opposite. So I ask you the plans that you have seen?

Mr. Poole: Yes

Mr. Landon: Did not show anything?

Mr. Poole: Based on the response from the engineer.

Mr. Landon: If you could please let me, sir.

Mr. Poole With the existing building system sprinkler systems are provided for the existing building.

Mr. Landon: Okay fair enough and then we went to the building permit and showed that you removed the sentence about the existing building. So I'm going to ask you the same question on the plans is there sprinklers to be put in the existing building?

Mr. Poole: There are none shown on these plans.

Mr. Landon: Thank you, if we could move onto the building permit, do you have a copy of that?

Mr. Poole: Do you I need these anymore?

Mr. Landon: You can hold onto those, hold on. Well, for the sake of being efficient and for brevity I'm going to submit that every time his project is described in this building permit as an addition?

Mr. Poole: Yes

Mr. Landon: Okay, if we could turn to page 6 in your occupancy load calculations.

Mr. Poole: The occupancy load calculations submitted by Mr. Baker?

Mr. Landon: Right?

Mr. Poole: Okay.

Mr. Landon: Now the occupancy load of course includes the existing building and the new building, correct?

Mr. Poole: Yes

Mr. Landon: okay so on the first page of the occupancy load it's clearly designated as the existing building, actually PBC stands for Pilgrim Baptist Church. Exist. Bldg. stands for existing building, correct?

Mr. Poole: Yes.

Mr. Landon: Next page, separately and distinctively designated as a new building actually Pilgrim Baptist Church, new building. Correct?

Mr. Poole: Yes.

Mr. Landon: And again the next page, new building second floor?

Mr. Poole: Yes.

Mr. Landon: While you have the building permit in front of you, can you tell me where in the building permit other than let's agree to disagree just for a second. Other than the part about the sprinklering, where in the building permit do we designate any work to be done in the existing building?

Mr. Poole: Where it says the entire building shall be.

Mr. Landon: I just asked you to.

Mr. Poole: No, well other than the plans describe.

Mr. Landon: Okay let's try again, on the building permit, where does it say that the work is to be done on the existing building?

Mr. Poole: It does not specifically state that on the building permit or comments.

Mr. Landon: Okay, That's all I have for Mr. Poole.

Mr. Paradee: Mr. Herron any redirect?

Mr. Herron: Just a couple questions, thank you. Mr. Poole, Mr, Landon asked you some questions about the December 14, 2012, memo rather than letter from Mr. Baker the September 4, 2012, plan review record more specifically the March 28, 2013, plan review record. On that last document number three, I think you wanted to clarify your answer with respect to number three, can you go ahead and do that?

Mr. Poole: My comment number 3 again reiterates that the entire building which includes the addition and the existing building but doesn't specifically note them shall be provided with automatic sprinkler protection. I had removed the first part of that referencing the existing building based on comment responses from the design team stating that the sprinkler system is provided for the existing building. So I felt no need to clarify it again as it was stated as part of the project.

Mr. Herron: So is it fair to say based on Mr. Baker's Dec 14, 2012, memo it was your belief that it had been confirmed that the existing facility and the new construction need to be sprinklered?

Mr. Poole: Yes, both on December 14, 2012, comment response letter and on the January 22, 2013, comment response letter also from Mr. Baker. It states that on both of the comment responses.

Mr. Herron: Mr. Landon asked you some questions about the code and specifically I believe Section 7-1(a)8 – the definition of renovation which I think is about three pages in to the binder.

Mr. Poole: Yes.

Mr. Herron: Has the new construction resulted in the addition of load bearing elements to the existing church facility?

Mr. Poole: Yes.

Mr. Herron: Can you explain to the board why that is?

Mr. Poole: It was choice by the design team. Again pretty early in the process we discussed the building construction type and the requirements to match the existing building type at which point I had suggested because of the parking garage issue, that the addition be separated by a structurally fire wall in order to reclassify it as a type 2 building that could be constructed, that the parking

garage could be constructed as and they chose not to do that and provide the fire wall at that location as the design concept.

Mr. Herron: I believe that's all I have for Mr. Poole.

Mr. Paradee: Thank you Mr. Heron, any re-cross Mr. Landon? Any questions from the board?

Mr. Haskins: Yes, is the hallway sprinklered?

Mr. Poole: Yes

Mr. Paradee: Anything else from the board? If not, we will ask for this witness be excused. Mr. Heron do you have any other witnesses?

Mr. Herron: The City has nothing further at this time.

Mr. Paradee: Thank you, understanding that the reserving opportunity testimony we will Mr. Landon to begin his presentation.

Mr. Landon: Thank you. To please the board I have five witnesses this evening; I'm going to start with Pastor Doctor Lonnie Rector to give us a little background of the church.

Mr. Paradee: Okay, if the Pastor could come forward and I would ask that he state his name and spell his name for the record please.

Mr. Landon: Pastor please state your name and spell it.

Pastor: L-o-n-n-i-e E. R-e-c-t-o-r, Like in the church.

Mr. Paradee: Thank you pastor. If you wouldn't mind raising your right hand. Do you swear or affirm that the testimony you are going to give this evening will be the truths, and the whole truths so help you God?

Pastor: I affirm so.

Mr. Paradee: Thank you.

Mr. Landon: Pastor Rector, can you tell us by whom are you employed?

Pastor: Pilgrim Baptist Church

Mr. Landon: Is it ok if Pastor Rector?

Mr. Paradee: Whatever he prefers.

Pastor: I'll stand.

Mr. Landon: He'll stand, okay. Laughs, can you describe your position with the church?

Pastor: I am the senior pastor there.

Mr. Landon: Can you give us a little background about yourself. What's your educational background?

Pastor: laughs. BS degree from Walfer College in Spartanburg, South Carolina. Went onto receive my Master degree from Erskine Theological Seminary in Due West, South Carolina. I also masters of theology, I mean my doctorate of theology degree from Andersonville Theological Seminary and doctor of ministry from Andersonville Baptist College.

Mr. Landon: So it's safe to say you're not from Delaware?

Pastor: No.

Mr. Landon: (laughs) Can you tell you where you are from and how you got to Delaware?

Pastor: Originally I am a product of Spartanburg, South Carolina I where I pastored for 20 years prior to receiving the call to come to Delaware to shepherd this particular flock. Ten years we have, we will be here ten years in November and God blessed us to grow. He is blessed us, people blessed and because of all it because of the new addition. We did not have room for the spiritual education part and then we did not have sufficient room for the social. So you see the addition for spiritual training as well as having a position to allow our young people to do theatrics or theater or spiritual dance. This is what the new part will serve as for the community and Pilgrim Baptist Church.

Mr. Landon: That's a great Segway. Thank you. Can you briefly, I'm going to back you up just a bit, to give us a brief history of the church for us that don't know.

Pastor: PBC has been long standing entity within the Newark community, founded in 1913, in a tent, and later on in 1978, acquired what used to be the old colored theater where they began to hold services and in 1993, they began to build the facility that is there now on Barksdale Road. From 1994, they marched into that building and I am proud to say that twenty years later we can stand with an addition to the vision that our fore-fathers had for Pilgrim Baptist Church. She is now one-hundred-one years old.

Audience: Amen

Pastor: She has aided the black community as well as the white community here in Newark, Delaware.

Mr. Landon: So we have outgrown the old church so we need an addition.

Pastor: Need an addition.

Mr. Landon: Can you tell me the vision you've had and then the congregation has had for this new addition?

Pastor: Sure, the vision I received for this was the second year of my pastorey here in Newark. We began to grow but we were lacking in space. We were also lacking in the spaciousness for the ministries to meet and to design what they need to do on a regular basis. We have thirty different ministries within our congregation and to have four or five ministries on top of each other in the present facility is not wise. So, therefore, it was very important for us to become more spacious so that we can aide the community not only through full bank not only through after school programs if necessary, and maybe whatever the Lord may say. But it was by design that these would be two separate buildings because if by chance we needed to seek a grant that building could not be connected to the present facility. It had to be a separate building. So whenever you start looking at grants and aides and all the forms for certain programs to be established coming through federal funds, that building had to separate. The only reason if I may say?

Mr. Landon: Yea, I think you are going to next question. Why is there a roof, why is there what we call a breezeway? Why did we connect a roof on there?

Pastor: That was by design, because we have a great of number of seniors. We did not want them to go outside of one facility to go into the element to go into another facility. So all we did was put a breezeway. It was never designed as a one building, it was designed for two buildings.

Mr. Landon: But for semantics, you heard Mr. Poole, he doesn't think it's a breezeway. The only thing that separates it from the elements is in fact the roof and there is a door. There are two doors on either side.

Pastor: That's correct.

Mr. Landon: And that's for safety purposes?

Pastor: That's correct.

Mr. Landon: Okay. One thing I forgot to ask you, can you describe the demographics of the church to the board and to the group?

Pastor: In what way?

Mr. Landon: Where do they live, in the city and things of that nature?

Pastor: Well the church is open to any and every one. We have a number of members from all over Newark, New Castle. We have those that have migrated from New Jersey, New York, Virginia, Baltimore, D.C. who have come in from Sparksburg, South Carolina. Who have come in and who make up our congregation. But for the most part most of my parishioners have a roots right here. Coming off of New London Road, coming off the Wilson Center area, but many of them grew up on the hill. Some of them have come through the black school. I, myself was part of the immigration and many of my congregates are what part of immigration as well. We feel we have

worked tremendously well as a unit in the City of Newark and Newark has worked with us. But until the building of this new facility I never seen such activity on Barksdale Road since I've been here. We have no Police to come by, we have no complaints, all because during the building process we have to use the street and knowing we were allowed to park at Gore for overflow parking.

Mr. Landon: That's all I have for the Pastor.

Mr. Paradee: Thank you, any questions from members of the board for the Pastor. If not, Mr. Heron any questions? Thank you, Mr. Landon you may call your next witness.

Mr. Landon: Thank you, Pastor for that break in our technical discussion. Let's jump back into it. My next witness Mr. Desmond Baker.

Mr. Paradee: Good afternoon, Mr. Baker. For the record could you please raise your right hand? Do you swear that the testimony you are going to give this evening will be the truths, and the whole truths so help you God?

Mr. Baker: Yes, sir.

Mr. Paradee: Thank you, you may proceed.

Mr. Landon: Thank you. Mr. Baker, can you state your name and spell for the record, please?

Mr. Baker: Desmond A. Baker – D-e-s-m-o-n-d, middle initial is A. Last name is B-a-k-e-r.

Mr. Landon: Mr. Baker, by whom are you employed?

Mr. Baker: I am employed by Desmond A. Baker and Associates, Architects and Engineers.

Mr. Landon: Okay, can you describe your educational background?

Mr. Baker: I have a went to school in Jamaica, in Kingston, Jamaica, migrated to New York, went to the City College in New York for my undergrad degree in engineering and New York University School of Engineering for my master's degree and to Brooklyn Poly-Tech Institute for my masters in engineering degree.

Mr. Landon: Thank you, now you if you look at Mr. Baker's letterhead. There is a lot of letters after your name. Can you describe what those are? First we will start with M.E.?

Mr. Baker: Masters in Engineering different from Maters of Science.

Mr. Landon: and PE?

Mr. Baker: Professional Engineer.

Mr. Landon: FACAC .

