

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

**May 31, 2016 – 7:00 PM
Council Chamber**

- 1.** Call to Order
- 2.** Approval of the Minutes of the April 26, 2016 Boards and Commissions Review Committee Meeting
- 3.** Approval of the April 26, 2016 Evaluation of the Conservation Advisory Commission by the Boards and Commissions Review Committee
- 4.** Planning Commission Presentation
- 5.** Discussion and Potential Action Regarding the Committee Review of the Planning Commission
- 6.** Public Comment
- 7.** Introduction of New Business
 - A.** DNP Update
- 8.** Next Meeting Date – June 28, 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.

Agenda Posted – May 19, 2016

Attest:

Sworn by:

City Secretary

Notary Public

(Seal)

**CITY OF NEWARK
DELAWARE
BOARDS AND COMMISSIONS REVIEW COMMITTEE
MINUTES
APRIL 26, 2016**

Those present at 7:01 p.m.:

Members: Chair Rebecca Powers, At-Large (Left at 8:03 p.m.)
John Morgan, District 1
Jo Anne Barnes, District 2
Christopher Laird, District 3
Roberta Sullivan, District 4 (Left at 8:35 p.m.)
Maria Aristigueta, District 5
M. Howland Redding, District 6

Guests: Jason Kramer, Conservation Advisory Commission

Staff: Renee Bensley, City Secretary

1. **MEETING CALLED TO ORDER BY CHAIR REBECCA POWERS AT 7:01 P.M.**
2. **APPROVAL OF THE MINUTES OF THE MARCH 22, 2016 BOARDS AND COMMISSIONS REVIEW COMMITTEE MEETING**

(Secretary's Note: Dr. Morgan submitted various changes which were distributed to the Committee membership for review prior to the meeting and were incorporated.)

Ms. Barnes stated on page 7, public comment, second paragraph, the sentence should read "When the Board of Ethics recommendations are referred to Council from this committee, they are to be incorporated into a larger Ethics Code review."

Mr. Redding stated on page 2, first line change "Howland" to "Redding".

MOTION BY DR. MORGAN, SECONDED BY MR. REDDING: TO APPROVE THE MINUTES AS AMENDED.

**MOTION PASSED UNANIMOUSLY.
VOTE: 7 TO 0.**

3. **APPROVAL OF THE MARCH 22, 2016 EVALUATION OF THE COMMUNITY DEVELOPMENT/REVENUE SHARING ADVISORY COMMITTEE BY BOARDS AND COMMISSIONS REVIEW COMMITTEE**

MOTION BY MS. BARNES, SECONDED BY MS. SULLIVAN: TO APPROVE THE EVALUATION OF THE COMMUNITY DEVELOPMENT/REVENUE SHARING ADVISORY COMMITTEE.

MOTION PASSED UNANIMOUSLY.

VOTE: 7 TO 0.

4. CONSERVATION ADVISORY COMMISSION PRESENTATION

Ms. Bensley reviewed the comments provided to the Boards and Commission Review Committee from the Conservation Advisory Commission ("CAC") that provided background on the Commission (copy entered into the record). Also referenced was Article X, Sec. 2-151 from the Newark City Code that references the CAC. Ms. Bensley stated there were several items in the bylaws, as currently written, that were not being completed or followed in the timeline specified. For example, the bylaws specify they are to do a five minute presentation to Council on the Commission once per quarter. The commission is to submit the Annual Report by March of each year. Neither one of these matters were in compliance. The commission should either consider enforcing these or update the bylaws to reflect current practices. Ms. Bensley stated the nine member Commission had no vacancies. Although it was not required to be a City resident, there have been no non-resident appointees.

Ms. Bensley reported Mr. Tom Fruehstorfer, former Chair of the commission and currently Planner with the City of Newark felt the commission functioned well and was successful bringing forth ideas that were later implemented, such as the LEED-like development standards. He stated he did not feel any changes were needed in the current structure and duties of the commission.

Ms. Bensley also had received feedback from Tom Coleman, Public Works and Water Resources Director and staff liaison for CAC. He believed the CAC was fairly effective in the current configuration and they were accomplishing tasks (i.e. reforestation recommendation at Curtis Mill Park, McKees Solar Park, LED Street Light Project). Mr. Coleman was surprised there was not more community involvement outside of the active members. He felt there should be enhanced outreach efforts. The commission participated in Community Day and Newark Night but they may consider other ways to enrich community involvement. Mr. Coleman further stated with the current membership level and lack of additional volunteers, it was sometimes difficult for the commission to maintain momentum between the meetings and he believed additional at-large members may be beneficial. However, if the commission was too large, it may lose effectiveness.

The commission was not similar to any other boards and commissions but was necessary as a venue for the citizens of the City to have a voice in conservation related issues. Staff recommended that the Boards and Commissions Review Committee submit a positive review to Council regarding the work of the CAC. However, they may want to consider recommending updates to their by-laws to reflect FOIA compliance for officer elections, updated duties for the Chair and an updated timeline for submission of the Annual Report.

Ms. Barnes stated she had attended the previous CAC meeting and stated it was her opinion, they were a very active group that functioned well together. She further stated she was impressed by the activities undertaken by the commission.

Mr. Kramer, recent CAC appointee, stated their new initiative, the dashboard concept, is the intent by the CAC to show the community the impact the committee is having. Items shown will be the LED light replacement project, reforestation and estimated run-off reduction and groundwater recharge, etc. In addition, Mr. Kramer stated there were frequently members of the public present at the meetings that notify the members of upcoming events or projects that may be of interest to the Commission. Ms. Sullivan asked if the CAC is made aware of potential projects and items they may find of interest. Mr. Kramer stated

it is a two-way street and they find topics of interest from other members or residents; and City staff is proactive in notifying them as well of new projects and ideas. Mr. Kramer also indicated there was some conversation about adding some at-large members to the commission. It was Mr. Kramer's opinion the size of the commission was adequate (the addition of one or two members should not matter); but that a larger number may prove the commission unwieldy. He suggested the by-laws should be updated. Ms. Bensley also stated projects such as the LED light replacement project have been brought before the CAC for input prior to the matter coming before Council. Ms. Barnes added the CAC stated they were on the distribution list for Planning & Development reports and this is one way they are kept up to date with City news and projects.

Ms. Barnes stated she was not clear who the elected secretary on the commission was. Ms. Bensley said clerical staff was provided by the City Secretary's office. Ms. Bensley stated the commission may also have an internal secretary and internal minutes but she was not certain.

Dr. Morgan asked if there had ever been a contested election. Ms. Bensley stated that to her knowledge there had never been a contested election.

The Boards and Review Commissions Review Committee suggested the following changes:

Governing Authority: Sec. 2-152 should read "The commission shall consist of nine members' three appointed by the mayor and one by each of the council members for three year terms. The commission will draw up its own rules of procedure and elect its own officers annually." Areas for improvement: clarify terms, codify residency requirements.

Qualifications: Should read: Qualifications not specified by the commission but appears to have a good mix of talent and experience. It was noted there is no residency (City of Newark) for this commission. Dr. Morgan stated it was his opinion that the requirements of being a member of this commission did not necessarily depend on being a resident of a certain district. Ms. Bensley noted there are certain boards and commissions that do have places for business owners (non-resident) of City of Newark establishments. Mr. Redding suggested having a member from each district and three members at-large (non-residents). Ms. Bensley stated this concept would not change the current membership of the commission.

Ms. Powers asked what the gender balance was on the Commission. Ms. Bensley stated there are currently six men and three women on the Commission. Ms. Powers suggested gender balance be kept in mind for this commission. Ms. Bensley thought the Boards and Commission Review Committee may want to consider keeping this idea in mind for all boards and commissions in general and be mindful to not target just the Conservation Advisory Commission. Ms. Powers concurred.

Orientation/Training: Mr. Kramer suggested a more formal orientation could be instituted i.e. introduction, review of current projects, etc. Dr. Morgan suggested it also include FOIA training as it would pertain to members of boards and commissions. Ms. Bensley stated the City had offered formal FOIA in the past. She further stated information on general guidelines is offered to boards and commissions periodically.

(Secretary's Note: Dr. Morgan took the role as Chair at 8:03 p.m. due to the early departure of Ms. Powers.)

Rules of Procedure/Selection of Chair and other officers: Ms. Barnes suggested the commission no

longer have an elected secretary from its members. In addition, Ms. Bensley suggested a “clean-up” of the by-laws with regard to the procedure for voting on a chair for the commission.

Meeting Procedures: Ms. Barnes expressed concern about the commission keeping internal minutes. Mr. Kramer stated he had not utilized any internal minutes but kept his own set of notes. Ms. Bensley reported any internal minutes are subject to the rules of FOIA. Dr. Morgan suggested any internal minutes be accessible to the public.

Activity Level: It was agreed there was high participation from the commission. Mr. Kramer stated each member of the commission has areas of expertise, so that a particular member may focus more on a project that was aligned with their knowledge base. A suggestion was made to provide more publicity of A Better Newark Award

Reporting: The suggestion was made to reflect what the commission follows or to adhere to the bylaws. Mr. Laird asked when the CAC anticipated completion of their 2015 Annual Report. Ms. Bensley said it was hoped to be finalized at the May 2016 meeting. It was suggested the Commission had difficulties in the past with consistency and momentum. Ms. Bensley reported there had been some long term vacancies and possible inconsistencies may have been related to those vacancies. She noted the Commission seemed to be getting more momentum now that all vacancies are filled. Ms. Bensley stated that although recommendations from the Commission are forwarded to Council with regularity in a memo format; the Commission is not presenting to Council on a quarterly basis as is indicated on their by-laws. Council also garners support from the Commission on projects that Council may deem suitable for CAC input. The appeal process for decisions of the body was not applicable to this committee.

Stakeholder Viewpoints: Mr. Kramer reported he was satisfied with the current structure of the commission. It was functioning at a high level and was a friendly and professional atmosphere. There was cooperation from all the members.

Necessity/Scope of Duties: Should say “Duties are clear and important to the City.” There should also be clarification on how items are referred to or raised by the Commission (i.e. ideas come to the Commission or are brought up by the Commission). There are no similarities to other bodies.

The final overall recommendation of the Boards and Commissions Review Committee for the Conservation Advisory Commission:

- Amend the by-laws to reflect actual activities, or complete activities as indicated by bylaws.
- Amend Rules of Procedure to reflect actual election process.
- Pursue better outreach to get additional resources from community outside the formal committee.
- Update Section 2-152.
- Formalize secretary role for City staff.
- Implement formal onboarding/orientation process.

Ms. Bensley stated a final draft would be prepared for the Boards and Review Commission Review Committee.

5. PUBLIC COMMENT

There was no one present from the public.

(Secretary's Note: Ms. Sullivan departed at 8:35 p.m.)

6. INTRODUCTION OF NEW BUSINESS

A. CREATION OF NEW FAQ SHEET TO BE DISTRIBUTED TO COMMITTEES

Ms. Barnes said she thought it helpful to have the commission members ask questions about the form. Therefore, her FAQ form was created from their questions. Ms. Bensley stated prior to every review a cover letter, along with a copy of the amended blank form is sent to each of the committee members. This FAQ form would be added to the packet. There was consensus from the Committee members to do so.

B. DOWNTOWN NEWARK PARTNERSHIP REVIEW

Dr. Morgan reported the independent review of the DNP was delivered to the City of Newark and the DNP board. He reported there would be a meeting of the DNP board on May 12, 2016 at which time, there will a discussion of the report. It is his opinion the Boards and Commissions Review Committee should take part in the evaluation of the Downtown Newark Partnership in conjunction with the independent report with the consultant's findings. Ms. Bensley stated several members of Council were expecting the consultant's report will be presented to Council first. She believed the evaluation from the consultant and the Boards and Review Commission were two separate processes. After a lengthy discussion, it was agreed Ms. Bensley would follow-up with the DNP staff to determine where they are in the process of the consultant's evaluation and report back to the Committee at its 5/31 meeting. Following, the determination would be made how to proceed with Council.

Dr. Morgan stated the Planning Commission is up for review at the next Boards and Review Committee. He said he would attend the meeting. Ms. Barnes and Mr. Laird indicated they would attend as well.

Ms. Barnes stated she would attend the upcoming Downtown Newark Partnership Board meeting on May 12, 2016. Mr. Redding would check his schedule.

7. NEXT MEETING DATE

The next meeting is scheduled for Tuesday, May 31, 2016 at 7:00 p.m.

8. THE MEETING WAS ADJOURNED AT 9:04 P.M.

Renee K. Bensley
City Secretary

/tas



BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT

Name of Board/Commission/Committee: Conservation Advisory Committee

Representatives Present For Review: Jason Kramer, District 6

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Governing Authority	City Code and/or resolutions governing the body	Charter and responsibilities clearly spelled out in City Code Chapter 2.	Section 2-152 should be updated to remove the initial staggering of terms as that is no longer applicable.	
Qualifications	Are the required qualifications appropriate for the body?			Qualifications not specified but appears to have a good mix of talent and experience. No specified residency requirement for this Commission and non-residents may add value in an at-large role.
Orientation/ Training	Existing orientation and/or training for the body		No formal training provided. Buddy system used to orient/train new members.	Formal orientation/training should be provided. This should include FOIA training.
	Level of participation by members of the body in the above training	Members active. Means for replacing non-active members exists.		

Rules of Procedure	Selection of chair and other officers	Clearly defined and followed.	Remove the elected secretary position as that is fulfilled by staff.	
	Meeting procedures	Clearly defined.	Concern about the reference to internal minutes. If they exist, they should be available to the public.	
Activity Level	Amount of active participation by members	High participation.	Better community involvement could improve the reach of the Commission.	A Better Newark Award program could be better publicized and used as leverage for more public participation.
Reporting	Existing reporting requirements	Clearly defined.		
	Compliance with existing reporting requirements	Minutes are complete and up to date.	Not all reporting listed is being completed (ex: quarterly report to Council, date of annual report).	Commission should comply with existing reporting requirements or the bylaws should be changed to reflect what currently is occurring.
	Appeal process for decisions of the body			Not applicable.

Stakeholder Viewpoints	Views of members of the body being evaluated	Members happy with the functioning and workload of the group.		
	Views of department heads who work with the body	City liaisons happy with the interaction with the group.		
	Views of the public who interact with the body			None provided.
Necessity	Scope of duties	Clear and essential.		Clarification should be provided on how items are referred to the Commission for consideration.
	Similarity to other bodies	None.		

Activity Level

1. This committee meets Monthly Quarterly Annually As Needed Other (Explain) _____

2. In the past five years, this board or commission has met 50 times. Its last two meetings were on 3/8/16 and 4/18/16.

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 in your committee? 9

5. How many vacancies do you currently have in your committee? None

Board Membership

6. How long is a committee member's term on your committee? 1 year 2 years 3 years Other (Explain) _____

7. Is City residency a qualification for membership on your committee? Yes No

8. If City residency is not a requirement, does your committee have any members who are not City residents? Yes No

9. How long is the committee chair's term on your 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 Conservation Advisory Commission appears to be well-organized and functioning under current leadership. We see the following areas that need review or clarification.

1. AMEND THE BYLAWS TO REFLECT ACTUAL ACTIVITIES OR COMPLETE ACTIVITIES AS INDICATED IN THE BYLAWS

The Commission has several reporting items in its bylaws that it is either not completing (i.e. a quarterly report to Council at a Council meeting) or is not completing in the specified timeline (i.e. submitting its annual report to Council by March). The bylaws for the Commission should be amended to reflect what is actually occurring or the Commission should complete the activities as indicated in its bylaws.

2. AMEND BYLAWS TO REFLECT ACTUAL ELECTION PROCESS

The bylaws should be amended to remove references to electing the chair by email as the chair is elected at the Commission meeting in public and in compliance with FOIA.

3. PURSUE BETTER OUTREACH TO GET ADDITIONAL RESOURCES FROM THE COMMUNITY OUTSIDE THE FORMAL COMMITTEE

With the conservation-minded nature of the citizenry of Newark, the Commission is encouraged to expand its outreach to the community via better publicity of the A Better Newark Award, participation in City community events, etc.

4. UPDATE SECTION 2-152 OF THE CITY CODE TO REMOVE REFERENCES TO STAGGERED TERMS

As the Commission is already established, the references to shortened, staggered terms can be confusing and should be clarified as the Commission is already in existence.

5. UPDATE THE BYLAWS TO REMOVE THE ELECTED SECRETARY ROLE

As City staff fulfills the role of secretary for the Commission, it is unnecessary for the bylaws to provide for an elected secretary from the body.

6. IMPLEMENT FORMAL ONBOARDING/ORIENTATION PROCESS

New members should be provided with an overview of the committee as well as an orientation when they are appointed.

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**

May 17, 2016

TO: Boards & Commission Review Committee Members

FROM: Renee Bensley, City Secretary *RWB*

VIA: Carol Houck, City Manager *CH*
Maureen Feeney Roser, Planning & Development Director *Maureen*

CC: Mayor and Council

SUBJECT: Planning Commission Review Information and Staff Recommendation

Governing Authority

The Planning Commission is governed by Delaware State Code Title 22, Chapter 7 (attached), Article IX of the City Charter (attached) and City Code Chapter 2, Article VIII (attached). Additionally, the role of the Planning Commission is outlined in various sections of the City Code related to development, which are attached.

Qualifications

7 Del. C. §701 states that a planning commission can have “not less than 5 nor more than 9 members”. City Charter Section 901 provides that the planning commission consists of “seven (7) members, one from each of the six (6) districts and one (1) at-large.” City Code Section 2-78 provides for the same. Section 2-79 also states that “Members of the planning commission shall be qualified by reason of education, experience and familiarity with the city, and each member shall be a resident of the numbered district from which he was appointed.”

Orientation/Training

Training for members of the Planning Commission was provided in April 2016 by the University of Delaware Institute for Public Administration and legal counsel for the City. This training was videotaped so future members would have the opportunity to review it. Additionally, several members of the Planning Commission have taken advantage of opportunities provided to attend other IPA trainings on topics such as the Delaware Freedom of Information Act and ethics.

Rules of Procedure

The Planning Commission, per Chairman Alan Silverman, utilizes past practices as the basis for its meeting procedure. Mr. Silverman has requested in the past for the Commission to consider adopting separate administrative procedures, a draft of which he attached to his comments to this Committee. However, the Planning Commission decided that they were satisfied with current procedures and elected not to discuss them. The chair and secretary are elected by the Commission members per 7 Del. C. §701. Additionally, City Code Section 2-82 provides for the election of a chair, vice-chair and secretary. The secretary “need not be a member” per Section 2-82.

Activity Level

The Commission is required by City Code to meet at least once per month (Section 2-83) and typically does that unless a meeting is cancelled for lack of a quorum. With the large numbers of development plans filed with the City, the ongoing update of the City’s Comprehensive Plan, reviews of proposed Code changes related to development and special projects of interest to the community related to zoning, development and parking, the Commission consistently stays busy. The Commission has extensive responsibilities as outlined in Section 2-89 of the City Code (attached) and referenced in various places in Chapters 7 (Building), 14A (Floodplains), 27 (Subdivisions) and 32 (Zoning), all of which are attached. However, not all of the responsibilities referenced in other chapters are included in Section 2-89, such as their role in considering parking waivers.

There are seven members on the Commission with no vacancies. Members are appointed for three year terms. As mentioned previously, members are required to be residents of the City in the Code. There is no compensation for this committee.

Reporting

Currently, the Commission is required to keep minutes under the State of Delaware Freedom of Information Act and Section 2-83 of the City Code. Minutes are up-to-date and have been posted on the City website since 2006. Additionally, the Commission is required to submit an annual work program to Council by October 1 of each year for the upcoming fiscal year as outlined in Section 2-87 of the City Code. While this had not been done for many years, it was reinstated in 2015. Per 7 *Del. C.* §710, the Court of Chancery has jurisdiction over planning commissions. However, in practicality, as the Planning Commission is an advisory body to Council, any applicant can present an appeal to a negative Planning Commission recommendation during their Council public hearing for the project without having to file a suit in the Court of Chancery.

Stakeholder Viewpoints

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

Edgar Johnson is the District 3 representative on the Planning Commission. He noted that he felt no special qualifications should be required and that being a citizen of Newark was adequate. He felt that common sense and a history of the City was helpful. He felt that the orientation and training provided for the Commission was sufficient. He stated that the chair should be a Commission member who wants to serve in that capacity, but that the chair should not force his own agenda on the group. He was satisfied with the existing meeting procedures. Regarding participation, he noted that everyone chose their own level of participation, which made for a diverse group. He felt that the existing reporting requirements and the compliance with those reporting requirements were sufficient. He thought that input from the department heads was most helpful and should be continued as required. Mr. Johnson noted that the Commission works for the citizens, that they have adequate input and that the input is both valued and respected. He stated that change can create apprehension and fear and that voicing opposition to change/development is part of the process and should be respected. He expressed concern that applications going to the Board of Adjustment prior to Planning Commission was problematic to the process. He felt that if the positions of the two groups were adversarial, that the Planning Commission recommendation should be heard prior to the Board of Adjustment or City Council.

Jeremy Firestone is the District 4 representative on the Planning Commission. He felt that the existing orientation and training seemed appropriate. Regarding meeting procedures, he noted that it might be useful to have time limits on public comment on a given issue. He stated that there was a healthy amount of active participation by members. Regarding the appeal process for the body, he felt that the final decision of the Planning Commission should be given some weight and either require a supermajority to reverse or, if a majority of Council, it should relate to some standard of review. He noted that the members of the Commission had a good balance of skills and knowledge, but the Commission lacked diversity and was not reflective of the community. He complimented Maureen Feeney Roser, Planning and Development Director, as top notch, knowledgeable, helpful and having good instincts. He noted that there was a "pretty narrow slice" of the public that interacted with the Commission and that, other than applicants, they tended to be the same one or two people with the exception of neighbors who turn out for a particular project. He felt that the Commission was "mission critical" and noted that the Board of Adjustment has some similarities and, at times, constrains what the Planning Commission can do, which he noted as unfortunate.

The concerns of Messrs. Johnson and Firestone were submitted to Bruce Herron, City Solicitor, and Maureen Feeney Roser for review regarding the Board of Adjustment and Planning Commission roles in the development process. Mr. Herron and Ms. Feeney Roser agreed that the Planning Commission should not consider

a project that does not meet Code, so any variances that would be needed must either be considered by the Board of Adjustment prior to the Planning Commission's consideration of the development or the applicant must elect to apply for Site Plan Approval, which is discretionary approval. If the applicant elects to go to the Board of Adjustment and the variances are granted, the Planning Commission then considers the development. If the applicant elects to go to the Board of Adjustment and the variances are not granted, the Planning Commission does not review the project until it is either changed to meet Code or the applicant applies for Site Plan Approval. Mr. Herron further noted that the Board of Adjustment and the Planning Commission have different roles and decide different issues under the City Code and State Law. Once the Board of Adjustment grants a variance, neither the Planning Commission nor Council can overturn it. Any changes that would be desired regarding the relationship between the Planning Commission and Board of Adjustment would require an amendment to State law.

Alan Silverman is the District 5 representative on and chair of the Planning Commission. He expressed concern regarding the absence of bylaws, administrative procedures, rules or a compendium of past practices, which he felt "deprives the sitting commissioners and the public of continuity of actions, transparency and context." He submitted a suggested administrative procedures document, which is attached. He also felt a job description should be developed. He noted in his comments the various orientation and training offered to the Commission, however, he did not make any qualitative comments. He noted for the current term, there was no Commissioner willing to serve as vice-chair, so the Commission agreed that, in the absence of the chair, the most senior Commissioner would lead the meeting. He noted that the Planning Commission was the first opportunity the public had to comment on land use and comprehensive planning items or discussions which may be brought before City Council, or on proposals or recommendations by the City administration, such as the Hillside Road stormwater management proposal. He felt that the Planning Commission was unlike most in that it provides a legally required advisory opinion before Council could act on land use issues.

Frank McIntosh is the District 6 representative on the Planning Commission. He noted that the Commission members put much effort into each application that comes before them and felt that over time they have developed an expertise in these matters that Council was less likely to have. He wondered why the Commission's decision was only advisory. He felt the Commission should be the verdict and Council should be the appeal mechanism. He thought that the qualifications of the Commission members could be better. He used himself as an example in that he knew very little about the technical aspects of what was presented and had little desire to learn what he would need to know in order for it to make a difference. However, he listened carefully, was intelligent and asked good questions, so he thought he had been able to contribute effectively within the scope of his knowledge to the process. Mr. McIntosh felt the orientation and training was lacking, could be better and recommended that a person who is versed in training, in conjunction with the Planning Department and Council, should put together a "thorough and formal session before anyone serves." He noted that time on the commission should not be a deciding factor for leadership selection, only the ability and interest to lead. He felt there should be a limit on how long a person can talk and that they should not be allowed to speak on a subject unless they sign up. He also felt that public comments should only come from Newark citizens unless requested by the Commission. He felt the Commission was very necessary and important to the City and that it should have more clout. He felt more attention should be paid to small details including what commissioners can comment on or question about. He noted the role of a commissioner was specific in nature and "not about an individual's personal agenda."

Maureen Feeney Roser is the Planning and Development Director and acts as staff liaison for the Planning Commission to the City of Newark. She noted that the Planning Commission is essential to the land use process. It provides citizen review of all land use projects and ordinances pertaining to Chapters 27 and 32, reviews the CIP, the Comprehensive Development Plan and the official City Map and also conducts special projects of interest to the community regarding zoning, development and parking.