Mr. Baker: I am a Fellow in the American Consulting Engineering Consultant one of two in the state.

Mr. Landon: Can you describe your experience?

Mr. Baker: Out of college, I joined DuPont Company as a Senior Engineer in their Thermal Sciences Group at the Louviers Department and then at the DuPont Experimental Station. In 1985, I took early retirement and myself and couple of associates we started the business.

Mr. Landon: I ask the board to recognize Mr. Baker as an expert.

Mr. Paradee: With any objection, Mr. Heron?

Mr. Herron: No.

Mr. Paradee: Without objected, so granted.

Mr. Landon: Thank you, in your design professional, what I mean is

Mr. Baker: Principal in charge, yes.

Mr. Landon: Okay, great. Let's talk about the project. Imagine at first you met with the church members?

Mr. Baker: Yes, met with the church building committee and the past director. Basically, to get an appreciation of the vision and exactly what the church wanted to accomplish.

Mr. Landon: Can you briefly describe in your view what the vision and accomplishments for the addition were at that time?

Mr. Baker: As it was explained to me, the pastor reiterated that the congregation had gotten much bigger and they were working with the City of Newark done what was essential for Phase 1 which was water retention on the site and then the new addition would be construed as Phase 2. Phase 2 would incorporate the new fellowship hall, class rooms, meeting space and a new kitchen. With Phase 3 being the renovation of the existing sanctuary and elimination of the existing kitchen to make that facility encompassing of the new sanctuary of itself.

Mr. Landon: So there were three distinct phases?

MB: As I understood it, yes

Mr. Landon: Storm water management phase which has already has been accomplished?

Mr. Baker: Was done before I got on the site, yes.

Mr. Landon: Second phase the addition.

Mr. Baker: Yes, sir

Mr. Landon: Third phase renovation of the existing building?

Mr. Baker: Of the existing building, yes sir.

Mr. Landon: Including the renovations of the existing building, I imagine you anticipated the sprinkler system?

Mr. Baker: Yes, sir.

Mr. Landon: Now in the early stages of the project, and Mr. Poole I think described with his meeting on March 22, 2010. Who did you meet with? If you can recollect?

Mr. Baker: I met Mr. Poole and he mentioned a gentleman that I did not recognize name as Mr. Schumacher meeting.

Mr. Landon: and who is Mr. Schumacher?

Mr. Baker: He was the fire marshal.

Mr. Landon: So you met with Mr. Poole and the fire marshal. I imagine sprinklers came up?

Mr. Baker: Sprinklers came up but we talked about sprinklers for the new building.

Mr. Landon: Okay, now in that initial meeting did you discuss sprinklering the existing building?

Mr. Baker: No.

Mr. Landon: Okay, did you make clear to Mr. Poole, Mr. Schumacher, I apologize if I mispronounce. You're phasing of these projects?

Mr. Baker: Yes

Mr. Landon: So it was clear that it was three phase project?

Mr. Baker: We discussed it, matter fact I have I set an agender and all the notes I took from that meeting is written on here.

Mr. Landon: Okay, now if you could look at those notes real quick. Was the idea of phasing these three separate phases communicated?

Mr. Baker: I don't see it expressly on here but I think we did must have talked about it.

Mr. Landon: Okay, great. Now you designed the addition, correct?

Mr. Baker: My team did, yes sir.

Mr. Landon: Okay, but you are the lead project manager.

Mr. Baker: Yes, lead project manager.

Mr. Landon: You take responsibility for it?

Mr. Baker: Yes, sir.

Mr. Landon: Everybody heard that (laughs). Can you describe the design? I know that's a broad question and I apologize, but the question is, are these two independent structures, two independent buildings and there is a breezeway what we call a breezeway in the middle. In that context can you describe your design?

Mr. Baker: Okay, just for some background, when we initially met, when I met with the Rev. Rector and the building committee. One of the big concerns that church had was parking. The building in itself in foot print standpoint for ways to provide addition and did not impact in adversely the parking space on side. To that end instead of building a full print building we would give provision to parking below building.

Mr. Landon: The second floor sticks out?

Mr. Baker: Overhangs, yes, we were able to give back to the site eighteen parking spaces.

Mr. Landon: This is all under the new building?

Mr. Baker: Yes sir. So that standpoint, the pastor and building committee explained the space they were looking for. Number of rooms, accommodations for the fellowship hall, kitchen, and class rooms. We came up with the square footage. We found we couldn't do everything on one level so we went to two levels.

Mr. Landon: You designed the new structure as an independent building. The only thing that connects is the roof line what we call the breezeway. If we were to cut the breezeway it would be two separate buildings. That's how you designed it.

Mr. Baker: Yes, sir.

Mr. Landon: Plans submitted to the board are they the basis to the building permit?

Mr. Baker: Yes, sir.

Mr. Landon: Members of the board if I may draw your attention to the Mr. Bakers Dec 14<sup>th</sup> correspondence. Sorry it's Dec 20, 2012. Can you describe your response to the meaning and describe it to me?

Mr. Baker: Mr. Poole's question this came about after the permit app and Mr. Poole states on the Sept addition entire building was be sprinklered.

Mr. Landon: I asked you to put that document to the left. If I may back up for a minute. Asked for coverage not sprinklering. Asked for coverage. If you could answer that question and why it was designed that way.

Mr. Baker: Knowing when I met with the church I planned to build a new addition. When I met with Mr. Poole and Mr. Schumacher on March 20, 2012. Calculate the load only sprinkler the new addition at this time. Phase 3 is down the road.

Mr. Landon: More efficient that way?

Mr. Baker: More efficient, one header coming in that way. Have coverage for both buildings. Because of Phase 3. We have been working under that premise.

Mr. Landon: You've read the Newark City Code. Does the code contained phrase shared load bearing elements?

Mr. Baker: No sir.

Mr. Landon: Mr. Heron states the addition can become a renovation. In your expert opinion is that possible? Either addition or renovation?

Mr. Baker: Codes clearly states that the existing bldg. if renovated more than 50% must be sprinklered, does not include addition. Completely separate.

Mr. Landon: You heard Mr. Poole testify, the two structures share same load bearing elements. Do you agree or disagree with that statement?

Mr. Baker: I disagree.

Mr. Landon: Without breezeway with no load bearing the two structures are two separate buildings?

Mr. Baker: If you take off the breezeway they are independent. The flashing at the roof that did not separate from the existing building. The existing wall for existing sanctuary is load bearing wall for that building. The sanctuary. The existing building is fire separation for the new building. The new building is a fire wall.

Mr. Landon: If the church was required, if existing church was required to sprinkler the building. What's the cost?

Mr. Baker: It provides hardship for church, disrupt the sanctuary, different phases for the cost and hardship on the church.

Mr. Landon: if we were forced to sprinkler the existing building, we would put in now at significant cost?

Mr. Baker: Yes and vacate the building.

Mr. Landon: All I have for Mr. Baker.

Mr. Paradee: Any members of board have any questions for Mr. Baker?

Mr. Bergstrom: I'm a little confused, you said sprinkler coverage is provided but you mean without any pipes for time being

Mr. Baker: For capacity. Water department is doing hydraulic test. Person responded to do a test and did a report

Mr. Bergstrom: Okay, trouble understanding, not trying to cross examine. Sprinkler coverage and sprinkler system is provided to existing building but not provided now. In your mind will be provided later?

Mr. Landon: Two buildings will have a shared system so what's he's done for now he put system in the new bldg. to move over to the existing building.

Mr. Bergstrom: So reason we're here for the timing?

Mr. Baker: Yes, will renovate in phase 3.

Mr. Bergstrom: You're the fire protection for the job?

Mr. Baker: My office

Mr. Bergstrom: You decided masonry wall is fire wall. Fire doors are on there? Kind of concerned doesn't overwhelm the existing fire sprinklers in new part of the building.

Mr. Baker: We acknowledge that and Mr. Poole we offered replaced the doors and he said that is not acceptable. We offered that to Mr. Poole. We were told that is not acceptable.

Mr. Bergstrom: Apparently here for the issue you are not allowed to occupy the new building until you sprinkle the old part but that's seems very difficult. Have City offered you a time frame?

Mr. Landon: City offered thirty days which found unreasonable for several reasons. It's impossible, we have asked for longer than that because renovations have to take place, financial issues, there are quite enough issues, we cannot move to phase 3 without phase 2.

Mr. Bergstrom: Okay, we're not here to negotiate that time.

Mr. Paradee: No we're not. Any other questions. Yes?

Mr. Haskins: For safety concern, does the new building does nothing block former exit from the old building?

Mr. Baker: No sir.

Mr. Haskins: If in old building, not sprinklered and all matters of egress even with new addition

Mr. Bergstrom: Hearing has not shared the life safety review for this place

Mr. Landon: Correct and the city portion has ended and you may not hear that. If we didn't have the new building, the existing building stay the same.

Mr. Baker: The existing fellowship at the existing building when you egress that you exit into the breezeway and you have two double doors. Difference in new space you are sprinklered and protected. Fire alarm and everything.

Mr. Baker: It's a safer place to exit.

Mr. Paradee: Any questions from the board? If not, I have a couple, Mr. Baker any part of the new building place any load on any wall of the existing building?

Mr. Baker: We attached to the existing building with a couple bolts so we can do flashing at roof level.

Mr. Paradee: Other than breeze way there's no connection or load bearing elements on the existing building?

Mr. Baker: No sir

Mr. Paradee: Does breezeway place any load on existing wall?

Mr. Baker: Just transferred by 4x4 angler that is attached by bolts and to cover that corridor that area.

Mr. Paradee: If you move breezeway obviously existing and new building would continue to be stable and structurally sound?

Mr. Baker: Yes sir.

Mr. Paradee: If I may, what is the anticipated time from if CO were to issue for new building? Anticipated time to sprinkler existing?

Mr. Baker: I would ask the pastor that.

Mr. Landon: A lot of variables to that, it would be a couple of years would have to finance the new renovations, pay down debt took on for new building so the plan is two years.

Mr. Paradee: fair enough, understood, I wasn't look for a certain answer but I think it's helpful to understand the timing. Last question, if you hadn't initialed this addition then would there be any requirement to sprinkler existing building?

Mr. Landon: Absolutely not.

Mr. Paradee: Thank you. No further questions from the board?

Mr. Bergstrom: Curiously 5S7 cross section there's a wall there that is tied onto roof held up by the roof of the breezeway –

Mr. Baker: It runs from the one corridor door to the exterior wall.

Mr. Bergstrom: If you took roof away what would hold it up?

Mr. Baker: Structural element there sir.

Mr. Bergstrom: Tied in here, would it be strong enough to hold this up? This could just go away?

Mr. Baker: Yes sir

Mr. Paradee: Any other questions for this witness from the board?

Mr. Sedita: Any discussion about taking roof off breezeway for two plus or minus year until the existing building has been constructed?

Mr. Landon: No, but we are open for discussion with the city and been negotiating.

Mr. Paradee: Mr. Herron any questions for this witness?

Mr. Herron: Mr. Baker, Mr. Landon asked you questions about initial meeting with City in 2010, you indicated discussion of phasing, correct?

Mr. Baker: New addition and church's plans, not sure if phases were discussed then.

Mr. Herron: after you met with Mr Poole and possibly Schumacher, followed up here with memo June 1, 2010, earlier to Mr Poole and Schumacher existing and new building will be sprinklered. No comment about phasing it?