Ms. Feeney Roser pointed out that the current commission is dedicated and hardworking – they take their job very seriously and provide well thought out recommendations to City Council. They are always prepared and engaged. She stated that if she had a criticism, it would be a mild one to say that they sometimes get into the weeds

– like trying to require concessions from developers which are beyond the City’s ability to require and/or questioning professional findings – generally fire or building code compliance, but sometimes sewer capacity or lateral placements, etc. which have already been reviewed and approved by professional staff prior to their review – or wanting to rehash a Board of Adjustment ruling, but generally these issues are few and far between. There were also some issues on understanding their roles and responsibilities as commissioners – when to recuse, is it appropriate to speak for or against a project at a Council meeting, etc., but the Commission recently had a good training session that addressed these issues (which was videotaped for future commissioners) so she was hopeful that those concerns are behind them.

Additionally, Ms. Feeney Roser agreed with Mr. Johnson that the Commissioners did not need specific expertise in building or zoning codes, stormwater management, civil engineering or planning to adequately serve the community as there was professional staff to provide them the information that they need in those areas.

Necessity

The Committee is not similar to any other boards or commissions. It is necessary as it is required by State Code and provides an essential venue for citizen involvement in the City land use process.

Recommendations

Staff recommends that the Boards and Commissions Review Committee submit a positive review to Council regarding the work of the Planning Commission. However, the Committee should consider recommending updates to Section 2-89 of the City Code to create a centralized listing of all of the Planning Commission’s responsibilities. The Commission should also continue the improvements in training over the past year and ensure that training is continued for new members.

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

/rkb

Chapter 7 PLANNING COMMISSION

§ 701 Establishment; membership.

Any incorporated city or town may at any time establish a planning commission under this chapter. A planning commission established hereunder shall consist of not less than 5 nor more than 9 members. Such members shall in cities be appointed by the mayor, subject to confirmation by the city council, and in towns where there is not a mayor shall be elected by the town commissioners. When a planning commission is first established the members thereof shall be appointed or elected for terms of such length and shall be so arranged that the term of at least 1 member shall expire each year and their successor shall be appointed or elected for terms of 2 to 5 years each. Any member of the planning commission so established in a city may be removed for cause after a public hearing by the mayor with the approval of city council; members of the planning commission elected by town commissioners shall be removed by them for cause after a public hearing by a majority vote. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term in a city in the same manner as an original appointment and in a town by the town commissioners. Such a planning commission shall elect annually a chairperson and a secretary from among its own number and may employ experts, clerical and other assistants. It may appoint a custodian of its plan and records who may be the city engineer or town clerk.

(22 Del. C. 1953, § 701; 49 Del. Laws, c. 415, § 1; 59 Del. Laws, c. 463, § 1; 70 Del. Laws, c. 186, § 1.)

§ 702 Comprehensive development plan.

(a) A planning commission established by any incorporated municipality under this chapter shall prepare a comprehensive plan for the city or town or portions thereof as the commission deems appropriate. It is the purpose of this section to encourage the most appropriate uses of the physical and fiscal resources of the municipality and the coordination of municipal growth, development and infrastructure investment actions with those of other municipalities, counties and the State through a process of municipal comprehensive planning.

(b) Comprehensive plan means a document in text and maps, containing at a minimum, a municipal development strategy setting forth the jurisdiction's position on population and housing growth within the jurisdiction, expansion of its boundaries, development of adjacent areas, redevelopment potential, community character, and the general uses of land within the community, and critical community development and infrastructure issues. The comprehensive planning process shall demonstrate coordination with other municipalities, the county and the State during plan preparation. The comprehensive plan for municipalities of greater than 2,000 population shall also contain, as appropriate to the size and character of the jurisdiction, a description of the physical, demographic and economic conditions of the jurisdiction; as well as policies, statements, goals and planning components for public and private uses of land, transportation, economic development, affordable housing, community facilities, open spaces and recreation, protection of sensitive areas, community design, adequate water and wastewater systems, protection of historic and cultural resources, annexation and such other elements which in accordance with present and future needs, in the judgment of the municipality, best promotes the health, safety, prosperity and general public welfare of the jurisdiction's residents.

(c) The comprehensive plan shall be the basis for the development of zoning regulations as permitted pursuant to Chapter 3 of this title. Should a jurisdiction exercise its authority to establish municipal zoning regulations pursuant to Chapter 3 of this title, it shall, within 18 months of the adoption of a comprehensive development plan or revision thereof, amend its official zoning map to rezone all lands within the municipality in accordance with the uses of land provided for in the comprehensive development plan.

(d) After a comprehensive plan or portion thereof has been adopted by the municipality in accordance to this chapter, the comprehensive plan shall have the force of law and no development shall be permitted except as consistent with the plan.

(e) At least every 5 years a municipality shall review its adopted comprehensive plan to determine if its provisions are still relevant given changing conditions in the municipality or in the surrounding areas. The adopted comprehensive plan shall be revised, updated and amended as necessary, and readopted at least every 10 years; provided, however, the municipality may request an extension of such date by forwarding an official request to the Cabinet Committee at least 90 days prior to the deadline. The basis for the request shall be clearly indicated. The decision whether to grant a request an extension, and the duration of such extension, shall be at the discretion of the Cabinet Committee.

(f) The comprehensive plan or amendments or revisions thereto shall be submitted to the Office of State Planning Coordination for review at such time as the plan is made available for public review. The plan shall be reviewed in accordance with the comprehensive plan review and certification process detailed in § 9103 of Title 29.

(g) Municipalities shall provide to the Office of State Planning Coordination a report describing implementation of their comprehensive plan and identifying development issues, trends or conditions since the plan was last adopted or amended. The report shall be due annually no later than on each anniversary of the effective date of the most recently adopted comprehensive plan or plan update until January 1, 2012, and annually no later than July 1 each year thereafter starting on July 1, 2012.

(22 Del. C. 1953, § 702; 49 Del. Laws, c. 415, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 477, § 1; 73 Del. Laws, c. 186, §§ 7-9; 78 Del. Laws, c. 92, §§ 26-28.)

§ 703 General studies and reports.

The planning commission shall have full power and authority to make such investigations, maps and reports of the resources, possibilities and needs of the city or town as it deems desirable, providing the total expenditures of said commission shall not exceed the

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appropriation for its expenses. Upon completion of any such reports the planning commission shall submit the same to the city council or town commissioners with its recommendations. It shall report annually to the city council or town commissioners on the activities of the planning commission during the preceding year.

(22 Del. C. 1953, § 703; 49 Del. Laws, c. 415, § 1.)

§ 704 Adoption of official map.

Each incorporated city or town established under this title may, by action of its city council or town commissioners, adopt an official map prepared under the direction of such planning commission and showing the public ways and parks therein as theretofore laid out and established by law and the private ways then existing and used in common by more than 2 owners. Such official map is hereby declared to be established to conserve and promote the public health, safety and general welfare. Upon the adoption of such a map and upon any change therein or addition thereto made, as hereinafter provided, the city or town clerk shall forthwith file with the recorder of deeds in the respective counties a certificate of such action and a copy of such map as adopted or as changed or added to.

(22 Del. C. 1953, § 704; 49 Del. Laws, c. 415, § 1.)

§ 705 Change of or addition to official map.

An incorporated city or town so adopting an official map by action of its city council or town commissioners may, whenever and as often as it may deem it for the public interest, change or add to such map, so as to place thereon lines and notations showing existing or proposed locations not theretofore mapped of new or widened public ways and new or enlarged parks and proposed discontinuances in whole or in part of existing or mapped public ways and parks. No such change or addition shall become effective until after a public hearing in relation thereto before the city council or town commissioners, at which parties in interest shall have an opportunity to be heard. At least 10 days' notice of such a public hearing shall be given by advertisement in a newspaper of general circulation in the city or town or in the county in which the city or town is located. No such change or addition which has not been previously recommended by the planning commission established by this chapter shall be adopted until after a report thereon by said commission and no variance from a plan prepared or approved by said planning commission shall be made except by a 2/3 vote of all the members of a city council or by a 2/3 vote of the town commissioners; provided, that the last mentioned requirement shall be deemed to be waived in case the matter has been referred to said commission for a report and it has failed to report within 30 days thereafter.

(22 Del. C. 1953, § 705; 49 Del. Laws, c. 415, § 1.)

§ 706 Establishing or changing public ways and parks.

This chapter shall not abridge the powers of the city council or the town commissioners of any town or any other municipal officer in regard to public ways or parks in any manner except as provided herein, nor shall they authorize the taking of land or the laying out or construction of a way or a park or the alteration, relocation or discontinuance thereof, except in accordance with the laws governing the same; provided, that after an incorporated city and/or town has adopted an official map under this chapter no public way shall be laid out, altered, relocated or discontinued if such laying out, alteration, relocation or discontinuance is not in accordance with such official map as it then appears, unless the proposed laying out, alteration, relocation or discontinuance has been referred to the planning commission of such city or town established under this chapter and such planning commission has reported thereon or has allowed 45 days to elapse after such reference without submitting its report. After a city or town has adopted an official map under this chapter, no person shall open a way for public use, except as provided under the sections of this chapter, unless the location of such way is in accordance with the official map as it then appears or has been approved by the planning commission established under this chapter, and, in either case, the grading, surfacing and draining of such way have been approved by such commission or by the city or town engineer.

(22 Del. C. 1953, § 706; 49 Del. Laws, c. 415, § 1.)

§ 707 Public way or park to be shown on official map.

Upon final action by the proper authorities in laying out, altering or relocating a proper way or in discontinuing the whole or any part thereof or in establishing or enlarging a public park or closing thereof in whole or in part, the lines and notations showing such improvement, discontinuance or closing, as so established or effected, shall, without further action by the city council or town commissioners, be made a part of the official map, if any, of the incorporated city or town in which such public way or park is located.

(22 Del. C. 1953, § 707; 49 Del. Laws, c. 415, § 1.)

§ 708 Reference of certain matters to planning commission.

In a city or town having a planning commission established under this chapter, but which has not adopted an official map, no public way shall be laid out, altered, relocated or discontinued unless the proposed laying out, alteration, relocation or discontinuance has been referred to the planning commission of such city or town and such commission has reported thereon or has allowed 45 days to elapse after such reference without submitting its report. Any city or town having a planning commission established under this chapter may, by ordinance, bylaw or vote, provide for the reference of any other matter or class of matters to the planning commission before final action thereon with or without provision that final action shall not be taken until the planning commission has submitted its report or has had

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a reasonable fixed time to submit such report. Such planning commission shall have full power to make such investigations, maps and reports and recommendations in connection therewith, relating to any of the subjects referred to under this section, as it deems desirable.

(22 Del. C. 1953, § 708; 49 Del. Laws, c. 415, § 1.)

§ 709 Entry upon lands; making examinations and surveys.

Planning commissions established under this chapter, their officers and agents may, so far as they deem it necessary in carrying out this chapter, enter upon any lands and there make examinations and surveys and place and maintain monuments and marks.

(22 Del. C. 1953, § 709; 49 Del. Laws, c. 415, § 1.)

§ 710 Enforcement.

The Court of Chancery shall have jurisdiction on petition of the planning commission established hereunder to enforce this chapter and any ordinance or bylaws made thereunder and may restrain by injunction violations thereof.

(22 Del. C. 1953, § 710; 49 Del. Laws, c. 415, § 1.)

§ 711 Limitations on powers and liabilities.

This chapter shall not be construed to authorize the taking of land nor the authorization of a city or town to lay out or construct any way which may be indicated on any plan or plot until such way has been laid out as a public way in the manner prescribed by law, nor shall this chapter be construed to render a city or town liable for damages except as may be sustained under § 705 of this title by reason of changes in the official map.

(22 Del. C. 1953, § 711; 49 Del. Laws, c. 415, § 1.)

ARTICLE IX. - PLANNING

901 - - PLANNING COMMISSION.

The council shall appoint a planning commission consisting of seven (7) members, one from each of the six (6) districts and one (1) at large. Appointments shall be made at the first council meeting in September. All appointments shall be for terms of three (3) years. Appointments during the transition period shall be fixed by ordinance, but terms shall not exceed three (3) years. The compensation of the planning commission, if any, shall be determined by the council. They shall receive reimbursement for actual and necessary expenses incurred in traveling on official business approved by the council.

The powers, duties and scope of activities of the planning commission shall be determined by ordinance. The commission shall advise the council on zoning and land subdivision matters, on the comprehensive development plan, on the official map of the city, and on such other matters as shall be contained in said ordinance.

The commission shall have no authority to employ persons, disburse monies, make contracts, or to exercise administrative authority in any manner whatsoever, but all such employees engaged in planning matters, and all disbursements, contracts and administrative duties shall be under the direct supervision of the city manager.

902 - - COMPREHENSIVE DEVELOPMENT PLAN.

902.1 - Development. The council shall adopt, and may from time to time, modify a comprehensive development plan setting forth in graphic and textual form policies to govern the future physical development of the city. Such plan may cover the entire city and all of its functions and services or may consist of a combination of plans governing specific functions and services or specific geographic areas. Such comprehensive development plan shall show, among other things, existing and proposed public ways, streets, bridges, tunnels, viaducts, parks, parkways, playgrounds, sites for public buildings and structures, pierhead and bulkhead lines, waterways, routes of railroads and buses, locations of sewers, water mains, and other public utilities, and other appurtenances of such a plan, including certain private ways. Such plan shall be adopted and have the effect as set out herein.

902.2 - Adoption of the Development Plan. Upon receipt from the city manager of the proposed comprehensive plan, portions thereof, or proposed modifications thereto, the council shall refer such proposal to the planning commission, which shall, within a time specified by the council, report its recommendations thereon. After receipt of the recommendations of the planning commission, the council shall hold a public hearing on the proposed comprehensive plan or modification thereof, and may thereafter adopt it by ordinance with or without amendment.

The comprehensive development plan shall serve as a guide to all future council action concerning land use and development regulations, urban renewal programs, and expenditures for capital improvements.

902.3 - Implementation of the Development Plan. The council may, by ordinance, adopt land use and development regulations, including, but not limited to zoning and subdivision regulations. The council may, by ordinance, provide for redevelopment, rehabilitation, conservation and renewal programs for the alleviation or prevention of slums, obsolescence, blight or other conditions of deterioration, and the achievement of the most appropriate use of land.

Before acting on any proposed ordinance concerning land use and development regulations, urban renewal, or expenditures for capital improvements, where such ordinance refers to a matter covered by the comprehensive development plan or the official map, the council shall refer the proposal to the planning commission, which shall, within a time specified by the council and prior to the public hearing on the proposed ordinance, report its recommendations thereon. Upon adopting any such ordinance, the council shall make findings and report on the relationship between the ordinance and the comprehensive plan, and in the event that the ordinance does not accord with the comprehensive plan, the plan shall be deemed to be amended in accordance with such findings and report.

Editor's note— Ord. No. 03-8, enacted May 12, 2003, adopted a new Comprehensive Plan for the city, thereby "modifying and superseding the Plan previously adopted June 22, 1987, and the Adjacent Areas Land Use Plan, previously adopted March 12, 1979; said Plan to serve as a guide for the purposes specified in Section 902.2 of the Charter of the City of Newark, Delaware.

903 - - OFFICIAL MAP.

903.1 - Adoption. The council shall have the authority to adopt an official map showing the public ways and parks within the city as therefore laid out and established by law and the private ways then existing and used in common by more than two (2) owners. Such official map is hereby declared to be established to conserve and promote the public health, safety and general welfare. Upon the adoption of such a map, and upon any change therein or addition thereto made, as hereinafter provided, the city secretary shall forthwith file with the recorder of deeds in and for New Castle County a certificate of such action and a copy of such map as adopted or as changed or added to.

The council may, whenever and as often as it may deem it for the public interest, change or add to such map so as to place thereon lines and notations showing existing or proposed locations not theretofore mapped of new or widened public ways and new or enlarged parks and proposed discontinuances in whole or in part of existing or mapped public ways and parks. No such change or addition shall become effective until after a public hearing in relation thereto before the council, at which parties in interest shall have an opportunity to be heard. At least ten (10) days' notice of such a public hearing shall be given by advertisement in a newspaper of general circulation in the city.

After the council has adopted an official map as herein provided, no public way shall be laid out, altered, relocated or discontinued if such laying out, alteration, relocation or discontinuance is not in accordance with such official map as it then appears. After such adoption, no person shall open a way for public use, except as provided under this charter, unless the location of such way is in accordance with the official map as it then appears, and the grading, surfacing and draining of such way have been approved by the city manager.

Upon final action by the proper authorities in laying out, altering or relocating a proper way, or in the discontinuing the whole or any part thereof, or in establishing or enlarging a public park or closing thereof in whole or in part, the lines and notations showing such improvement, discontinuance or closing as so established or effected shall, without further action by the council, be made a part of the official map.

903.2 - Enforcement of Official Map. Officers and employees of the city may, so far as they deem it necessary in carrying out the provisions of the preceding section, enter upon any lands and there make examinations and surveys, and place and maintain monuments and marks.

The council may petition the court of chancery for the State of Delaware to enforce any of the provisions of the preceding two (2) sections, and any ordinance made thereunder, by restraining by injunction violations thereof.

904 - - LIMITATIONS ON PLANNING.

The provisions of the preceding three (3) sections shall not be construed to authorize the taking of land nor the authorization of the city to lay out or construct any way which may be indicated on any plan or plot until such way has been laid out as a public way in the manner prescribed by law; nor shall any of the provisions of the preceding three (3) sections be construed to render the city liable for damages except as may be sustained under section 903 hereof by reason of changes in the official map.

Sec. 2-44. - Creation of the Downtown Newark Partnership; purpose.

- (a) The Council of the City of Newark hereby establishes the Downtown Newark Partnership, hereinafter referred to as the Partnership.
- (b) The purpose of the Partnership shall be to advise the Council on matters requiring Council action concerning the economic improvement and enhancement of downtown Newark. Downtown Newark shall, in general, encompass all properties located between Library Avenue and South Main Street, and between the CSX Railroad right-of-way and Delaware Avenue, and also shall include all properties fronting on both sides of South Main Street to West Park Place. ⁽¹⁵⁾ The Partnership may also advise Council on matters requiring action concerning the economic improvement and enhancement of the city at large. "Economic improvement and enhancement" shall refer to the promotion of business, business recruitment and retention, commercial and residential incentive programs, promotion of public events, coordination and communication among entities involved in downtown projects, and activities including merchants, city, and university, downtown off-street parking, downtown transportation improvements, public relations, downtown beautification, and the management of the affairs of the Partnership. In addition, the Partnership shall periodically evaluate Partnership programs. The Partnership's purpose, however, shall not include those purposes and duties established in this chapter for the Planning Commission. The Partnership may carry out other duties as required by Council.

(Ord. No. 98-5, Amend. No. 1, 3-23-98; Ord. No. 07-16, Amend. No. 1, 5-29-07; Ord. No. 12-19, Amend. No. 1, 7-23-12)

Footnotes:

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Editor's note—This sentence, as amended by Ord. No. 12-19, Amend. No. 1, adopted July 23, 2012, shall become effective January 1, 2013. Until such time, the sentence reads as follows: "Downtown Newark shall, in general, encompass all properties located between Library Avenue and Elkton Road, and between the CSX Railroad right-of-way and Delaware Avenue, and also shall include all properties fronting on both sides of Elkton Road to Apple Road."

ARTICLE VIII. - PLANNING COMMISSION^[1]

Footnotes:

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Charter reference—Planning commission, see Art. IX, § 901.

State Law reference— Planning commission generally, 22 Del. Code Anno. §§ 701—711 (c.p.p. 1966)

Sec. 2-78. - Planning commission—Creation and composition; appointments from election districts.

Pursuant to Article 9, Section 901 of the city charter, there is hereby created a planning commission for the city consisting of seven members, one member to be appointed from each of the six districts into which the city has been divided for election purposes, and one member to be appointed on an at-large basis.

(Code 1959, Ch. 1, § 31)

Sec. 2-79. - Appointment and qualifications of members of planning commission.

Appointment to the planning commission, as required, shall be made by the city council at its first regular meeting in September and shall become effective on the following day. Members of the planning commission shall be qualified by reason of education, experience and familiarity with the city, and each member shall be a resident of the numbered district from which he was appointed.

(Code 1959, Ch. 1, § 31; Ord. No. 68-4, 2-19-68)

Sec. 2-80. - Term, composition and compensation of members of planning commission.

In the initial appointment of the planning commission, the member to be appointed from the Third District and the member at large shall be appointed for the term of three years; the members to be appointed from the Second and Fourth Districts shall be appointed for a term of two years, and the members to be appointed from the First, Fifth and Sixth Districts shall be appointed for a term of one year. Thereafter all terms shall be for three years. Upon expiration of a term of appointment, a member shall serve until his successor has been duly appointed and qualified. Members of the planning commission may be appointed to successive terms. Compensation of the members of the planning commission shall be determined by the city council and members shall receive reimbursement for actual and necessary expenses incurred while on official business as approved by the council.

(Code 1959, Ch. 1, § 31; Ord. No. 68-4, 2-19-68)

Sec. 2-81. - Vacancies on planning commission—Filled by council.

If a member of the planning commission shall cease to be a resident of the numbered district from which the member was appointed or if by virtue of the reapportionment of districts a member's residence is no longer within the numbered district from which the member was appointed, or if a member shall resign, be removed or die, the office of such member shall immediately become vacant and a person residing in the same numbered district shall be appointed by the city council to fill the remainder of the term.

(Code 1959, Ch. 1, § 31)

Sec. 2-82. - Election of officers; duties of secretary; appointment of committees by chairman.

At its first meeting after September 16 of each year, the planning commission shall elect a chairman and vice-chairman from its members. The chairman, with the approval of a majority of the members of the planning commission, shall recommend the appointment of a secretary who need not be a member. The secretary shall record all business and keep all records available and in order. The chairman may appoint committees at any time.

(Code 1959, Ch. 1, § 32; Ord. No. 68-4, 2-19-68)

Sec. 2-83. - Meetings of planning commission; records required at regular business meetings.

The planning commission shall hold regular business meetings at least once per month in the city hall, the day and time to be set annually at the first meeting of the planning commission after September 16. A record of all minutes and business shall be kept by the secretary and copies provided to members of the planning commission and council. The planning commission may also hold such informal conferences as it deems necessary and proper, provided that no business shall be done at such conferences and that they shall be for informational purposes only. No minutes need be kept at such conferences.

(Code 1959, Ch. 1, § 32; Ord. No. 68-4, 2-19-68)

Sec. 2-84. - Public hearings and business meetings of planning commission open to public; agenda published; executive sessions excepted.

- (a) All public hearings and business meetings of the planning commission, as required by ordinance, shall be open to the public. At such hearings and meetings, members of the public shall be permitted to speak for or against the matters being considered by the planning commission. At least 15 days before each hearing or business meeting of the planning commission, an agenda of the matters to be considered by the planning commission at such hearing or business meeting shall be published in a newspaper of general circulation within the city.
- (b) Nothing in this section shall be construed as preventing the planning commission from holding executive sessions as a part of its regular or business meetings, at which sessions the public shall be excluded, for purposes of discussion of matters before the planning commission for consideration. No minutes need be kept at such executive sessions.

(Code 1959, Ch. 1, § 33(d); Ord. No. 68-4, 2-19-68; Ord. No. 74-24, 6-17-74)

Sec. 2-85. - Staff services to planning commission.

The City of Newark Planning Department shall provide necessary staff services to the planning commission.

(Code 1959, Ch. 1, § 32; Ord. No. 68-4, 2-19-68)

Sec. 2-86. - Planning director to advise and seek advice from planning commission.

The planning director shall advise and seek advice from the planning commission in the exercise of his and its responsibilities.

(Code 1959, Ch. 1, § 32; Ord. No. 68-4, 2-19-68)

Sec. 2-87. - Work program of planning commission—Preparation and contents; council approval; funding; disbursement of monies.

On or before October 1 of each year, the planning commission shall prepare a program for the coming fiscal year, said program to include those items to be studied by the planning commission during the next 12 months, and the necessary planning commission expenses to cover the program. The program shall then be submitted to the city council, who shall review the program and recommend to the city manager those parts of the program deemed necessary for fulfillment of the duties of the planning commission. The city manager shall provide necessary funds for those parts of the program approved by the city council for inclusion in the budget. All contracts required by such approved portions of the planning commission program and the disbursement of monies arising therefrom shall be entered into and made solely by the city manager with the approval of the council.

(Code 1959, Ch. 1, § 32; Ord. No. 68-4, 2-19-68)

Sec. 2-88. - Planning commission authority to incur necessary expenses, change program emphasis, seek assistance.

The planning commission shall have the power with the concurrence of the city manager and the planning director, to incur necessary and proper expenses within the approved budget; change its emphasis on subjects to meet new or changing conditions throughout the year; and to seek assistance in the carrying out of its responsibilities.