Mr. Baker: Yes, sir.

Mr. Herron: Cut roof off of breezeway two separate buildings, but roof is not cut off correct and no plans to cut roof off?

Mr. Baker: No, sir.

Mr. Herron: In your mind difference between sprinkler coverage and actual installation of sprinkler system?

Mr. Bergstrom: Yes sir, we do design all over the state. Sprinkler coverage meaning anticipate what is new for what is renovated based on phasing plans.

Mr. Herron: Where is sprinkler coverage is used in these plans and in correspondence does not says sprinkler coverage after the building permit issued, any reference there?

Mr. Baker: No sir.

Mr. Herron: Would you agree with me that the automatic sprinkler requirement is a safety issue?

Mr. Baker: Yes sir.

Mr. Herron: If God forbid if there's a fire.

Mr. Baker: Existing building is protected by fire alarms and smoke detectors as we stand now. We have every intent to integrate the new sprinkler system into the existing building in accordance with Phase 3 program.

Mr. Herron: Automatic sprinklers is an additional safety requirement?

Mr. Baker: Yes sir. Sprinkler system is designed to protect property and smoke detectors are designed to protect lives.

Mr. Herron: All I have now.

Mr. Paradee: Thank you Mr. Heron, any further questions from members of the board, if not, Mr. Landon? Yes sir.

Mr. Landon: How long is the building been there without sprinklers?

Mr. Baker: 1913

Mr. Landon: What for this for the new building and argument of that would the code would require the new building to be sprinklered?

Mr. Baker: No sir.

Mr. Landon: No further questions.

Mr. Paradee: If there are no further questions of this witness he may be excused.

Mr. Paradee: Mr. Landon you may call your next witness.

Mr. Landon: I apologize in advance for beating a dead horse, but I'm going to call what we call experts to testify that there are two independent buildings. I call Mr. Robert Shorts.

Mr. Paradee: Could the witness please state and spell his name?

Mr. Shorts: Robert Shorts – r-o-b-e-r-t-s-h-o-r-t-s.

Mr. Paradee: Would you please raise your right hand, do you swear or affirm the testimony you will give here will be the truth the whole truth and nothing but the truth so help you God? You may proceed, thank you.

Mr. Landon: Mr. Shorts, whom are you employed?

Mr. Shorts: New Castle County.

Mr. Landon: In what capacity?

Mr. Shorts: I'm a heavy equipment operator.

Mr. Landon: Can you tell me or describe your construction background?

Mr. Shorts: Very long all my life I have been in construction. I started out after leaving college, I attended South Carolina State University for four years major in civil engineering came home starting working at a family construction business. I've worked as a public works inspector, installed utilities, subcontractor at Delmarva.

Mr. Landon: With your experience and reason you are here, because you are on the building committee at the church?

Mr. Shorts: Yes

Mr. Landon: I asked the board to qualify Robert Short as an expert in general construction?

Mr. Landon: Mr. Heron will ask you if you would like to ask witness any questions or have any objection.

Mr. Herron: Brief comment, I would object that Mr. Shorts is an expert witness, I don't think he is qualified, I think this is an interpretation of the code, his background does not justify as an expert witness. I have no problem with him looking at the plans and giving his opinion.

Mr. Paradee: Understood, this is a case of statutory construction. If the witness testimony is being offered as an expert in construction that would be certainly be.

Mr. Landon: Limit it to his construction experience not his code interpretation experience.

Mr. Paradee: That would be fine, exception Mr. Heron's objection which is noted.

Mr. Paradee: I would ask you to repeat witness's qualifications as I understand he is a P.E.

Mr. Landon: General experience being in construction his entire life.

Mr. Paradee: Is he in fact a P.E.?

Mr. Shorts: No, I never said that I was a P.E.

Mr. Paradee: With his qualifications I think we should allow the witness to testify for construction background with that limitation.

Mr. Landon: You are the chair person for the church building committee and involved with new building from beginning?

Mr. Shorts: Yes.

Mr. Landon: With knowledge and project in general?

Mr. Shorts: Correct.

Mr. Landon: Can you describe the three phases of the project?

Mr. Shorts: We have been looking for additional parking at our church, we had a dry retention pond that we were not able to use dead space, we had been told by the city we were in the one-hundred year plan, flood plan, nothing could be done because of the streams that surround our property. We and the pastor came in we came before city council and was approved to construct the storm tech system to enable us put underground and add additional parking spaces. Phase 1 of this project.

Mr. Landon: Phase 1?

Mr. Shorts: Initial phase 1 of the project. The vision of the pastor had for the church was to at phase 2 add additional building, for fellowship hall, kitchen, etc. We were put in contact Mr. Baker to have plans drawn up. Phase 3 to turn existing building into convert that over to pew space to gut existing kitchen as well, and to come up with additional office space.

Mr. Landon: Phase 1 storm management system, Phase 2 new building, and Phase 3 renovations of the existing building?

Mr. Shorts: Correct.

Mr. Landon: You've been involved with the drawings and new building?

Mr. Shorts: Yes.

Mr. Landon: In your expert opinion, do you consider this a separate building? If I would remove the roof of the breezeway are they independent structures?

Mr. Shorts: Yes.

Mr. Landon: No further questions.

Mr. Paradee: Okay, any questions from members of the board? If not, Mr. Heron do you have questions for this witness?

Mr. Herron: No questions, just member of the board these were repetitive questions from Mr. Baker.

Mr. Paradee: Understood, I intend to address that with Mr. Landon shortly. If there are no further questions of this witness, he may be excused. We heard from Mr. Baker that is well qualified as expert to testify on engineering, if you have another witness that can add to that than certainly the board would be interested that but if it's additional repetitive testimony.

Mr. Landon: I think it will be repetitive, Mr. Sills the general contractor to the same thing.

Mr. Paradee: So he would add nothing new or different?

Mr. Landon: Correct.

Mr. Paradee: Do you have any other witnesses?

Mr. Landon: That being said, that's all I have.

Mr. Paradee: At this point does the appellant rest its case? So at this point the board is prepared should say will entertain any closing arguments that either party would represent?

Mr. Herron: If I could briefly Mr. Poole on testimony on questions.

Mr. Paradee: This is an administrative hearing it's not a trial, so rules of evidence, and civil procedure are fairly lax not strictly enforced ordinarily, I think it would not be appropriate since you had closed your case. But in the interest and record if possible under circumstances I would recommend that the board allow Mr. Heron to call any additional rebuttal witnesses if he likes to and ability for Mr. Landon ability to cross examine and present rebuttal to that testimony. With those limitations Mr. Chairman, if there are no objections Mr. Heron may proceed.

Mr. Herron: Mr. Poole very briefly, there's been testimony you've heard regarding the definition of sprinkler coverage as opposed provision automatic sprinkler. Can you give the board your interpretations?

Mr. Poole: Sprinkler coverage is provided by a sprinkler system. If you going to provide sprinkler coverage for a building you're going to provide a sprinkler system for the building. Otherwise it's not covered.

Mr. Herron: Mr. Baker testified regarding fire wall being in place; can you give the board your understanding if there is a fire wall that complies with the code in place?

Mr. Poole: By definition a fire wall is fire resistance rated wall having protected openings w/ restrictions of fire and restrictions of spreading of fire and extends continuously from the foundation to or through the roof with sufficient structural stability with fire conditions to allow collapse of construction on either side without collapse of the wall. It's very different from a fire barrier or fire partition, which is a less structured fire rated partition to protect the spread of fire. The code requires fire wall in certain instances, fire barriers which is the next step down, and fire partition which are the least structural requirements to separate certain things and to be considered a separate building it would have a fire wall not a fire partition or fire barrier.

Mr. Herron: Is there a fire wall?

Mr. Poole: No.

Mr. Herron: That's all I have for Mr. Poole.

Mr. Paradee: Thank you Mr. Heron, any questions for this witness by the board?

Mr. Bergstrom: I just have one, Mr. Poole, did a fire protection engineer seal the drawings calling it a fire wall?

Mr. Poole: No.

Mr. Bergstrom: You didn't do the sprinkler review?

Mr. Poole: No, I did not.

Mr. Bergstrom: There was no seal drawings calling it a fire wall the masonry wall?

Mr. Poole: It was not called a fire wall on the plan.

Mr. Bergstrom: Okay, thank you.

Mr. Paradee: Any other board members have any questions? Mr. Landon? If there are no further questions, this witness may be excused. Mr. Heron does that conclude your redirect?

Mr. Herron: Yes it does.

Mr. Paradee: Mr. Landon do you wish to call witnesses in response?

Mr. Landon: I do, I like to call Mr. Baker ask the obvious question.

Mr. Paradee: Sure.

Mr. Landon: Is it a fire wall?

Mr. Paradee: I do apologize obviously the witnesses are under oath as was Mr. Poole.

Mr. Landon: Mr. Baker the obvious question is that wall a fire wall?

Mr. Baker: The wall is a structural wall in its original configuration as supporting the existing building, because we had an addition to the opposite side of it it's a fire rated wall, it's a three hour fire rated wall by code.

Mr. Landon: So my question is it is a fire wall?

Mr. Blake: Yes, sir and the recommendation I made to Mr. Poole was to change the three doors and were seal all openings to make it a fully fire rated wall.

Mr. Paradee: Does it raise any questions to the members of the board of this witness?

Mr. Paradee: Just the one obvious questions.

Mr. Paradee: Let's make sure that the witness has a microphone.

Mr. Paradee: Mr Bergstrom, please repeat your question?

Mr. Bergstrom: Your office, who at your office?

Mr. Baker: I am a certified fire engineer in my office.

Mr. Bergstrom: That's all I have.

Mr. Paradee: Any questions from any other members of the board? Mr. Herron do you have any questions of this witness?

Mr. Herron: I do not.

Mr. Paradee: If that concludes the witnesses, you may proceed with your closing argument. I'm sorry Mr. Heron you should go first in that regard. If the testimony is concluded, we will entertain closing arguments, and Mr. Heron you may go first.

Mr. Herron: If I could suggest, it would make more sense for Mr. Landon to go first as I do not believe he had an opportunity to do an opening.

Mr. Paradee: It really, I don't think makes much difference if the Mr. Landon is willing to go first, we will give you a fair opportunity to rebut arguments but this does need to go on forever.

Mr. Herron: Understood.

Mr. Landon: I will be brief as I was not brief before, Mr. Chairman and members of the board, thank you for your time tonight. You have read my submissions, read my plans and heard the testimony. I'm going to briefly sum up, I think this issue stems to two issues. One, shared load bearing elements even though it's nowhere in the code and I don't think that's what we need to discuss today. The answer is none. I prospered two witnesses and Mr. Poole is not considered an expert and should not be viewed as an expert by the board. So two experts, have both testified in their expert opinion that these two buildings are separate of one another with zero, no shared load bearing elements. So therefore, the issue to share the load bearing elements is false. Second, is the argument that there would be sprinkler coverage. I think that is also incorrect. I'm sorry they are using coverage differently, but that it was always understood would be sprinklered. It is eventually going to be sprinklered, but when it's time and we do the renovations it's going to be sprinklered and it was mentioned in the beginning and Mr. Baker testified to that. Secondly, all you have to look at is the three documents that were presented to you. The first document that was presented to you on September 2012, includes two separate sentences. Entire building sprinklered and existing building sprinklered. Two completely different buildings. The request was for information of the existing building to it and Mr. Baker answered yes, there will be coverage, there will be capacity when we're ready to put the sprinklers in. It will be connected to the new building. With that, the entire sentence to the existing building was removed from the building permit. Removed. It's obviously two separate sentences. So it's clear that the understanding was not that the existing building would be sprinklered at least not at this time. With given those two issues that 903.2.4 does not apply to these two buildings and the sprinkler of the existing building should not be contingent for the C of O new building.