(Code 1959, Ch. 1, § 32; Ord. No. 68-4, 2-19-68)

Sec. 2-89. - General powers and duties of the planning commission.^[1]

- (a) *Recommendations and advisements on planning subjects.* It shall be the duty of the planning commission, after considering the advice of the planning director, to advise the city council on zoning and land subdivision matters as provided in the respective ordinances; on the comprehensive development plan; on the official map of the city; on proposed ordinances concerning land use and land development regulations; on urban renewal; on expenditures for capital improvements, where such improvements refer to a matter covered by the comprehensive plan or the official map and on such other planning subjects as are referred to it by the city council or the city manager. All such recommendations and advisements by the planning commission shall be submitted to the council within a time specified by the council and prior to the public hearing by the council on the proposed ordinance, where applicable.
- (b) *Recommend legislation for civic development.* It shall be the duty of the planning commission to study and, in its discretion, to recommend, after considering the advice of the planning director, such legislation applicable to the city as will facilitate the prevention and relief of congestion of population and of traffic, the better control of fire hazard, the better distribution of areas and of buildings for the purposes of residence, manufacturing, trade and transportation, the preservation of the natural and historic features of the city, the beautifying thereof, the coordination of transportation facilities, the best method of financing and assessing the cost of public improvements, or any other matter relating to a coordinated civic development within the city.
- (c) *Recommend building or zoning amendments.* The planning commission, after considering the advice of the planning director, may recommend to the council amendments to the building code, and/or the zoning ordinance, regulating the height, location and ground areas of buildings and structures and the division of the city into districts or zones based upon the height, ground areas and use of all buildings and structures.
- (d)

Hearings on zoning district classification changes. It shall be the duty of the planning commission to conduct public hearings on all requests for changes in zoning district classifications and to report its recommendations to the council within a time specified by the council and prior to the public hearing conducted by the council on the matter.

- (e) *Applications for land subdivisions.* The planning commission shall study all applications for approval of land subdivision plans and shall, if practicable, conduct such conferences and hearings as are necessary to effectuate alterations in said applications so as to make the applications for approval of such land subdivision plans acceptable to the planning commission. The planning commission, after considering the advice of the planning director, may also make recommendations to the council regarding revisions of the subdivision regulations.
- (f) *Public hearings on annexation proposals and on the adjacent areas land use plan.*
- (1) It shall be the duty of the planning commission to conduct such public hearings as it may deem advisable on all proposals for annexation. The results of such hearings and the planning commission's recommendations as to the action to be taken on such proposed annexation shall be reported to the council.
 - (2) The planning commission shall hold public hearings on amendments to the annexation plan portion of the comprehensive development plan—the adjacent areas land use plan—as stipulated under the Delaware State Code, subsequent to the receipt of required comments from the Office of State Planning Coordination. Public hearings concerning amendments to the adjacent areas land use plan, if related to a subdivision plan, as specified in Chapter 27 of this Code, shall be held separately and prior to the consideration of such subdivision. The results of such public hearings and the planning commission's consideration and recommendations as to the action to be taken on such proposed amendments to the adjacent areas land use plan shall be reported to the council.
- (g) *Economic improvement program loans.* It shall be the duty of the planning commission to review and approve, disapprove, or approve with conditions, applications for low interest loans, funded through the U.S. Department of Housing and Urban Development's community block grant program, to preserve and rehabilitate the architectural quality and character of commercial properties. The commission shall consider the advice of the planning director, hold a public hearing, and may require drawings, site plans, and other documentary material in considering such applications. Disapproved applications may, within 30 days, be appealed to city council which may, in the form of a resolution, uphold the planning commission's decision, or approve the application, or approve it with conditions. Within 30 days, city council may also review planning commission approval, disapproval, and approval with conditions upon the recommendation of the planning director and/or the city manager.
- (h) *[Review of certificate of economic hardship applications.]* It shall be the duty of the planning commission to review and make recommendations to city council concerning the approval, disapproval, or approval with conditions of applications for certificates of economic hardship for historic buildings and review requests for listing or delisting of historic buildings and sites, pursuant to the requirements of section 7-16 of this code.

(Code 1959, Ch. 1, § 33; Ord. No. 68-4, 2-19-68; Ord. No. 86-23, Amend. No. 1, 5-12-86; Ord. No. 95-15, Amend. No. 1, 7-10-95; Ord. No. 06-07, Amend. No. 1, 2-27-06)

Footnotes:

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Charter reference—As to duties of planning commission regarding comprehensive development map of city, see Art. IX, Sec. 902.

Sec. 2-90. - Questions concerning public improvements to be referred to planning commission.

All questions concerning the location or acceptance of any public place, playground, parkway, street, avenue, highway, square, park or of the design, acceptance or location of any bridge, viaduct, street or park fixtures or structures, or any public building (including a public library) or works of art proposed to be erected either wholly or partly by public or private funds, and as related to the implementation of the comprehensive development plan, shall be referred to the planning commission by the city council. The planning commission shall, within a time specified by the council, and prior to the public hearing on the proposed ordinance, report its recommendations to the council on the matters under consideration.

(Code 1959, Ch. 1, § 34; Ord. No. 68-4, 2-19-68)

Sec. 2-151. - Creation of conservation advisory commission.

The council of the City of Newark hereby creates a conservation, hereafter called the commission, to advise in the development, management, and protection of its natural resources with appropriate consideration of Newark's human and economic resources. The commission shall concern itself with conservation in its broadest sense and may, among its activities:

- (a) Recommend to city council a program for ecologically suitable utilization of all wet lands, valley streams, and floodplains and other land areas, the condition and use of which will affect the environmental quality of life in the City of Newark;
- (b) Shall file an annual report;
- (c) Maintain informal liaison with the planning commission, the parks and recreation department, the city manager, and the city council, and cooperate with other public and private bodies organized for similar purposes;
- (d) In addition to the foregoing, carry out any other duties, tasks, or responsibilities, consistent with the objectives of this commission assigned to it by resolution of city council.

(Ord. No. 77-56, 11-14-77)

Sec. 7-19. - Historic buildings.

The 2012 International Building Code, 2012 International Existing Building Code, 2012 International Residential Code and subsequent Codes as issued by the ICC, are amended concerning special historic buildings and districts by adding the following to such regulations:

- (a) *Purpose and intent.* The purpose of this section is to provide for the designation of historic buildings, sites, and structures, to establish regulations concerning the maintenance of, alteration of, and demolition impact upon such structures; and to establish procedures and requirements for the city's review of such alteration, demolition and maintenance with the intent, among other things, to:
1. Safeguard and prevent further loss of the city's architectural heritage;
 2. Stabilize and protect the value of property;
 3. Foster civic pride; and
 4. Promote the use and preservation of historic buildings and sites for the benefit, education, welfare, and enjoyment of our city's residents, property owners, and visitors.
- (b) *Definitions.* For this section's purposes, the following words and phrases shall be interpreted or defined as follows:
1. *Alter* shall mean an act or process that changes the exterior architectural facade in such a way as to substantially reduce the historic significance of the structure as established in subsection (c)(2)(e).
 2. *Certificate of economic hardship* shall mean a certificate appended to a building or demolition permit issued by the city council approving and authorizing demolition of an historic building or site.
 3. *Demolition* shall mean the act or process that results in the removal of a building or structure from its site or the removal or destruction in entirety or of a significant part of the exterior architectural facade of such buildings. "A significant part" shall mean a substantial change in design and appearance that materially alters the exterior architectural facade of the structure. In arriving at a determination as to whether a particular demolition has involved or will involve a "significant part," the building/code official may, with the assistance of the planning and development department, perform a calculation to determine what percentage of the whole exterior 50%; such official may determine that such demolition has per se impacted upon a significant part of the facade.
 4. *Demolition by neglect* shall mean improper maintenance, or the lack of maintenance, which results in substantial and widespread deterioration of a building, structure, or site and which threatens the likelihood of its preservation or which threatens public safety, health, and welfare of the immediate community.
 5. *Exterior architectural facade* shall mean the architectural style, design, and general composition of the exterior of a structure that can be seen readily from a street, sidewalk, or way opened to the public.
 6. *Historic building or site* shall mean the buildings and/or sites in Newark listed in this section; and additional buildings and/or sites that may be designed historic and added to this section under the procedures established in subsection (c)(2).
 7. *Ordinary maintenance and repair* shall mean the work done on a building or site to prevent or minimize any deterioration, decay, or damage to a building, or any of its parts, or in order to restore a building or site prior to its deterioration, decay, or damage.
 8. *Preservation* shall mean the act or process of applying measures to sustain the existing form, integrity, and material of the building or structure and the existing form and vegetative cover or a site. It may include initial stabilization work, where necessary, as part of ordinary maintenance and repair.
 9. *Rehabilitation* shall mean the act or process of returning a property to a state of utility through a repair or alteration which makes possible an efficient use of the building, while preserving those portions or features of the property which are central to its historic, architectural, and cultural significance.
 10. *Restoration* shall mean the act or process of accurately recovering the form and details of a property and its settings as it appeared at a particular period of time in the past by means of the removal of later work or by the replacement of missing earlier work.
- (c) *Historic buildings and sites.*
1. Historic buildings and sites that come under this section's requirements are as follows:
 - (a) Newark School District building, 83 East Main Street.
 - (b) Memorial Hall, South College Avenue.
 - (c) St. Thomas Episcopal Church, 21 Elkton Road.
 - (d) Old First Presbyterian Church, West Main Street.
 - (e) St. John the Baptist Roman Catholic Church, 200 East Main Street.
 - (f) Blue Hen Farm, 505 Stamford Drive.
 - (g) Anderson House, 58 West Park Place.
 - (h) Bell Farm House, 401 Nottingham Road.
 - (i) Edward R. Wilson House, 521 South College Avenue.
 - (j) Belmont Hall, 203 West Main Street.
 - (k) Andrew Kerr House, 812 Elkton Road.
 - (l) Meteer Storehouse, 325 Paper Mill Road.
 - (m) Curtis Paper Mill Worker's Houses, Curtis Lane.
 - (n) Curtis Mansion, 189 West Main Street.
 - (o) Wright House, 47 Kent Way.
 - (p) John Evans House, West Main Street and North College Avenue.
 - (q) George Evans House, 4 West Main Street.
 - (r) Baily House, 166 West Main Street.
 - (s) 140 West Main Street.
 - (t) Bank of Newark Building, 102 East Main Street.
 - (u) Deer Park Hotel, 108 West Main Street.
 - (v) Exchange Building, 154-58 East Main Street.
 - (w) Newark Opera House, 95 East Main Street.
 - (x) Green Mansion, 94-96 East Main Street.
 - (y) Rhodes Pharmacy, 36 East Main Street - "Treats".
 - (z) Wilmington Trust Company, 82 East Main Street.
 - (aa) 34 Choate Street.
 - (bb) 28-34 and ½ Academy Street.
 - (cc) Newark Passenger Railroad Station, South College Avenue.
 - (dd) Chambers House, 196 South College Avenue.

- (ee) Aetna Hose Hook and Ladder Company, Fire Station #1, 26 Academy Street.
 - (ff) Aetna Hose Hook and Ladder Company, Fire Station #2, 31 Academy Street.
 - (gg) Delaware College Historic District, Northeast corner of East Main Street and North College including Old College, Recitation Hall and Annex, Mechanical Hall, Elliott Hall, Alumni Hall (Purnell Hall).
 - (hh) Newark Academy Building and Academy Square, Main Street.
 - (ii) Andrew Fisher House, 725 Art Lane.
 - (jj) Phillips Mill property, Nottingham Road.
2. Other buildings and sites may, from time to time, be added or deleted from subsection (c)(1) above by city council, following recommendations from the planning commission as specified below:
- a. The property owner, a member of city council or of the planning commission, or the planning and development director or his/her designee may nominate a building and/or property for listing as a historic building or site, or request that a building or site be removed from the listing.
 - b. The planning commission, upon receipt of a report from the planning and development director or his/his designee concerning of the status of the building and/or property, shall conduct a public hearing, pursuant to the requirements of this code, and make a recommendation to city council concerning the nomination or request for removal from the listing of a particular building or site. If applicable, the owner of the property shall be notified at least 15 days prior to the planning commission's public hearing. Depending upon the nature of the application, the planning and development director or his/her designee may require that applications for listing or removal from listing include information evaluating the request in terms of the criteria in subsections (c)(2) e or f of this section.
 - c. City council, upon receipt of a recommendation from the planning commission, shall consider the request for listing or the request for removal from the listing at a public hearing pursuant to the requirements of this code. The request for listing, or the request for the removal of the listing, shall be submitted to city council in the form of an ordinance.
 - d. If city council denies a request for listing or a request for removal from the listing, such a request shall not be eligible for reconsideration for two years after determination by city council, except upon a motion of three-fourths of the council.
 - e. Criteria for evaluation for listing as a historic property is as follows:
 - 1. The planning commission's consideration, and council's approval, of a nomination for listing as a historic building or site shall be based on the National Register of Historic Place's, "Criteria for Evaluation" which reads:
 "This quality of significance in American history, architecture, archeology, and culture is present in districts, sites, buildings, structures, and objects that posses integrity of location, design, setting materials, workmanship, felling and association, and:
 - i) That are associated with an event that has made a significant contribution to the broad patterns of our history; or,
 - ii) That are associated with the lives of persons significant in our past;
 - iii) Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, whether they represent a significant and distinguishable entity whose components may lack individual distinction; or,
 - iv) That has yielded or may be likely to yield, information important to prehistory.
 Ordinarily, cemeteries, birthplaces, or graves of historic figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature and properties that have achieved significance from the past 50 years shall not be considered eligible."
 - 2. The planning commission and city council may also consider in reviewing the above criteria, if a building or property is of particular local historic, cultural, and architectural significance, and is one of the few remaining Newark examples of a past architectural style or a structural representative of its era, whose demolition or deterioration would constitute an irreplaceable loss to the quality and character of the Newark community.
 - 3. Criteria for evaluation for removal from the listing of historic properties. The planning commission's consideration and city council's removal of historic building and/or site designation shall be based on the property no longer meeting the criteria for evaluation for listing as historic property in subsection (e) of this section, resulting from the alteration or damage to the structure to such an extent that the special and distinguishing architectural character that had lead to its original listing has been greatly diminished or destroyed.
- (d) *Scope.*
- 1. *Reviewable activities.* Except as otherwise specified in this section, all demolition permits and building permits calling for the destruction of the entirety or a significant part of an exterior architectural facade for historic buildings shall require a certificate of economic hardship viewed by the planning commission and approved by city council under procedures for review of such certificates established in this section.
 - 2. *Non reviewable activities.* The following activities shall not require a certificate of economic hardship:
 - (a) Ordinary maintenance or repair that does not require a building permit; such maintenance and repair requiring a building permit also shall not be reviewable if it does not involve a substantial change in design or appearance that materially alters the exterior architectural facade of the structure.
 - (b) Sign installation or repair.
 - (c) Installation of seasonal fixtures and elements including, but not limited to, air conditioning and holiday decorations.
 - (d) The application of paint or stain.
 - (e) Interior design, redesign, or rearrangement: including window displays, and related construction or reconstruction having no impact on exterior architectural facades as defined in this section.
 - (f) Installation of swimming pools.
 - (g) Other activities not requiring a building permit or demolition permit, including the installation or repair of storm windows and doors, gutters or downspouts, and similar items.
- (e) *Procedures for review of certificates of economic hardship.*
- 1. Applications for demolition or building permits requiring certificate of economic hardship shall be forwarded by the code enforcement division to the planning and development department.
 - 2. Applicants for certificates of economic hardship may wish to submit, based on the advice of the planning and development director, 15 copies of all or some of the following:
 - a. A cover letter, statement, or report request the certificate, including the applicant's evaluation of the criteria to be reviewed by the planning commission as stipulated in this section.
 - b. An affidavit of ownership which shows the book and page number for each conveyance to the present owner as recorded in the New Castle County Recorder of Deeds offices.
 - c. For building permits impacting exterior architectural facades, as specified in this section, plans and specifications showing the impact of the proposed work on the exterior architectural appearance of the building.
 - d. Current color photographs of the property showing the present condition, accurately representing the existing materials and textures. All photographs shall be labeled to indicate direction of view.