Mr. Paradee: Thank you, Mr. Landon, Mr. Herron....

Mr. Herron: Thank you members of the board, I will be equally brief. The issue is not shared load bearing elements. The issue is the addition of load bearing elements. Mr. Poole's testimony is clear in this regard and I ask the board to consider that in making its determination. Because there was the addition of load bearing elements on the existing structure, it is a renovation because it is a renovation the automatic sprinkling is required. It's a safety issue, it's even handed interpretation of the administration of code ordinance. It's simply it's not two completely different buildings. They are connected, there are interior that connect the two buildings, if they were separate buildings there would be no automatic sprinklers required. I ask the board with all the testimony and would ask the board to find that in fact there are not two distinct two independent buildings, it is one structure. We believe that the documentary evidence establishes contrary Mr. Landon it was clear in the beginning that the existing facility to be sprinklered. That was communicated to representatives to the church throughout and therefore we would ask that the decision of the code official would be upheld. Thank you.

Mr. Paradee: Thank you, Mr. Heron. Are there any questions from any of the members of the board of council free their party? If not, let me say greatly appreciates the presentations. I thought that

the both council did an excellent job and the witnesses as well. It was very helpful and interesting. At this point we will close the record and it's time for the board to deliver its deliberations before Mr. Chairman, the board does so I would like to review briefly the code provisions and the standard for the board to apply. In initially I will reference Section 7-1(d) of the City Code Subsection Three entitled "Limitations on Authority" it says "An application for appeal shall be based on the claim that the true intent of this code or rules legally adopted here under have been incorrectly interpreted. The provisions of this code do not fully apply or equally good or better form of construction is proposed. The board shall not have the authority to waive requirements of this code." Under the boards of procedure Subsection Four provides "It shall become incumbent upon the appellant or the representative to show why the appeal should be granted for one or more of the following reasons: 1. The true intent of the code or rule has incorrectly been interpreted. 2. The provisions of this code do not fully apply. 3. Equivalent form of construction is to be used." Essentially echoing what the city code provides. Subsection 5 of the Boards Rules Procedures" further states "That the powers of the board are as follows "The board is empowered by municipal statute to take the following actions by majority vote: 1. Reverse the building official's decision based upon evidence presented substantiating one or more provisions item 4 (of which I just read previously). 2. Uphold the building official's decision. 3. Approve modifications as agreed by the appellant and building official. All motions for the board actions must include the appropriate reason Item number 4 which is identified as justification. Of course that refers back to the section of the code and the rules of procedure that I read previously. 1. The true intent of the code or rule has been incorrectly interpreted. 2. The provisions of the code do not fully apply. 3. Equivalent form of construction is to be used. So Mr. Chairman and the board that is the legal standard presented in this context and in your deliberations you should feel free to ask questions at one another or me. Ultimately, you need to make a decision either to reverse the building official's decision, uphold the building official's decision, or prove modifications as agreed to by the appellant and the building official. Now, with regard to number three, we've not been presented with any modifications agreed to by the parties. So, it would appear your options are limited to reversal or upholding the decision. If you are unable to do that and would prefer to ask the parties possible modifications, I suppose that is something that could be explored. That would have to be by agreement of the parties and the testimony that I heard seems to indicate that there was no agreement. Again, I believe your options at this point are limited to upholding or reversing the decision. I'm going to shut up and let the members do their job.

Mr. Bergstrom: Let's start with the left hand.

Mr. Sedita: Let's not. (laughs).

Mr. Bergstrom: Come on Sal, what do you think?

Mr. Sedita: I thought I heard Mr. Poole say that he described them as two different buildings and if there was no roof then we wouldn't be having this conversation. I thought I heard Mr. Baker for his attorney say that we were in negotiations and that hadn't been specifically proposed. But I got a sense that was a compromise. It's ashame that this building can't be open and be used when it's almost completed and if it seems to me it's a technicality that the roof of the two buildings is what's holding us up. That's my sense of it, I would hate to have to go one way or the other when it seems to me there's a compromise that's pretty readily available.

Mr. Bergstrom: Yes and perhaps some unfortunate understanding. Even to the nature of what sprinkler coverage means. Terry, do you have?

Mr. Haskins: I feel it is two buildings and that the decision of the building official should be reversed.

Mr. Paradee: Mr. Chair if I may, before you get to far down the road in terms with decision or motion. Suggesting a decision. I would suggest that the members of the board ought to have whether or not they believe the building, the addition is part of the existing building that is, is a renovation of the existing building? Are these two buildings or one building? So I'd like to hear each board member's view on that issue. Also, I think it's important for you to attempt the best you can to address the question whether or not you feel that the new building places any load bearing on the existing building because that there seems to be provisions of the code that deal with that question as well.

Mr. Bergstrom: Right, Terry you have the microphone. What do you think? You are kind of giving away the end result.

Mr. Haskins: The end result.

Mr. Bergstrom: Why do you think that?

Mr. Haskins: I don't feel that there is a sufficient from one building to the other to warrant that. That's where I fall back to my original statement that the two buildings are separate.

Mr. Bergstrom: Of course they are attached.

Mr. Haskins: They are attached.

Mr. Bergstrom: They do not a fire wall between them.

Mr. Haskins: By a roof element and they have a fire wall between them.

Jeff Bergstrom: Do you believe that the existing masonry wall without any protection for penetration on either side is sufficient to make them separate buildings?

Mr. Haskins: Yes. I've seen the wall. I've looked at them.

Mr. Paradee: I've been asked to make sure that members of the board speak as clearly as possible into the microphones because it is not being picked up on the tape.

Mr. Bergstrom: I will try that again, sorry. I just. I can hear the testimony of our expert of the certified fire protection engineer saying it's a fire wall but I just can't believe with openings in it that in its present state it's a firewall. We're dealing with the present state, we're not dealing with anything in the future. We're dealing what's there today. I certainly if the church could come up

with a compromise with the building department then we wouldn't be here and they could change what they are doing tonight. There's no fire separation between the buildings when there's penetration. At this moment, no working sprinkler system. I can't go along with, I understand they are two separate buildings if that corridor wasn't between the two, yea, I would assume that they are far enough apart to be considered to be separate buildings.

Mr. Haskins: We did determine that the breezeway is sprinklered itself, right now.

Mr. Bergstrom: Right, they said the breezeway is sprinklered. Of course that it would be unlikely if you had a fully involved fire on the other side that it wouldn't be overwhelmed depending on air currents. That this would blow through since there is no protection, no fire wall.

Mr. Paradee: Please make sure you speak into the mike. You may have to pull it closer to you.

Mr. Bergstrom: Yep, I understand what you were saying and I'd agree with you if that breezeway wasn't there if they take that down that is one solution or if they can come to an agreement with the building department for some way to make that legally a fire wall with some kind of penetration. Some sort of fire doors or whatever they could. I just can't see it right now.

Mr. Sedita: The existing, I guess it's the south wall on the existing building that leads to the new building. My understanding that nothing has changed with that wall it was it was deemed structurally sound or acceptable for the code before and if nothing has changed with that then it would be structurally sound and acceptable with the code now. That is my understanding.

Mr. Paradee: that is correct. Just so we are clear here. We can't ask questions of the council.

Mr. Sedita: I understand.

Mr. Paradee: ...or the witnesses at this time because the hearing has been closed but that is my understanding of the testimony. Yes, sir. How does that inform your view about whether or not that is two separate buildings?

Mr. Sedita: I think it clarifies my opinion that there are two separate buildings.

Mr. Bergstrom: I'm not an expert. I'm not a fire protection engineer but I've dealt with code issues my adult life. Certainty, you just can't add a separate building up against the wall when it's not a fire wall. I think Mr. Poole, carefully explained the reasons between a fire wall and a fire barrier. It's just not, it does not separate the buildings legally. The interpretation of the code is correct. We've got the most civilized discussion and hearing I've ever been at this evening. With the packed room and not one outburst. But I'm.

Mr. Paradee: Mr. Chair if I may apologize if I'm interrupting. I did want to make sure that the testimony was summarized is as accurately as possible. It's my understanding that Mr. Poole, testified that it is clearly not a structural fire wall. He talked about the difference between a fire wall, a barrier and a partition.

Mr. Bergstrom: Yes.

Mr. Paradee: He testified it was not a fire wall. Mr. Baker testified that he viewed, believed that is now a fire rated fire wall and I believe his testimony was if you change the doors that it would make it a fire rated wall. I'm not sure if I understand that the distinction that adding the doors would make, but he did indicate that in his view it was a fire rated fire wall presently. I believed he testified that he is a certified fire protection engineer. So that's to my understanding on that point.

Mr. Bergstrom: Guess that's the expert testimony we have.

Mr. Paradee: That is in fact correct.

Mr. Haskins: Jeff, would your feelings be different if you knew they were fully rated fire doors?

Mr. Bergstrom: I don't know what the . . . nobody has ever shown us a cut of that. So we don't know what other openings are in that wall. But, yes, yes, so far we got, we got today. We've got to make a decision on the decision that is made today and we can't mediate a compromise at this hearing. The question is did Mr. Poole make an error in his judgement calling things the way he saw them? And for the life of me is, is, I guess I can't see how we can determine he made a mistake? It's absolutely appears to be a correct decision. Expert testimony notwithstanding. I don't think that the expert testimony said that today it's absolutely a fire wall. Would have to have some modifications to it. We're not brokering a deal. I just believe that Mr. Poole did not make an error in his decision in this case. I certainly believe that this situation can be resolved amicably and this wonderful congregation could continue but that's not why we're here. We're here to make a decision to whether Mr. Poole decision should be overturned or not. I see absolutely no reason considering all the testimony that was presented to allow me to overturn that decision.

Mr. Paradee: Mr. Chairman, I do want to comment on one point you made and that is that you're correct the board does not have the ability to mediate this dispute absence of agreement we have between the parties which we have not heard or seen. With regard to some compromise that position the board is in as they you must either affirm or reverse the decision of the building official. You simply you don't have the ability to impose any conditions absent and agreement of the parties.

Mr. Bergstrom: Is it reasonable for us to ask the parties would they would consider some further negotiations and adjourn this hearing until they have a short opportunity to do that or are we bound to make to make a decision this evening?

Mr. Paradee: I would put that on the parties. I would ask Mr. Heron and Mr. Landon if they would be willing and they would both agree to postpone any decision by the board and give the parties some opportunity to discuss a compromise and if that's what the party's wish to do then we should set a strict timeline, timeframe for doing that and if that's the road we go down then the board would need to reconvene at some point and either bless that compromise or issue a decision. I should also add that the no decision of the board is final until it's placed in writing. So even if you made a decision tonight, we would still need to come back at a later date to have the board approve

a written decision which I would author and which would reflect whatever the decision and rationale of the board is. So, at this point given the direction that the chair headed in. I will ask the parties if they would be interested in essentially staying the proceedings in order to give the parties some limited period of time.

Mr. Landon: Mr. Paradee, I wanted to ask for about five minutes?

Mr. Paradee: Sure.

Mr. Landon: To take a break (not able to hear everything- not at microphone)

Mr. Paradee: Understood, let's take a five minute recess. Thank you.

Mr. Landon: Great, thank you.

-----Recess-----

Mr. Bergstrom: Thank you very much, I think we've concluded our five minute recess.

Mr. Paradee: Mr. Herron, have the parties been able to reach any understanding?

Mr. Herron: All I can say, is thank God I have this announcement to make instead of another one, the parties have reached a tentative agreement and we would ask that the board give us some time to finalize that agreement and I believe the Mr. Landon that the expectation would be that we would get that finalized within the next, hopefully the next two weeks and if for some reason that doesn't happen that the board would reconvene as you suggested earlier. Is that fair?

Mr. Paradee: Okay, so we have...

Mr. Landon: I do not see any reason why we wouldn't. We wouldn't finalize it but the board stand at recess.

Mr. Paradee: Thank you very much gentleman, that's very good news and I appreciate you taking the time to explore the possibilities. Mr. Chairman at this point, I think it would be appropriate for the board for a motion to table? With the understanding, that the parties would use that time to work out an understanding and if they are able to do so we would reconvene. I would suggest within in approximately thirty days? If the parties have an agreement to present to the board, the board could adopt that agreement as resolution of the dispute. The only other thing I would caution that the members if the board should not discuss the merits of this matter outside of this hearing either amongst themselves or with anyone else. So if the parties are not able reach an agreement when we reconvene in thirty days give or take we'll get a date to the parties ASAP. But if the parties are not able to present in an agreement at that time, then the board would be accepted to making a decision at that time.

Mr. Herron: The only thing I would offer, Mr. Paradee, is there is some discussion to not presenting the actual agreements to the board but to simply inform that the matter has been resolved and decision is not necessary?

Mr. Paradee: That is fine as well. I had considered that possibility because I do think it's important that the resolution comes out of this if it's something other than a decision of the board that would have not any presidential effect on any other situations. So Mr. Chairman, with that caveat I think it would be appropriate to entertain a motion to table.

Mr. Bergstrom: The chair will entertain a motion to table.

Mr. Haskins: Second.

Mr. Bergstrom: No, now you will have to be the first.

Mr. Sedita: Good Move.

Mr. Bergstrom: All in favor?

Mr. Sedita: I

Mr. Haskins: I

Mr. Bergstrom: Oppose? (No, yea, I do. we are 100% in agreement, unanimously tabled to for a time to be determined in approximately thirty days. Unless the matter is resolved and I would assume the appeal would be withdrawn at that time in making any further meeting.

Mr. Paradee: We can address that when we reconvene.

Mr. Landon: More than likely that's what we are not 100% sure about that.

Mr. Paradee: Okay, sure, if there are no other questions than it would be appropriate to entertain a motion to adjourn?

Mr. Bergstrom: Motion to adjourn.

Aye – 3

Oppose – 0

Angela Conrad  
Secretary

**CITY OF NEWARK  
DELAWARE  
BOARD OF BUILDING APPEALS  
NOVEMBER 11, 2015**

Design Collaborative, Inc.  
representing the  
BPG Hotel Partners IV, LLC  
and  
United Restaurant  
Group, LP  
seeking a variance  
to Chapter 7  
Section 706.1.1,  
Party Walls  
for  
650 & 654  
S. College Avenue

Those Present at 3:00 P.M.:

Chairperson:	Jeffery Bergstrom
Members:	Sal Sedita Lester Stein
Staff:	Jim Kiesel David M. Culver

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**Chairman: Jeffery Bergstrom:** Ok, are we recording?

**Angela Conrad:** Yes

**Chairman: Bergstrom:** Hi, my name is Jeff Bergstrom, I'd like to call the City of New Castle, Board of Building Appeals on Wednesday, November 17, 2015. City of Newark, sorry, Board of Building Appeals notice for November 11, 2015, at 3p.m. Would any one like to read the notice for the record? I guess I can do it. Pursuant to Chapter 7, Code of the city of Newark, Delaware, notice is hereby given a public hearing of the Board of Building Appeals to be held on Wednesday, November 11, 2015 at 3:00 p.m. in City Council Chamber, 220 South Main Street, Newark, Delaware to hear the following appeal: Design Collaborative, Inc. representing the BPG Hotel Partners, IV, L.L.C., and United Restaurant Group, L.P., is seeking a variance to Chapter 7, Section 706.1.3, Party Walls. Applicant states that an equally good or better type construction than the Code requires is being proposed.

**Jim Kiesel:** You read the section incorrect.

**Bergstrom:** I'm sorry.

**Jim Kiesel:** Section 706.1.1

**Mr. Bergstrom:** 706.1.1? Okay, sorry. Party Walls. Applicant states that an equally good or better type construction than the Code requires is being proposed. I guess is there any one to speak on behalf of the applicant for this appeal?

**Ms. Stabler:** I don't think I need the microphone, but I understand we are being transcribed, so good evening and thank you for coming out to listen to the application this afternoon. I'm sure your schedules are busy and we very much appreciate you convening the meeting, the building appeals committee. So, I'm Wendy Stabler, I'm an attorney for the United Restaurant Group, I have with me its CEO, Tony Freelo, I also have with me Joe Charma from Landmark Engineering and Dan Hoffman from Design Collaborative whom have been working with me on this application. So, folks are I think or probably fairly with familiar with the property consistent of little over seven acres on Route 896 and Christina Parkway. It is a site of an Embassy Suite and TGI Friday's which are connected physically to one another but operate completely independently of each other. They share access parking and a common party wall which by virtue of this application is the culprit, because we are looking to create a property line where there is currently a lease line and a creation of that line would then causes us to be a technical violation of the code. Little more background and then we will turn it over to the experts to why this is walk you through to why this application would be entirely consistent with the code and would not compromise in any way, shape or form the fire security and the operational security of these buildings which will continue to operate exactly as they do now. So, the client is an owner/operator of about 28 TGI Friday Restaurants in four states and they are one of the largest and I hope and believe one of the successful franchise operations, they operate in four states. In 1998, an affiliated of the current owner, partnered with the BPG Hotel Group which was interested in teaming up to put a hotel and restaurant on this site. The original intent was in fact to subdivide each so each would be on its own parcel, however at that time the department through Roy Lopata, expressed concern over approving additional freestanding uses and in a consequence discouraged subdivision and indeed would not be willing to approve that at the site. So, in order to enable the project to proceed the parties to agree to enter into a long term lease arrangement which would avoid the necessity of subdividing in essence at a financial standpoint it was almost as if it was a fee acquisition because TGI Friday's, my client, the affiliated acquired by long term lease, 99 plus and paid all of the rent up front for that. So in essence, right now they operate financially their independent, there is no co-ownership and but at the same time the property is leased. It is working well, it's the flag ship, and one of the flag ships properties of this franchise. It's a very successful project. However, as time as gone on, the folks that originally entered into the agreement which said we will lease it to you but you ever buy it, you can buy it for a \$1.00 because you already paid for it. We will cooperate with you to enter into a sub-division and so Tony came to me some time ago and said I have an opportunity that would put this property in a portfolio where I would

wrap it up with other properties that I own and lease it back to free up some capital for additional operations and essentially lease it back from somebody who was interested in acquiring all the real estate. So this application is candidly and financially driven in an opportunity to free up, free up some operating cash. At the same time, there is absolutely no plans to make any change to the way site operates and the acquisition of the property would be subject to reciprocal cost access easements that would in essence memorialize all the arrangements that are in the existing lease now. We went to New Castle, went to City of Newark, and in the presence of Mr. Culver and caused me to bring that up, and actually the reaction we candidly was quite positive, however, there were concerns after the review of the file that there had been this reluctance to subdivide the property and I was asked what, if anything we were prepared to do in order to address that and I assured the department at that time and I can reassure this board that my client is willing to enter into a restriction that would require that any building on the site be attached to the hotel as it is now. Should be the building be lost, it would not be marked a casualty or something along those lines. We would commit as a condition of this moving this through the subdivision process, that any building would be attached to the building on the other parcel. Thereby, assuring that the objective of not having two freestanding independent looking operations would be assured. So, with that in mind we are moving forward in an effort to allow my client to acquire more bundle of steps that go with the property and to draw a subdivision line that would enable us to convey the property to a third party and/or finance it in a way of constraint of doing now. So, in moving this forward we identified another technical issue that prevented this application from moving forward and that is the fact that once we create we create a property line where there was formally just a lease line we have thereby converted what was a wall to a party wall and the provision in the code that Mr. Bergstrom sited to precludes any openings or breaks in a party wall that divides two properties. We are making no changes to it, it is already fire safety all built in and the folks I brought with me today would walk you through that so you can hopefully feel confident that if you grant the relief from the technical provision in the code that you will be doing so in a way that is entirely protects the public interest and has no adverse impact. So, Tony, if you would come forward.

**Tony:** Thank you, I appreciate you hearing us today. Wendy elegantly laid out my business plan so there's really not much to add to that. I can tell you a little bit about myself, I'm the presidency and general partner of United Restaurant Group. We have been a franchise of TGI Friday's for twenty years and we operate five restaurants in Delaware and twenty-eight restaurants on the East Coast in four states, Virginia, South Carolina, and North Carolina.

**Ms. Stabler:** Joe Charma is here with me, he can walk you through the sub, the post subdivision plan. He'll show you the common party wall and what we are talking about in terms of the fire rated doors and Dan will also speak to the architectural issues and the answering any questions you might have.

**Mr. Charma:** Thank you, Wendy. Good afternoon, board members, pleased to be here. I just want to give you a brief history of how we got to where we are today. First, we met with the Planning Director and Jim Kiesel, at that point was the acting head of Code

Enforcement Division. We met on September 16<sup>th</sup> this year to discuss this project. Following that meeting, on October 12<sup>th</sup>, we filed the subdivision application and October 19<sup>th</sup>, the application was denied which we knew it would be because of the creation of the property line that change the definition of the common wall to a party wall. Subsequently, we filed a Board of Building Appeals application on October 29<sup>th</sup>, and which brings us to today. I was retained again by United Restaurant Group to help them through the subdivision process. We were the original engineers on the Embassy Suites, TGI project. What's important to note that why that opening is there is at the time, the operators of the hotel and the restaurant wanted to coexist to have a people to come, eat from the hotel; but the restriction placed on the project by the Planning Department, said that it can't be freestanding, we don't want to be freestanding, we want to have an opening. Well, if you have an opening and you got two different businesses, how are we going to provide adequate fire protection? So, that gets us to the wall designed to provide a separate fire barrier meeting the IBC Codes which Dan will elaborate on; but yet we still have a connection that allows people to go from the hotel to the restaurant and the restaurant to the hotel. Again, as Ms. Stabler mentioned there are no proposed construction changes in this plan. This plan is the same plan that was originally approved in 1998. In 1999, TGI's had their restaurant, their current restaurant, there was a prior plan, they did an expansion; but the prior plan, the original plan they had their as-built and they got their C of O and they opened their restaurant. Then again, in 2003, there was an 827 foot, square foot addition, added to the building, which again met the building codes and all the fire codes. So with that, again, there's no changes to any buildings proposed by this plan and we will honor the provisions as Ms. Stabler mentioned by the Planning Department of no free standing further subdivision of this property. There will be deed restrictions and probably subdivision, an agreement provisions that will preclude that without council approval. Just for a minute I would like walk you briefly through the photographs that you can see on this board. What we have is and I'll pass these around also. The first one is right here, that's a photograph from inside TGI Friday's looking out toward the hall way, that's inside the restaurant. Then, on the right side of the bar, our plan here is another photograph that shows the door opening from the hall way side of the restaurant. What is important to note in that photograph, as you can see the tracks or the automatic fire shutters there. Mr. Hoffman will go into that little more and he will go into detail about the ratings of the wall and the fire shutter. Again, I also have, here's an exit from the hall way that leads directly out into the right out into the fire lane that runs in front of the portion of TGI Friday's and the hotel. So, if you were in that hall way for any reason and you were kind of between the restaurant and the hotel you could get out of that building. Again, this is the exit door from that hallway out into the walk that leads into the fire lane. With that, I think I will turn this over to Mr. Hoffman to detail the fire protection provisions. Thank you.