- e. Site plans showing the existing building and, if applicable, the proposed addition, and adjacent and nearby properties.
 - f. Color elevations, drawn to scale, of all sides of the building visible from streets, sidewalks, or way used by the public, including from the Newark Parking Authority parking lots. Such elevations shall include complete existing and proposed exterior architectural details, exterior equipment, and all appurtenances located on roofs, walls, and the ground. All existing and proposed finishes of materials shall be identified and noted on the elevation.
 - g. Other information that may be considered appropriate by the planning director or planning commission.
3. Applicants for certificates of economic hardship may wish to submit the information in subsection (e)(2) above and may also wish to submit, based on the advice of the planning and development director or his/her designee, to submit the following:
- a. Information from an architect, developer, or real estate professional with experience in preservation or rehabilitation of historic properties evaluating attempts to preserve or rehabilitate the property based on the criteria in this section for a certificate of economic hardship; or an economic evaluation of a proposed attempt, showing that the existing or changed use in a preserved, rehabilitated, or restored structure is incapable of earning a reasonable return.
 - b. A report, sealed by a Delaware licensed structural engineer concerning the soundness and condition of any buildings on the property and their suitability for preservation, reconstruction, rehabilitation, or restored structure is incapable of earning a reasonable return.
 - c. The amount paid for the property by the applicant and the date of purchase.
 - d. If the property is income producing, the annual gross income from the property for two years prior to application, itemized operation and maintenance expenses for those years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period for those years.
 - e. Remaining balance in any mortgage or financing secured by the property and annual debt service, if any, for the previous two years.
 - f. All appraisals obtained within the previous two years prior to application, by the owner or applicant in connection with the purchase, financing, or ownership of the property.
 - g. Any listing of the property for sale or rent, price asked, and offers received, if any within the previous two years of application.
 - h. Form of ownership or operation of the property, whether sole proprietorship, for-profit, or not-for-profit Corporation, limited partnership, joint venture, or other entity.
 - i. Any other information, including Federal income tax returns for the two years immediately preceding the application of the owner, applicant, or principal investors in the property that may help to determine whether the property may yield a reasonable return.
4. The planning and development department shall distribute the submitted plans and information to the city manager, building/code official and other applicable departments. The departments shall provide written comments to the planning and development department concerning the request for a certificate of economic hardship on a schedule set by the planning and development department.
5. The planning and development department shall prepare a written report containing recommendations concerning the application for a certificate of economic hardship. The planning and development department may consult with the State of Delaware, Division of Historical and Cultural Affairs, concerning the application, and may refer to the U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.
6. The planning commission shall hold a public hearing to review the application for a certificate of economic hardship. Prior to taking action on the application for a certificate of economic hardship, the members of the commission present shall affirm that they have inspected the exterior of the building or site. The commission shall recommend to the city council the approval, approval with conditions, or disapproval of the application.
7. Upon receipt of the planning commission recommendation and planning and development department report, city council shall consider the application for the certificate of economic hardship at a public hearing. Council shall thereafter approve, approve with conditions, or disapprove the application.
- (f)–(i) *[Reserved.]*
- (j) *Enforcement.* Enforcement of this section shall be the responsibility of the building/code official.
- (k) *Penalties and remedies.* The following penalties and remedies shall be applicable to violations of this section:
- 1) Failure to perform any action required by this section or performance of any section action which is prohibited by this section shall constitute a violation. Every day in which a violation exists shall constitute a separate violation and a separate offense. Any person violating any of the provisions of this section shall be subject to a fine of not less than \$250.00, nor more than \$1,000.00, for each offense. In addition, if the owner of any building, structure, or site listed in Subsection (c)(1) willfully alters or demolishes all or a significant part of such structure without obtaining a certificate of hardship as required in this section, then no permit to construct a new structure or portion of a structure shall be issued for the property upon which the building, structure, or site stood for a period of three years from the date of demolition or alteration.
 - 2) Notwithstanding the provisions of Subsection (k)(1) of this section, in the event any building, structure, or site is altered or demolished, or is to be altered or demolished, in violation of this section, the city may institute appropriate proceedings in any court of competent jurisdiction to prevent or remedy such unlawful alteration or demolition.
- (l) *Historic Preservation Technical Advisory Committee.* A committee shall be established to advise and assist in the evaluation of properties for inclusion in the list of historic buildings and sites, in the review of building permit fee waivers, in the review of requests for certificate of economic hardship, and in the review of tax credits for the preservation, restoration, and/or rehabilitation of historic properties as established in this code.
- The committee shall consist of one representative each from the following: the University of Delaware's Center for Historic Architecture and Engineering, a licensed professional architect member of the New Castle County Historic Review Board, and a registered design professional member of the City of Newark Board of Building Appeals. The committee shall be convened by the code enforcement division director when necessary to advise and assist as described in this subsection.

(Ord. No. 12-25, Amend. No. 1, 9-24-12)

Sec. 14A-36. - Amendment procedure.

- (a) The council may, from time to time, on its own motion, or on the motion of the planning commission amend, supplement, change, modify, or repeal the floodplain regulations and restrictions in a manner and in accordance with the procedure hereinafter provided.
- (b) All proposals for amending, supplementing, changing, modifying, or repealing the floodplain regulations or restrictions, before being acted upon by the council, except those originating on motion of the planning commission, shall be referred to the planning commission for consideration and recommendation. The planning commission shall study all such proposals, whether originating with the planning commission or otherwise, conduct a public hearing thereon after having given notice thereof required for the agenda of the planning commission. The planning commission shall report its findings and recommendations to the council.
- (c) The planning commission is hereby granted the authority to require, as a condition to consideration of any proposal, other than one originating with the council, that a petition be submitted accompanied by such maps, charts, sketches, and other information as the planning commission deems necessary for the proper and effective consideration of such proposal, and to refuse to consider any proposal not complying with such requirement.
- (d) No proposed amendment, change modification, or repeal of any floodplain regulation or restriction, shall become effective until after a public hearing in relation thereto shall have been held by the council, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the city.
- (e) If, after due consideration, a proposal is denied, such proposal shall not be eligible for reconsideration for a period of two years after final action by the council, except upon the favorable vote of three-fourths of planning commission or council.

(Ord. No. 15-02, Amend. No. 7, 1-12-15)

Sec. 27-2. - Authority.

By authority of the City Charter of the City of Newark, Delaware, Article IV, the council of the City of Newark, Delaware, hereafter referred to as the council, adopts the following regulations governing the subdivision of land within the corporate limits of Newark, Delaware, and hereby exercises its authority to review, approve, and disapprove plans for the subdivision of land within the corporate limits of Newark, Delaware. By the authority of the Code of the City of Newark, Delaware, [Section 2-89](#), the planning commission shall exercise its authority to review plans for the subdivision of land and make recommendations for approval or disapproval. The City of Newark shall be exempted from these regulations.

(Ord. No. 78-32, 9-11-78)

Sec. 27-8. - Resubdivision and future resubdivision.

- (a) *Resubdivision*. Any change in the map of an approved or recorded subdivision plan (including plans approved prior to the adoption of this chapter) which affects street layout, areas dedicated for public use, or any lot line, shall be reviewed by the same procedure, rules, and regulations as for a subdivision.
- (b) *Future resubdivision*. Whenever a parcel of land is subdivided and the subdivision plan shows one or more lots containing more than one acre of land and there are indications that such lots will eventually be resubdivided into small building sites, the planning commission or city council may require that such parcel of land allow for the future opening of streets and the ultimate extension of adjacent streets. Easements providing for the future opening and extension of such streets may be made a requirement of the plan.

(Ord. No. 78-32, 9-11-78)

Sec. 27-9. - Vacation of approved subdivision plan.

- (a) The owner of an approved subdivision or any part of an approved subdivision may vacate said plan or any portion of said plan by submitting to the planning department a written request stating:
- (1) The reasons for vacation, and
 - (2) Metes and bounds description of said property to be vacate. The written request must be accompanied by a copy of the approved and recorded plan.
- (b) The request shall be acted upon by city council upon recommendation of the subdivision advisory committee and planning commission. The city council may reject any request it deems not to be in the best interest of the public.
- (c) When the owners of several adjacent parcels wish to vacate recorded plans, a joint written document may be submitted to the planning department.

(Ord. No. 78-32, 9-11-78)

Sec. 27-10. - Schedule of fees.

- (a) Fees for subdivision application, review, and recordation shall be paid at the time of application as follows:
- (1) Administrative subdivision\$50.00
 - a. Recordation fee100.00
 - (2) Minor subdivision
 - a. Application fee200.00
 - b. Review fee:
 1. Per dwelling unit20.00
 2. For all commercial and industrial development:
 - (i) Per acre or fraction thereof for the first 100 acres50.00
 - (ii) Per acre for the remainder of the tract25.00
 - c. Recordation fee175.00
 - (3) Major subdivision
 - a. Application fee1,000.00
 - b. Review fee:
 1. Per dwelling unit20.00
 2. For all commercial and industrial development:
 - (i) Per acre or fraction thereof for the first 100 acres50.00
 - (ii) Per acre for the remainder of the tract25.00
 - c. Recordation fee750.00
 - (4) Stormwater management facility maintenance fee for city-maintained facilities
 - a. Per household for dry retention basin550.00
 - b. Per household for infiltration/underground retention facility900.00
 - c. Per household for wet detention basin1,100.00
- (b) When a subdivision is not approved by city council or if the applicant withdraws his application prior to consideration by either the planning commission or city council, the recordation fees collected at the time of application shall be refunded to the applicant.
- (c) Sediment and stormwater permit. See Appendix III, Drainage Code, Section I(f).
- (Ord. No. 78-32, 9-11-78; Ord. No. 82-7, 2-22-82; Ord. No. 88-10, Amend. Nos. 1, 2, 3, 4, 5, 4-11-88; Ord. No. 93-5, Amend. Nos. 1—3, 4-12-93; Ord. No. 99-16, Amend. Nos. 1, 2, 5-24-99; Ord. No. 06-10, Amend. No. 1, 4-24-06; Ord. No. 06-21, Amend. No. 1, 8-14-06)

Sec. 27-13. - Amendments.

Upon recommendation of the planning commission, the city council may amend these subdivision regulations by ordinance. Public hearings on all proposed amendments shall be held by the planning commission and council after having been advertised in a newspaper of local circulation at least 15 days prior to the meeting date.