**Mr. Hoffman:** Good afternoon, gentleman, Dan Hoffman the Design Collaborate Architects. I think Wendy and Joe have already stated a lot of my case of the issue we are having. The main issue is back in September was that the proposed line that we're reporting here goes right through an existing separation wall between the restaurant and the hotel. Currently, it is a two hour cmu wall that has this one door opening that is covered by the fire shutter. Technically when the application is made, it changes the wall from a separation wall to a party wall. By coding the wall as a party wall you are not

allowed to have any openings. The separation between the two buildings is still a two hour rating. Which is what was required by a party wall anyway. With the existing wall and the fire shutter, we still have a two hour separation between the two units. I brought the plan for the restaurant with me and I can point out, it's actually upside down but this does not change the egress patterns from either building. The hotel which will be on top part of the page has its main entrance off of here, Joe pointing to the quarter exit right here which is the set means and we still have the rest of the hotel with the stair towers and its exits. The restaurant has its front door which is right here, has a secondary door out towards the Christiana Parkway and this door which is right inside of the other door which leads out to the parking lot and the actually the lane for the hotel. So, really not changing anything on the building, just creating a line between the two businesses.

**Mr. Bergstrom:** Is that it?

**Mr. Hoffman:** Anything anyone wants to close with?

**Mr. Bergstrom:** I have a question for Dan.

**Mr. Hoffman:** Yes?

**Mr. Bergstrom:** Isn't it rather unusual that to have an exit, an exit sign on a shutter door? It shouldn't have been there to begin with.

**Mr. Hoffman:** It shouldn't have, well when the building was all one use, it could have been used as an exit out of the restaurant.

**Mr. Bergstrom:** Not where the shutters are.

**Mr. Hoffman:** Not where the shutters, well the proposal would be we would have to remove that sign.

**Mr. Bergstrom:** Just push it over. If someone came in that door since I don't want to put words in your mouth, there would be an exit interment to that. 'Cause people would try to leave the way they came in, but that's another exit door right, right there.

**Mr. Hoffman:** Right to the side, that is correct.

**Ms. Stabler:** Certainty the border of this, the city it's improperly located. We would certainly be willing to move that. There's good egress in and out of there. So, just sum up it is we are just here to create a not a fictitious but a line for legal purposes that does not at all change the layout, the operation of the functionality and the existing physical structure. It was designed to have a break that would prevent, that would serve as the two hour fire wall and that was it is now. There is no change, it's absolutely intent there is preserved. So, this is to me a classic situation where relief from this board is appropriate because of technical provision in the code does not speak to this and granting relief to

the applicant will enable it to advance a plan and to do so in a way that will not at all adversely affect the health and safety of anyone. Thank you.

**Mr. Bergstrom:** If I can speak with you guys. Anybody tells us where the fire suppression system is supplied to the restaurant? Where does it come from? Are the utilities entirely separated between the two occupancies including the fire sprinklers?

**Mr. Hoffman:** Yes, the fire suppression for the restaurant is located right here facing 896 in front of the parking lot. Fire suppression system for the hotel is actually down the right on the corner by that exit door. There are two separate.

**Mr. Bergstrom:** In two separate feeds from the street. Is it all from the eight inch that goes underneath the parkway or?

**Mr. Charma:** No, there's a -

**Mr. Bergstrom:** Separate tap for the TGI Friday's right here?

**Mr. Charma:** If I may, there is a, there was a new system, water system brought in here. There was a feeding hydrant within three-hundred feet of the fire department connections. It's right on the corner right here. Right kind of this northerly corner of Fridays.

**Mr. Bergstrom:** The two fire suppression systems are entirely separate? The pump for the hotel is not feeding the restaurant?

**Mr. Charma:** That is correct.

**Mr. Bergstrom:** Any emergency power for the restaurant is, you know the electrical fires from a separate supply here? The systems are reversed in the building.

**Jim Kiesel:** I was not associated with this project as it was being built.

**Mr. Bergstrom:** It matters a lot. Can the owner speak to that? If you got a separate, if the utilities are separated that's a huge hurdle. If that's the case but we can condition an approval to grant one on the fact that it would be separated. Because we don't want the impairment of one suppression system to you know interfere with the suppression system to the other building nor heat in the other building if one turns the electric off.

**Ms. Stabler:** If you'll give us a sec? Joe's going to double check. He's seems rather confident that in fact is the case.

**Mr. Sedita:** Are the emergency panels separate?

**Mr. Bergstrom:** Well the utilities.

**Ms. Stabler:** The utilities.

**Mr. Bergstrom:** The utilities are separated.

**Mr. Sedita:** The utilities are totally separated?

**Mr. Bergstrom:** The utilities and the fire suppression system is totally separated.

**Mr. Charma:** If I may? This is the original construction plan for the hotel and the TGI's they brought it, here's the fire service that feeds the hotel, the fire service that feeds TGI Friday's. It's served off of this supply line here. There's a tap on each of these.

**Mr. Bergstrom:** Ok, I'm with you, that's wonderful.

**Mr. Charma:** here's the fire hydrant that feeds the fire department connection. There's one fire department connection here, and the other one is down on this case of the building.

**Mr. Bergstrom:** The fire supply for this building comes in

**Mr. Charma:** Here's the main and then we have another -

**Mr. Bergstrom:** and the fire main for the other buildings is back here and the main for the other building comes back here

**Mr Charma:** right, it comes in here and then it continues back to feed

**Mr. Bergstrom:** Well we don't imagine anything has changed hydraulically so that shouldn't matter, as long as their separate. So that one can't impair the other. They are going to be different owners now. Different parcels.

**Mr Charma:** Exactly. They were, if you will, because of this idea about freestanding building, that's why this hallway was constructed. That was the thinking back when we were going back through this process. Roy Lopata said hey look if you want to have separate buildings you know or separate entities that's fine but you can't have them separated, so the thought was well if we connect them with a common hallway but provide fire protection as you would as if they were separate buildings that's exactly what happened here and that's why that wall is constructed like that with a fire shutter and all. The thought was put in to provide the proper fire protection as if they were two separate buildings, but appearance wise and all from any code purposes they are one building and that's exactly what Mr. Lopata was trying to do at the time. Just to give you a little background, he did not want this section of 896 to become a bunch of free standing pad sites as you coming into the gateway of Newark, coming into downtown. He did not want that to happen and that's why he was pretty adamant this project being set up this way. So, that's how we got where we are

**Mr. Bergstrom:** The most sacred thing in the building code, the fire wall, the party walls, it would be. I can't imagine why if we are going to permit this we wouldn't want to the wall be protected on each side. Add the second 3yr door or whatever it is door? Outside of that you made the case it's the contention of the applicant that the wall that either building could collapse and the wall would remain? Is that your professional opinion?

**Mr Hoffman:** Yes, that is our professional opinion. Yes, it's a fire wall at that point. Neither structure is tied into it.

**Mr. Bergstrom:** Mr Kiesel, Jimmy, any comment?

**Jim Kiesel:** The Code Enforcement Department for City of Newark, does not oppose what they are trying to do. But as a matter of proper procedure, we had to deny it, and make it go through this process. Like they said, they are not doing anything different they just put a property line through the building which now reclassified the wall type and that's what brought the issue up.

**Mr. Bergstrom:** Considering a lot of other occupancies and a lot of other places pretty difficult to put protection on both sides of the wall when you are doing this exact thing. It's a kind of standard thing – the old rolling doors. You know the old rolling fire doors, warehouses and things, where you are trying to protect from both sides. Other than that it looks great, f you move the exit sign away from the shutter door because if someone could be confused and in case there is a fire if the shutter is down they would try to bump their way through. The door is almost adjacent to it. If there is not another exit sign there. Sign is only twelve feet away, it's not a big deal. Anybody else from the public want to speak about this matter? Alright, what do you guys think?

**Mr. Sedita:** You're good, they're good and I'm good.

**Ms. Stabler:** I don't want to interrupt, but I did want to point out that of course the property owner, the hotel next door to us is not in opposition of the application I also reached out to the University of Delaware who is aware of our desire to subdivide. They are not in opposition and we also reached out to the BPG affiliate that owns the hotel next door they also did not express any concerns. I did want to put that on the record.

**Mr. Bergstrom:** We do not have anything to do with the subdivision. We just have to tell the Planning Department if this walls is equivalent to a party wall and I would be willing to entertain a motion to that affect if someone. I really would like to insist on a fire shutter on the other side so they no matter where the fire originates they have absolute amount of protection and we can call it. Call it something that is not a party wall. A party wall is just as same as common as industrial practice for I can't think of how it can be used. Here we have a life safety issue. Move the sign, get the sign to the appropriate place, just adjacent to this doorway and anyone want to pull that trigger?

**Mr. Sedita:** I'd be happy to. That we approve the application.

**Mr Bergstrom:** With the event of the stuff we discussed with another shutter and moving of the exit sign. Now that we have it on the table. I am going to go a little informally and say it's either the Planning Department or the applicant have any objections to those two restrictions being added?

**Jim Kiesel:** No

**Applicants:** No

**Mr. Bergstrom:** then if we do not need any further discussion I'd like to call for the motion, all in favor?

Aye – 3

Nay – 0

Respectfully submitted,

Angela Conrad  
Secretary

**CITY OF NEWARK  
DELAWARE  
PROPERTY MAINTENANCE APPEAL BOARD  
MINUTES**

October 30, 2000

\*00-PM-1  
Sue Heagy  
208 King William Street

Those present at 3:00 p.m.:

Acting Chairman: Eugene Trivits

Members Present: Edward Gliwa, Jr.  
John Kalmer  
Kevin Mayhew  
Linda Shopland

Staff Members: Bruce Herron, Deputy City Solicitor  
Junie Mayle, Building Director  
Jim Hewes, Property Maintenance Inspector

- 
1. **Acting Chairman, Eugene Trivits:** Opened the inaugural session of the City of Newark's Property Maintenance Appeals Board. The board has been created under the provisions of Chapter 17 of Newark's City Code and the Mayor with consent of Council has appointed the members you see before you. As we proceed, this afternoon, the Secretary will identify the matter before us; the City would then present its case; the Appellant and his or her representative would have ample time to present the basis for the appeal; other witness may be called as appropriate; the members of the Board may question any of the presenters. At the conclusion of all the testimony, the Board will discuss the evidence presented and then if a motion is made we will vote. The Building Director would then implement the decision of the Board. We have some housekeeping things to do first.
  