(Ord. No. 78-32, 9-11-78)

Sec. 27-19. - Submission procedures and approval process—Administrative subdivision.

The adjustment of property lines or straightening of boundaries which does not create additional building lots shall be approved and reviewed as administrative subdivision under the procedures and regulations below.

(a) *Application and submission procedures.*

- (1) The planning department will provide application forms and information to applicants when requested regarding subdivision procedures. An applicant for subdivision approval must provide the following:
 - a. A completed application for subdivision approval.
 - b. The name and address of the owner or owners of land to be subdivided, the name and address of the subdivider if other than the owner, and the name of the land surveyor, if any.
 - c. The names and addresses of all adjacent property owners.
 - d. A reproducible drawing and ten prints drawn to a convenient scale of one inch equals 50 feet, including the following information:
 1. The location of all roadways within 100 feet of the property to be subdivided.
 2. The location of all buildings and accessory buildings on the property being subdivided.

(b) *Review procedure.*

- (1) The planning director shall, within ten work days, review the proposed subdivision. Preliminary approval of the administrative subdivision shall be made by the planning director if the proposed subdivision will not be detrimental to the public health, safety, or general welfare of the city, or appear injurious to other property. If the planning director disapproves the administrative subdivision, the applicant may request a planning commission and city council review of the proposal for final determination.
- (2) Within three work days of preliminary approval of the administrative subdivision, the planning director shall send notices of the proposed subdivision to all adjacent property owners and members of planning commission and city council. The applicant may fulfill the requirement of notification by supplying the planning department with written statements from adjacent property owners stating that they have reviewed the proposed subdivision and have no objections. If such statements are not provided by the applicant, the planning department shall proceed with notification. Notices to adjacent property owners shall explain that they have an opportunity to review property owners and members of planning commission and city council. The applicant may fulfill the requirement of notification by supplying the planning department with written statements from adjacent property owners stating that they have reviewed the proposed subdivision and have no objections. If such statements are not provided by the applicant, the planning department shall proceed with notification. Notices to adjacent property owners shall explain that they have an opportunity to review the proposed subdivision in the City of Newark planning department, to object in writing to the proposal, and to request a public hearing before the planning commission and city council to review the proposal. Notices shall, in addition, be sent to adjacent property owners if the planning director disapproves the subdivision and the applicant requests a planning commission and city council review.
- (3) If no objections are forthcoming from adjacent property owners, within ten days, the planning director shall, with the concurrence of the city manager, issue final approval of the administrative subdivision.
- (4) After the approval of an administrative subdivision, the city secretary shall certify such approval on the subdivision plot plan which shows distinctly the part to be recorded. The planning director shall certify on the approved subdivision plot plan that said plans and related plans comply with all requirements of the subdivision regulations, and deviations, if any, from the subdivision regulations have been noted and qualified. Three copies of the plan shall be signed and provided to the city secretary's office for recordation and certification. A copy of the approved plan shall be forwarded to the applicant.
- (5) If the applicant fails to secure approval within 24 months from the date of submittal, the applicant must reapply for subdivision approval beginning with the process described in Subsection 27-19(a)(1). The director of planning and development may grant an extension not to exceed six months for circumstances beyond the applicant's control.

(Ord. No. 78-32, 9-11-78; Ord. No. 82-7, 2-22-82; Ord. No. 13-17, Amend. No. 1, 7-22-13)

Sec. 27-20. - Same—Minor subdivision.

All division of land into five or less residential lots upon which building can occur, or the adjustment of property lines to permit the expansion of an existing structure, shall be approved and reviewed as a minor subdivision under the procedures and regulations below. Subdivisions of five lots or less which involve any new street or road shall be reviewed and approved as major subdivisions.

All development of land into commercial, business, or industrial lots for more than two uses with a building or buildings less than 20,000 square feet of total gross floor area on undeveloped and not previously approved subdivision parcels and where no new streets or other public improvements are involved shall be reviewed and approved as minor subdivisions.

(a) *Application submission procedures.*

- (1) The planning department will provide application forms and will provide information to applicants when requested regarding subdivision procedures. The applicant for subdivision approval must provide the following:
 - a. A completed application of subdivision approval.
 - b. An affidavit of ownership which shows the book and page number for each conveyance to the present owner as recorded in the county recorder of deed's offices.
 - c. A reproducible original and 25 copies of a subdivision plan drawn to a convenient scale (one inch=20 feet through one inch=100 feet) and showing date, scale, and north point. Each sheet shall be numbered to show its relation to the total number of sheets. The subdivision plan shall include the following information:
 1. A title consisting of the name of the fee simple or equitable owner(s) of the land to be subdivided, the name(s) and address(es) of the subdivider(s), if different than the owner(s) name, and address of the Delaware registered engineer, land surveyor or architect. The subdivision plan shall bear the certificate, signature, and seal of a Delaware registered engineer, land surveyor or architect.
 2. A location map drawn to the scale of one inch equals 800 feet indicating the location of the property and its relationship to all streets and other property within 1,000 feet of the applicant's property.
 3. The courses and distances of the boundary line survey on all properties being subdivided.
 4. The proposed name of the subdivision which shall not duplicate the name of any other subdivision in the city.
 5. The layout and dimensions of all proposed lots which will be created by the subdivision.
 6. The names of all property owners of unsubdivided property within 200 feet of the extreme limits of the subdivision as their names appear in the tax records. In the event that lots adjoin the land to be subdivided, the subdivision name and lot number of the adjoining lot shall be shown. The zoning classification governing the tract and adjoining properties shall be shown.
 7. The location of all existing and proposed water courses and natural drainage flows, the location and size of storm sewers and other related storm water facilities which may influence the design of the subdivision, and type and design of storm water management structures.
 8. The location of the special flood hazard area (SFHA), formerly known as the open floodway district (OFD), if applicable.
 9. The location, widths, and names of all existing roads upon which the proposed subdivision will front and within 100 feet of the proposed subdivision.
 10. Contours at intervals of five feet; areas with slopes between 15 percent and 25 percent and greater than 25 percent shall be identified.
 11. Location of proposed landscape screening, if applicable.
 12. The general location of mature tree stands, if any.
 13. The location and size of existing and proposed water lines which serve the proposed subdivision.
 14. The location and size of existing and proposed sanitary sewers which serve the proposed subdivision.
 15. Location of all proposed sidewalks.
 16. The dimensions and area of all property proposed to be dedicated or reserved for public open space use, or to be dedicated for use of all property owners in the subdivision, and the location, dimensions, and purpose of any proposed easements, if applicable.
 17. Proposed parking areas and number of parking spaces, where applicable.
 18. The approximate location of proposed buildings and the amount of land to be used for buildings expressed as a percentage of total land area, if applicable. The location of existing buildings and a description of their present or intended use.
 19. Wetlands report may be required in accordance with Appendix III.
 20. Show all United States Geological Survey (USGS) identified blue line streams.
 21. For business zoned properties (BL, BLR, BN, BB, and BC) fronting on Main Street and located between Elkton Road/New London Road and Capitol Trail/Library Avenue, all new proposed construction shall include building elevations and be subject to the review criteria and requirements set forth in Appendix XIII of this chapter.

(b) *Review and approval process.*

- (1) 25 copies and a reproducible original of the subdivision plan shall be submitted by the applicant to the planning director. The planning director shall, within three work days, distribute subdivision plan copies to the city manager's office, finance, water and waste water, public works, building, and legislative departments. Within 15 work days of the receipt of the subdivision plan, the departments shall review, prepare, and return written comments to the planning department.
- (2) Upon receipt of departmental comments, the director shall prepare a written report to the applicant indicating those suggestions, concerns, or problems pointed out by the reviewing departments. This report shall be completed within five work days and forwarded to the applicant. The applicant may then revise or amend the subdivision plan as per departmental suggestions.
- (3) If no departmental concerns are raised, or if departmental concerns are eliminated through applicant revisions in the subdivision plan, the planning director, with the approval of the city manager, shall within five work days prepare a written report containing the recommendations concerning the subdivision plan to the planning commission and city council.
- (4) The planning commission shall review the subdivision plan and within 40 days issue a recommendation to city council concerning the subdivision plan. If the planning commission does not review the subdivision plan within 24 months from the date of submittal, the applicant must reapply for subdivision approval beginning with the process described in Subsection 27-20(b)(1). The director of planning and development may grant an extension not to exceed six months for circumstances beyond the applicant's control. If approved, the city solicitor should prepare a subdivision agreement to be signed by the applicant and the city manager upon approval by city council.
- (5) Upon receipt of the planning commission report, city council shall review the subdivision plan for final determination. The subdivision plan and agreement shall be submitted to city council with a resolution of approval. The resolution, plan, and agreement shall be approved, approved with conditions, or disapproved by city council.

Approval with conditions may include recommendations by the planning commission and stipulations by city council that through the building permit process the subdivision shall conform to all or portions of the design criteria set forth in Appendix XIV of this chapter.

(6)

After approval, or approval with conditions, the city secretary shall certify such approval on the subdivision plot plan which shows distinctly the part to be recorded. The planning director shall certify on the approved subdivision plot plan that said plans and related plans comply with all requirements of the subdivision regulations, and deviations, if any, from the subdivision regulations have been noted and qualified. Five copies of the plan shall be signed and provided to the city secretary's office for recordation and certification. A copy of the approved plan shall be forwarded to the applicant.

- a. Following approval of the subdivision plan by city council, the subdivider or developer shall prepare the necessary construction improvements plans for approval by the city in accordance with Section 27-22 of these regulations. Approval of the subdivision plan by council shall indicate the city's approval of the construction improvements plan.
- b. If, however, the subdivision plan is not completed in full within five years from the date of approval by city council, the planning commission may require the applicant to reapply for subdivision approval beginning with Subsection (b) above. In cases where no building construction has begun within five years from the date of approval by city council, the approved subdivision shall expire and the applicant must reapply for subdivision approval beginning with Subsection (b) above.

- (7) Within 15 work days after council approval, all agreements, easements, and deeds of land concerning the subdivision plan shall be executed and signed by the applicant and city manager.

- a. The agreements shall constitute a covenant running with the land and be binding upon the parties to the agreements and their successors and assigns.

(Ord. No. 78-32, 9-11-78; Ord. No. 82-7, 2-22-82; Ord. No. 91-30, Amend. No. 1, 9-23-91; Ord. No. 93-10, Amend. No. 3, 6-14-93; Ord. No. 98-4, Amend. No. 1, 3-23-98; Ord. No. 00-13, Amend. No. 5, 5-22-00; Ord. No. 06-26, Amend. No. 1, 9-25-06; Ord. No. 10-02, Amend. No. 2, 1-11-10; Ord. No. 10-03, Amend. No. 2, 1-11-10; Ord. No. 13-17, Amend. Nos. 2, 3, 7-22-13; Ord. No. 16-05, Amend. No. 5, 1-25-16)

Sec. 27-21. - Same—Major subdivision.

(a) *Sketch plan.*

(1) *Submission procedures.*

- a. The sketch plan of a proposed subdivision shall be clearly and legibly drawn to the following scale:
 - One to 20 acres—one inch=50 feet
 - 21 to 100 acres—one inch=100 feet
 - Above 100 acres—one inch=200 feet

- b. A reproducible original and 25 prints shall be submitted to the planning director.

(2) *Required information.* The sketch plan shall contain at least the following data, legibly drawn to scale, but not necessarily showing precise dimensions:

- a. Approximate tract boundaries and existing and proposed zoning districts accurately labeled.
- b. The phrase "sketch plan."
- c. Approximate total area in acres.
- d. North point, scale, and date, including the month, day and year that the original drawing was completed, and the month, day and year that the original drawing was revised, for each revision.
- e. Significant planimetric, topographic, and physical features.
- f. Proposed general street and lot layout, and proposed utility and drainage easements.
- g. Name and address of owner and/or subdivider, and registered civil engineer, professional land surveyor or land planner, if any, responsible for the preparation of the sketch plan.
- h. A general location map.
- i. Existing streets, utility, and drainage easements within the tract and adjacent to it if they have an effect on the development of the proposed subdivision (the information regarding the area adjacent to the proposed subdivision may be obtained from available existing records or other documents or from observation in the field if the adjacent property owner refuses permission to enter onto his land).
- j. The approximate location of all proposed structures, number of businesses, or firms.
- k. The approximate location, size, and capacity of all proposed off-street parking spaces.
- l. The estimated number of dwelling units.