  2. **Building Director, Junie Mayle:** There are a couple of things that we need to take care of since this is the very first meeting of this Board. This Board has been on the books for a number of years, but the material has been handled by our Board of Building Appeals. It was created to be a board that was more interested and perhaps more qualified to deal with the types of matters that are heard under the Property Maintenance Code.

The first thing that I have on my list this afternoon is to elect a Chairman. We don't know each other very well yet. Hopefully we won't meet so often that you become the

best of friends. This board rarely meets; once or twice probably will be all its going to meet per year. You can have someone act as chairman of the group today, you can vote today or you can vote at the next public hearing. It just doesn't make sense to have another public hearing to select someone to act as your chairman. I suggested unless someone has strong feeling about it or a strong desire to be chairman, that Mr. Trivits take the position today because he has served on other similar type boards and has done similar type things. I do not know you well enough to know if you know each other or Mr. Trivits. If you can make a decision on that now, it would be helpful to elect a chairman at this time.

**MOTION MADE BY MS. SHOPLAND, SECONDED BY MR. GLIWA TO NOMINATE EUGENE TRIVITS CHAIRMAN.**

Question on the motion was called.

**MOTION PASSED UNANIMOUSLY. VOTE 5 TO 0.**

**Mr. Mayle:** The second thing we need to do is to adopt our "Rules and Procedures". The Property Maintenance Code itself sets out the way that our board should operate. One of the things that it asks you to do is set up a set of rules to govern how evidence is presented; how we deal with the request; how you make decisions and so forth. The Rules and Procedure that you have in your packet are rules that were drawn up by the City Solicitor. It applies to the Board of Building Appeals which is the closest thing that we have to this board. The difference is that you deal with the Property Maintenance Code and they deal with the Building Code. What I have done is change the Rules of Procedure for the Building Code Appeals Board; modified them changing the names of the board from Building Appeals to Property Maintenance Appeals Board. Everything else is identical to the way it operates and is designed to comply with the requirements of our code or a set of rules and procedures. If you have any questions, I'll answer them. We also have Bruce Herron, Deputy City Solicitor, to answer any questions.

**Mr. Trivits:** These really are, in effect, extracted from the code?

**Mr. Mayle:** These were written for us for the Building Code Appeals Board by our solicitor. I'm not sure if it was Bruce Herron, Roger Akin or perhaps Mark Sisk. The requirements for the two different codes' appeals board are very similar.

**Mr. Trivits:** Does anyone need additional time?

**Ms. Shopland:** I'm just confused about something. If I'm reading this correctly, the appellant gets five (5) days minimum in advance to know the hearing is going to take place. The public gets seven (7)?

**Mr. Mayle:** We post so the public knows about the hearing as soon as we know the date, but we only have to do it for five (5). I don't know why there is a discrepancy.

**Ms. Shopland:** It just seems to me that the public is going to know before the appellant that's all.

**Mr. Mayle:** We don't even post it until the appellant has chosen a date. I don't mind changing that.

**Ms. Shopland:** No, I just thought it was a little confusing, but as long as there is no posting till the appellant gets knowledge of the date, I don't see any problem with it.

There was some discussion amongst the board members that the number of days should at least be equal. The board chose the seven (7) day notice for both the appellant and the public.

**Mr. Trivitt:** Do I hear a motion that we accept these rules as amended?

**MOTION MADE BY MR. GLIWA, SECONDED BY MS. SHOPLAND TO ACCEPT THE RULES OF PROCEDURE FOR THE BOARD OF PROPERTY MAINTENANCE APPEALS AS AMENDED.**

**MOTION PASSED UNANIMOUSLY. VOTE: 5 – 0.**

**Mr. Mayle:** Unless you have any further questions, we're ready to proceed with the matter before us.

**Mr. Trivitt:** Requested the secretary to read the request for the appeal.

**Ms. Hagerty:** The appeal today is for Sue Heagy, owner of 208 King William Street, Williamsburg Village, seeking to reverse the City's decision to revoke a rental permit under the authority of Chapter 17, Section PM-405.11.3 (Old Code) and Section 404.8.4 (New Code).

**Mr. Trivitt:** I have a feeling that you (Mr. Danberg, attorney for Ms. Heagy) need to address this board.

**Mr. Danberg:** Yes, Mr. Chairman. I am Ed Danberg. I represent the appellant. As you probably saw my client was present and the Newark City Police just took her away on a capias for a matter involving a contractor that has charged her with not paying his bill. As a consequence, we are simply not in the position to proceed and request that the matter be continued until another date.

**Mr. Trivitt:** Under the rules I don't see any reason why it shouldn't, but I would like to ask the City's Deputy Solicitor, Bruce Herron, his feelings.

**Mr. Herron:** I think we should get the position of the City on that request.

**Mr. Mayle:** The City has no objections.

**Mr. Herron:** I don't think there's any reason not to grant that request.

**Mr. Trivits:** What time extension would you propose, sir?

**Mr. Danberg:** Well, the notice provisions require at least a week. Typically, it takes considerably longer than that. I would say two (2) weeks to a month.

**Mr. Trivits:** We will say it will be scheduled within a month and proceed from there. You will obviously get due notice of when the hearing is rescheduled in accordance with your client's schedule and so forth.

Is there any other matters before this board today?

No further comments.

Meeting adjourned at 3:15 P.M.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jeanne D. Hagerty".

Jeanne D. Hagerty  
Recording Secretary

**CITY OF NEWARK  
DELAWARE  
BOARD OF SIDEWALK APPEALS  
MINUTES**

**AUGUST 15, 2005**

**PRESIDING:** Charles G. Maass

**MEMBERS PRESENT:** Robert Detwieler  
James Dunson  
Stanley C. Einhorn  
Leon Ryan

**STAFF PRESENT:** Richard M. Lapointe, Public Works Director

**1. REQUEST FROM THE FOLLOWING PROPERTY OWNER TO CONSIDER THE WAIVER OF THEIR RESPONSIBILITY TO INSTALL A SIDEWALK IN FRONT OF THEIR PROPERTY:**

**52 WOODHILL COURT - MR. & MRS. FRANCIS OWENS**

Mrs. Owen said the roots of an oak tree broke four to six blocks of pavement. The sidewalk was at the end of a dead-end street that led to a large open field owned by the Borchert's. A contractor advised them that they needed the oak roots cut and removed before the sidewalk could be repaved. Mrs. Owen she said that was a very expensive process. She asked that they be allowed to remove the broken pavement and replace them with grass. Mrs. Owen added that she understood the Borchert's planned to donate the property adjacent to her to the City for use as parkland.

Mr. Lapointe did not have a problem with the applicant's request. He said the owner would be responsible for the placement of a new sidewalk if the land at the end of the cul-de-sac were developed. Mr. Lapointe felt there should be a mechanism, similar to a lien or deed restriction, to make subsequent owners aware of this requirement.

Mr. Maass asked who would enforce a deed restriction if the land were developed. Mr. Lapointe said Public Works could request, through Council, to install a continuous sidewalk. Mr. Maass believed the City focused on Code enforcement and not as much attention was given to the enforcement of deed restrictions.

Mr. Detwieler asked what mechanism was used for other types of property. Mr. Lapointe said there was none. Mr. Detwieler asked if Council needed to create a resolution or

ordinance to address this issue. Mr. Lapointe did not think that was necessary but he was not sure what mechanism was needed.

Mr. Ryan felt that the Board could not act if they did not know the restrictions or the applicable Code. Mr. Lapointe did not feel this related to the Code because it dealt with relaying information from the current owner to future owners. He said the Code required sidewalks on all properties.

Mr. Lapointe said the Board could state that if a sidewalk were required in the future, the owner would be responsible for installation. He commented that he would like to avoid situations where new owners are not made aware of requirements like this.

Mr. Maass agreed that the Code addressed the requirement and felt the restriction could be added to the deed. He asked if the Board should ask the City Solicitor to rule whether they could add a deed restriction. He suggested tabling a decision until Mr. Akin gave his legal opinion. Mr. Lapointe did not feel the Board should table it because the City had the authority to require the installation of a sidewalk no matter who owned the property. Mr. Ryan felt they would overrule the provision to say someone had to put in a sidewalk if they granted an exception.

Mr. Maas said the Board issued "temporary" waivers in the past. He believed they could waive the requirement to repair now, however, if the street was cut through to another development the owners would have to install a sidewalk. He felt they needed a legal opinion about making this part of the deed restriction. Mr. Detwieler believed the Board would set precedence if they added a deed restriction.

Mr. Lapointe suggested placing a lien against the property. Mr. Maass responded that a lien could be placed for the value of the expense, but he questioned how they could calculate future value. Mr. Lapointe said it sounded like they needed a legal opinion to see if the Code should provide a lien mechanism. Mr. Ryan felt Public Works should have researched the procedures prior to the meeting.

Mr. Maas said deed restrictions were legal and existed throughout the City. He questioned whether anyone would enforce them. He felt that somebody would have to complain in order for a restriction to be enforced.

Mr. Lapointe remarked that in order to repair the sidewalk the applicant could get into major root problems and end up losing the tree. Mr. Maass thought there was enough room to go around the roots.

Mr. Maass asked if the City would have asked the owner to put in a sidewalk if the builder had not done so. Mr. Lapointe said they would not.

Mr. Dunson pointed out that the Board granted an exemption before where it was not likely that the land would be developed and they did not have this question of a deed restriction. Mr. Lapointe said in the past the restriction was stated in the minutes and that was probably sufficient.

Mr. Maass added that in the past a property owner asked for exclusion even though ten years prior to that the Board told the previous owner they had to install a sidewalk when their neighbors did. He felt there should be a mechanism in place to ensure that the Board's decisions were carried out.

Mr. Maass suggested a motion to table the decision until they received a legal opinion. Mr. Einhorn felt they should automatically approve the request if the answer was yes. Mr. Lapointe agreed they could move to deny or pass with the result of Mr. Akin's review. If a deed restriction could be placed then it would be approved. If it were not legal or feasible, then it would be up to the discretion of the Public Works Director to install sidewalks in the future.

**MOTION BY MR. DETWIELER, SECONDED BY MR. RYAN: THAT THE BOARD TABLE THE DECISION UNTIL A LEGAL OPINION ABOUT DEED RESTRICTIONS IS RECEIVED.**

**MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.**

Mr. Maass told the applicants he hoped they would have a response from Mr. Akin within a week or two. The Board would make a final decision at that time. Mrs. Owen offered to remove the roots and repair the sidewalk if it was easier. Mr. Maass said they did not want to kill the tree and they would reconvene and make a final decision after they hear from Mr. Akin.

**2. REQUEST FROM MR. & MRS. MATTHEW EGAN TO CONSIDER THE WAIVER OF THE INSTALLATION OF A SIDEWALK IN FRONT OF THEIR NEWLY CONSTRUCTED HOUSE AT 14 WHITE CLAY DRIVE.**

Mrs. Egan said she did not have anything to add other than the letter she wrote. She explained there was no sidewalk on her side of the street. They included a sidewalk in their building plan as required by the Public Works Department. Mrs. Egan asked if they could install a sidewalk in the future if requested, instead of putting it in now where it would end in dirt.

Mr. Ryan motioned to add language to the deed stating any new owner would be responsible when the sidewalk was extended on either side.

Mr. Dietwieler said he had the same issue as in the previous case. He thought the City should decide what mechanism should be implemented to enforce the requirement.

Mr. Dunson reminded the Board that they elected to defer the sidewalk when the same question came up a few years ago with the property on the other side of the street. He said there was a sidewalk on the other side of the street that ended directly opposite the applicant's property. He said there was discussion about the probability of a future sidewalk on the downhill side. Mr. Dunson said Councilman Clark wanted access to that property and future access up and down that side of the creek. He suspected there would eventually be a sidewalk along the north side of the road from North College Street as far as the far edge of the Clark parkland. Mr. Dunson thought the idea of deferring the sidewalk until they were appropriate was a good idea. He expected one or two of the adjacent properties would request an exemption in the near future. He reminded the Board that they exempted White Clay Road on the south side because they expected there would be a future sidewalk on the north side. He felt it was getting close to that time.

Mr. Einhorn restated that he did not feel Council needed to create new rules or regulations. He felt the City could enforce the Code and require the installations of sidewalks.

Mr. Maass felt they should handle this case in the same manner as the previous one. He suggested they make a similar motion and refer this to Mr. Akin for a legal opinion as to how they could implement a deed restriction or something similar to enforce installation if and when necessary.

**MOTION BY MR. DETWIELER, SECONDED BY MR. DUNSON: THAT THE BOARD TABLE THE DECISION UNTIL A LEGAL OPINION ABOUT DEED RESTRICTIONS IS RECEIVED.**

Vote: 4 to 1.

Aye - Detwielier, Dunson, Einhorn, Maass  
Nay - Ryan

Mr. Maass said the Board would reconvene and make a final decision when they received a legal opinion from Mr. Akin.

Mrs. Egan hoped to move in the home by the end of the month. Mr. Detwielier remarked that she needed a decision in order to receive a Certificate of Occupancy. He felt the Board needed to ensure their decision would not delay the Certificate. Mr. Maass asked if the City could issue a temporary certificate pending the decision on the sidewalk. Mr. Lapointe agreed to waive the sidewalk issue and approve the Certificate of Occupancy.

Mr. Lapointe apologized to the Board. He agreed with Mr. Ryan's comment that he should have had these answers before they conveyed.

4. Meeting adjourned. Time: 3:45 p.m.

*Sonji Hubbard*  
Sonji D. Hubbard  
Secretary

/sdh

**CITY OF NEWARK  
DELAWARE  
BOARD OF SIDEWALK APPEALS  
MINUTES**

**SEPTEMBER 20, 2005**

**PRESIDING:** Charles G. Maass

**MEMBERS PRESENT:** Robert Detwiler  
Stanley C. Einhorn  
Leon Ryan

**MEMBERS ABSENT:** James Dunson

Mr. Maass and Mr. Detwiler corrected the spelling of their last names in the August 15<sup>th</sup> minutes. Mr. Maass believed Mr. Dunson made the statement on page 2, paragraph 7, indicating that deed restrictions were legal and existed throughout the City.

**MOTION BY MR. RYAN, SECONDED BY MR. DETWILER: TO BRING THE OWENS PETITION FOR 52 WOODHILL COURT BACK TO THE TABLE.**

**MOTION PASSED UNANIMOUSLY. VOTE: 4 to 0.**

Aye – Detwiler, Einhorn, Maass, Ryan

Nay – 0

Absent - Dunson

Mr. Maass said he met with the City Solicitor following the August 15 meeting to discuss deed restrictions. The City Solicitor opined that a deed restriction or other recordable instrument could be prepared and publicly filed in the Office of the Recorder of Deeds stating that the Owens and all subsequent purchasers were on notice that at such time as the land at the end of the cul-de-sac adjacent to 52 Woodhill Court became evolved for any use, the City will order compliance with applicable to Newark's sidewalk ordinances. He said that was a recommendation of the wording if the Board chooses to grant a conditional exemption.

Mr. Detwiler asked if there should be a mention of within 30 days of notice by the City or something like that. Mr. Maass said that was covered in the City ordinance. He said there was a time frame in the City ordinance and the Board did not have to duplicate that in anything they said if they granted the extension.

**MOTION BY MR. RYAN, SECONDED BY MR. EINHORN: TO GRANT THE EXTENSION.**

Mr. Maass asked if there was any discussion. He said that he was advised that Public Works Director, Rich Lapointe, had suggested wording that if the property owner or the owner's attorney contacted him, he could share wording for a deed restriction.

MOTION PASSED UNANIMOUSLY. VOTE: 4 to 0.

Aye – Detwiler, Einhorn, Maass, Ryan  
Nay – 0  
Absent - Dunson

MOTION BY MR. RYAN, SECONDED BY MR. DETWILER: TO BRING THE EGAN PETITION FOR 14 WHITE CLAY DRIVE BACK TO THE TABLE.

MOTION PASSED UNANIMOUSLY. VOTE: 4 to 0.

Aye – Detwiler, Einhorn, Maass, Ryan  
Nay – 0  
Absent - Dunson

Mr. Maass said he met with the City Solicitor and he made the same suggestion for this case as the other. He asked if any Board members had any question or further discussion.

MOTION BY MR. DETWILER, SECONDED BY MR. EINHORN: TO GRANT AN EXTENSION.

MOTION PASSED UNANIMOUSLY. VOTE: 4 to 0.

Aye – Detwiler, Einhorn, Maass, Ryan  
Nay – 0  
Absent - Dunson

Meeting adjourned. Time: 3:45 p.m.

Sonji D. Hubbard  
Secretary

/sdh



**BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT**

Name of Board/Commission/Committee: \_\_\_\_\_

Representatives Present For Review: \_\_\_\_\_

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Governing Authority	City Code and/or resolutions governing the body	28+ years of Code Enforcement and Interpretation with New Castle County Gov.	Need to have Forwarded to me to be kept current with Local Newark Code Changes	
Qualifications	Are the required qualifications appropriate for the body?	For myself - yes others on the Board - don't know never met the others		

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Orientation/ Training	Existing orientation and/or training for the body	None	Needed	
	Level of participation by members of the body in the above training	Needed	offer some	
Rules of Procedure	Selection of chair and other officers	Should be by Robert's Rules		During the time of my appointment it has never met
	Meeting procedures	Same as Above		
Activity Level	Amount of active participation by members	Should Require Active involvement	← Same	

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Reporting	Existing reporting requirements			
	Compliance with existing reporting requirements			
	Appeal process for decisions of the body	After presentation to Board then the Courts	Require all Dept or Code Challenges to be Presented to Board	
Stakeholder Viewpoints	Views of members of the body being evaluated		Under Utilized	
	Views of department heads who work with the body	<del>Under</del>	Under Utilized	
	Views of the public who interact with the body			

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Necessity	Scope of duties		Should be enlarged as part of process of appeal	Board should be a step before court and a required part of appeal process
	Similarity to other bodies			None -

**Activity Level**

- When is this board or commission required to meet?  Monthly  Quarterly  Annually  As Needed  Other (Explain) have never met
- In the past five years, this board or commission has met 0 times. Its last two meetings were on \_\_\_\_\_ and \_\_\_\_\_.
- Do the minutes of this board or commission maintained by the City appear to be complete and up-to-date?  Yes  No  
If no, identify any apparent deficiencies: ?
- How many members are on this committee? ?
- How many vacancies are currently on this committee (number and percentage)? ?

**Board Membership**

- How long is a committee member's term on this committee?  1 year  2 years  3 years  Other (Explain) \_\_\_\_\_
- Is City residency a qualification for membership on this committee?  Yes  No should be
- If City residency is not a requirement, does this committee have any members who are not City residents?  Yes  No

9. How long is the committee chair's term on this committee?  1 year  2 years  3 years  Other (Explain) \_\_\_\_\_  
*should be*

10. How is the Chair selected for this committee?  Volunteer  Elected by Committee  Appointed by Mayor

**Compensation**

11. How much is the compensation for this committee? \$0  
*should be*

**Final overall recommendations of the Boards and Commissions Review Committee:**

I was appointed by Mayor Godwin and to this date  
Board has never met.

Approved by the Boards and Commissions Review Committee on \_\_\_\_\_, 2015.

Vote: \_\_ to \_\_.

Attest:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Chairperson  
Boards & Commissions Review Committee

**For Office Use Only:**

**Date Submitted to Council:** \_\_\_\_\_, 2015

**Action Taken by Council:**



**BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT**

Name of Board/Commission/Committee: \_\_\_\_\_

Representatives Present For Review: \_\_\_\_\_

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Governing Authority	City Code and/or resolutions governing the body	28 <sup>+</sup> years in Code for New Castle County		
Qualifications	Are the required qualifications appropriate for the body?	for myself Yes		

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Orientation/ Training	Existing orientation and/or training for the body	None Has Been Offered	Ongoing Education of Board members	
	Level of participation by members of the body in the above training	Minimal	Needed	
Rules of Procedure	Selection of chair and other officers	Should be by Roberts Rules		
	Meeting procedures	<del>Since</del> Robert's Rules		
Activity Level	Amount of active participation by members	Since my Appointment only met twice	Members should be utilized in policies all existing sidewalks and overseeing new work	

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Reporting	Existing reporting requirements			
	Compliance with existing reporting requirements			
	Appeal process for decisions of the body	City Council would be final Appeal		
Stakeholder Viewpoints	Views of members of the body being evaluated		Underutilized	
	Views of department heads who work with the body	Advisory		
	Views of the public who interact with the body			

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Necessity	Scope of duties	28+ years of Code work	Utilize Board Members as Eyes on Conditions within City	
	Similarity to other bodies			

**Activity Level**

- When is this board or commission required to meet?  Monthly  Quarterly  Annually  As Needed  Other (Explain) \_\_\_\_\_
- In the past five years, this board or commission has met 0 times. Its last two meetings were on \_\_\_\_\_ and \_\_\_\_\_.
- Do the minutes of this board or commission maintained by the City appear to be complete and up-to-date?  Yes  No  
If no, identify any apparent deficiencies: \_\_\_\_\_
- How many members are on this committee? ?
- How many vacancies are currently on this committee (number and percentage)? ?

**Board Membership**

- How long is a committee member's term on this committee?  1 year  2 years  3 years  Other (Explain) ?
- Is City residency a qualification for membership on this committee?  Yes  No should be
- If City residency is not a requirement, does this committee have any members who are not City residents?  Yes  No

9. How long is the committee chair's term on this committee?  1 year  2 years  3 years  Other (Explain) \_\_\_\_\_

Should be

10. How is the Chair selected for this committee?  Volunteer  Elected by Committee  Appointed by Mayor

Should be

Compensation

11. How much is the compensation for this committee? \$ 0

**Final overall recommendations of the Boards and Commissions Review Committee:**

Was Appointed by Mayor Godwin. Board has only 2 times and that was regarding the need of sidewalk in a new development

Approved by the Boards and Commissions Review Committee on \_\_\_\_\_, 2015.

Vote: \_\_ to \_\_.

Attest:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Chairperson  
Boards & Commissions Review Committee

**For Office Use Only:**

**Date Submitted to Council:** \_\_\_\_\_, 2015

**Action Taken by Council:**