(3) *Review procedures.*

- a. The planning director shall, within three work days, distribute sketch plan copies to the public works, electrical, water and waste water, parks and recreation, and building departments and the city manager, and shall advertise within seven work days in a newspaper of general circulation in the city, that sketch plans have been received and are available for public inspection. Within five work days of the receipt of the sketch plan, the various departments will review and comment to planning director regarding the proposed sketch plan. Concerns, suggestions, requests for additional information should be included in the departmental reviews.
- b. If any department determines that a traffic impact study will be necessary for future consideration, the request for a traffic impact study should be submitted with the departmental comments on the sketch plan. The traffic impact study will comply with the provisions of paragraph (b)(1)a.6. below. If a department determines that a market analysis will be necessary for future consideration, the request for a market analysis study should be submitted in the departmental comments on the sketch plan.
- c. Upon receipt of departmental comments, the planning director shall prepare a written report to the applicant indicating those suggestions, concerns, or problems pointed out by the reviewing departments. This report shall be completed and available to the applicant within 12 work days following the submission of the sketch plan by the developer.

(b) *Major subdivision application.*

(1) *Application and submission procedures.*

- a. The planning department will provide application forms and will provide information to applicant when requested regarding subdivision procedures. The applicant for subdivision approval must provide the following:
 1. A completed application for subdivision approval.
 2. An affidavit of ownership which shows the book and page number of each conveyance to the present owner as recorded in the county recorder of deed's offices.
 3. 25 paper copies of a subdivision plan drawn to a convenient scale (1 inch = 20 feet through 1 inch = 100 feet) and showing date, scale and north point. Each sheet shall be numbered to show its relationship to the total number of sheets. In addition, one electronic copy of the subdivision plan shall be submitted on a compact disk (CD) in a portable document format (PDF), or other electronic format approved by the planning department. All electronic submittals shall be included in one PDF document. The paper copy, however, shall continue to be considered the official submittal. The subdivision plan shall include the following information:
 - (i) A title consisting of the name of the fee simple or equitable owner(s) of the land to be subdivided, the name(s) and address(es) of the subdivider(s), if different than the owner(s) name, and address of the Delaware registered engineer, land surveyor, or architect. The subdivision plan shall bear the certificate, signature and seal of a Delaware registered engineer, land surveyor, or architect.
 - (ii) A location map drawn to the scale of one inch equals 800 feet indicating the location of the property and its relationship to all streets and other property within 1,000 feet of the applicant's property.
 - (iii) The courses and distances of the boundary line survey for all properties being subdivided.
 - (iv) The proposed name of the subdivision which shall not duplicate the name of any other subdivision in the city.
 - (v) The layout and approximate dimensions of all proposed lots which will be created by the subdivision and approximate location of proposed buildings.
 - (vi) The names of all property owners of unsubdivided property within 200 feet of the extreme limits of the subdivision as their names appear in the tax records. In the event that lots adjoin the land to be subdivided, the subdivision name and lot number of the adjoining lot shall be shown. The zoning classification governing the tract and adjoining properties shall be shown.
 - (vii) Layout of proposed streets, their proposed names, rights-of-way, and paving width, as well as right-of-way and paving widths for proposed alleys and easements for ingress and egress. Except for continuations, street names shall not duplicate existing street names in the city.
 - (viii) The location and size of all existing storm sewers, water courses, and natural drainage flows which may influence the design of the subdivision. The approximate location of all proposed storm drainage facilities including, when required, storm water management areas, sewer lines, and drainage ditches.
 - (ix) The location of the special flood hazard area (SFHA), formerly known as the open floodway district (OFD), if applicable.
 - (x) The location, widths, and names of all existing roads upon which the proposed subdivision will front within 100 feet of the proposed subdivision.
 - (xi) Contours at intervals of two feet; areas with slopes between 15 percent and 25 percent and greater than 25 percent shall be identified.

- (xii) On a plan with contours at intervals of two feet show all landscaping and the tree plantings, mature trees and community assets as specified in chapter 32, zoning, article XXV, landscape screening and treatment, and community assets, appendix IX, of this chapter.
 - (xiii) The location and size of existing water lines which might serve the proposed subdivision; proposed connections with existing water lines and including the approximate location and approximate size of all proposed water lines and water facilities.
 - (xiv) The location and size of existing sanitary sewer lines; proposed connections with existing sanitary sewer lines including the approximate location and approximate size of all proposed sanitary sewer lines and sanitary sewer facilities.
 - (xv) Location of all proposed sidewalks.
 - (xvi) The approximate dimensions and area of all property proposed to be dedicated or reserved for public open space use, or to be dedicated for use of all property owners in the subdivision, and the location, dimensions, and purposes of any proposed easements.
 - (xvii) The location of any proposed entrance/exit facilities which provide access for the subdivision to and from a public road.
 - (xviii) Proposed parking areas and number of parking spaces, where applicable.
 - (xix) Identification and boundaries of soils classifications as indicated by the New Castle County Soils Survey.
 - (xx) The approximate total area of all land to be used for roads, open space, and building lots expressed in percentage of total land areas.
 - (xxi) For business zoned properties (BL, BLR, BN, BB, and BC) fronting on Main Street and located between Elkton Road/New London Road and Capitol Trail/Library Avenue, all new proposed construction shall include building elevations and be subject to the review criteria and requirements set forth in Appendix XIII of this chapter.
- At all other locations, all new proposed construction shall include building elevations and be subject to the review criteria and requirements set forth in Appendix XIV of this chapter.

4. A demographic impact analysis to include, at a minimum, the following information:
 - (i) Projected population at the completion of each phase of project, if phased, or at completion of project (for residential development).
 - (ii) Projected population of school-age children (grades K-12) using evaluative criteria developed by the local school district; location of schools serving subdivision.
 5. Show all United States Geological Survey (USGS) identified blue line streams.
 6. An environmental analysis may be required and, if required, shall include the following information:
 - (i) A description of the characteristics and limitations of soil as indicated by the New Castle County Soils Survey.
 - (ii) Description of the recharge capabilities of the site and analysis of the proposed subdivision's impact upon those recharge capabilities.
 - (iii) Computation of pre and post-development storm water runoff levels, and methods to address quantity and quality of storm water runoff.
 - (iv) Any other substantial adverse environmental effects.
 - (v) Wetlands report may be required in accordance with Appendix III.
 7. A traffic impact study (TIS), prepared by a transportation professional under the direction and applicable specifications of the Delaware Department of Transportation (DelDOT) may be required and shall include the following information:
 - (i) A description of existing traffic volumes on the roads which will be impacted by the subdivision and a description of the present physical condition of affected roads. A traffic forecast which projects traffic volumes on affected roadways upon completion of the development, or within time frames as determined by DelDOT, with and without the completion of the subdivision. Peak hour turning movement counts at the affected intersections, rates of trip generation to and from the site, peak hour traffic distribution upon affected roads, and projected peak hour levels of services after the subdivision is completed, with and without transportation mitigation measures.
 - (ii) The TIS shall be prepared and subject to the review criteria and requirements set forth in Appendix XV of this chapter.
 8. A market analysis may be required and, if required, shall include a description of the proposed commercial/industrial development including:
 - (i) Square footage of gross building areas and subareas proposed for commercial/industrial development.
 - (ii) Known and probable uses.
 - (iii) Traffic configuration.
 - (iv) Number of parking spaces required and provided.
 - (v) The present and/or projected market area and population proposed to be served.
 9. The applicant shall provide the following information to assist in the determination of the cost/revenue impact to the city of the proposed development:
 - (i) The estimated market value and estimated completion date of the proposed development. If the development is proposed for completion by sections, the estimated market value and completion dates by section.
 - (ii) Typical electrical equipment and large appliances proposed.
 - (iii) Units per acre.
 - (iv) Any special conditions which would affect city costs or revenues.
 - b. An applicant shall be permitted to develop and record the subdivision plan in sections. Upon submission of the subdivision plan and application, the applicant shall indicate in writing any proposed sectional development intended, the sequence of such sectional development, and a proposed time schedule for such development.
 - c. The completed application and supporting documentation shall be submitted directly to the planning department which, in turn, will submit the application and supporting documentation to members of the subdivision advisory committee and any other appropriate agencies such as the Delaware Division of Highways, Soil Conservation Service, and Delaware Geological Survey, Inc.
- (2) *Review and approval process.*
- a. 25 copies and an original of the subdivision plan shall be submitted by the applicant to the planning director. The planning director shall, within three work days, distribute subdivision plan copies to all city departments and shall develop a tentative review time schedule, including a date for the subdivision advisory committee meeting. Within 15 work days of the receipt of the subdivision plan, the departments shall review and prepare written comments for the subdivision advisory committee meeting. The planning director shall transmit copies of the subdivision plan to city council and the planning commission.
 - b. The subdivision advisory committee and the developer shall meet to discuss the subdivision plan. Within five work days after the meeting, the subdivision advisory committee shall make comments concerning revisions or modifications to the subdivision to the developer or submit the plan with its recommendations to the planning director for transmittal to the planning commission.
The subdivision advisory committee shall also comment on the adequacy and availability of city services, city utilities, the visual impact of public utilities and related appurtenances, public safety, recreation and open space, stormwater management facilities, streets and roadways, and related aspects of the subdivision, as stipulated in [Section 27-3](#), Policy, of this chapter.
 - c.

Within seven work days of the receipt of the subdivision advisory committee recommendations, the planning director shall prepare a written report containing the recommendations concerning the subdivision plan. The report should contain revisions to be made by the developer at the request of the subdivision advisory committee. Within seven work days, the public works department shall prepare a fiscal impact analysis that estimates the cost-revenues generated by the proposed subdivision. Copies of these reports should be transmitted to the city council, the planning commission, and the subdivision advisory committee.

- d. The planning commission shall review the subdivision plan and within 40 days issue a recommendation to city council containing its recommendation concerning the subdivision plan. If the planning commission does not review the subdivision plan within 24 months of the date of submittal, the applicant must reapply for subdivision approval beginning with the process described in Subsection 27-21(b)(2)a. The director of planning and development may grant an extension not to exceed six months for circumstances beyond the applicant's control. If approved, the city solicitor should prepare a subdivision agreement to be signed by the developer and the city manager for approval by city council.
- e. Upon receipt by the city council of the planning commission recommendation, city council, within a reasonable time, will consider the application at a public hearing. All such hearings shall be advertised in a newspaper of general circulation in the city not less than ten days prior to any such public hearing. City council, at its discretion, either prior or subsequent to such public hearing, may request an informal review with the applicant and/or the applicant's engineer, and/or the applicant's legal representative, regarding alterations, changes, or modifications deemed desirable by city council.
- f. The subdivision plan and agreement shall be submitted to city council with a resolution of approval. The resolution, plan, and agreement shall be approved, approved with conditions, or disapproved by city council.
- g. Approval shall indicate the city's approval of the proposed subdivision subject to final approval of the construction improvements plan.
- h. Following approval of the subdivision plan by city council, the subdivider or developer shall prepare the necessary construction improvements plan for approval by the city in accord with Section 27-22, below.
- i. If the subdivision is to be developed in sections, the applicant may complete the construction improvements for each section individually.
- j. If, however, the subdivision plan is not completed in full within five years from the date of approval by city council, the planning commission may require that the applicant reapply for subdivision approval beginning with the subdivision advisory committee's review as described above for the uncompleted portions of the subdivision. In cases where no building construction has begun within five years from the date of approval by city council, the approved subdivision shall expire and the applicant must reapply for subdivision approval beginning with Subsection (b) above.
- k. Following the approval of the construction improvements plan by the city, the developer shall prepare a complete subdivision plan (with construction improvements plan) for the recordation.
- l. After approval of the subdivision plan and agreement by the city council, the city secretary shall certify such approval on the subdivision plot plan which shows distinctively the part to be recorded. The planning director shall certify on the approved subdivision plot plan that said plans and related plans comply with all requirements of the subdivision regulations, and deviations, if any, from the subdivision regulations have been noted and qualified. The agreement shall be executed and signed by the applicant and city manager and shall constitute a covenant running with the land and binding upon the parties to the agreement and their successors and assigns.

The city secretary shall sign the required certification or certifications, as the case may be, and affix the seal according to subparagraph (1) or (2) as follows:

- 1. For a subdivision plot plan approved by city council to be recorded and developed in its entirety:

["It is hereby certified that this subdivision plot plan was granted 'approval' by the council of the City of Newark, Delaware on (date) and accordingly, is eligible for recording in the office of the recorder of deeds for New Castle County, Delaware.

/s/ _____
City Secretary]

- 2. For a subdivision plot plan approved to be recorded and developed in sections, certification on separate plans as follows:

["It is hereby certified that the section or sections of this subdivision plot plan distinctively shown hereon as the part to be recorded were granted 'approval' by the council of the City of Newark, Delaware on (date) and accordingly, is eligible for recording in the office of the recorder of deeds for New Castle County, Delaware.

/s/ _____
City Secretary]

- m. Notification in writing or action taken by city council will be transmitted promptly to the applicant by the secretary of the city council.

(Ord. No. 78-32, 9-11-78; Ord. No. 79-21, 5-14-79; Ord. No. 91-30, Amend. Nos. 2—4, 9-23-91; Ord. No. 93-10, Amend. No. 4, 6-14-93; Ord. No. 98-4, Amend. No. 2, 3-23-98; Ord. No. 00-3, Amend. No. 1, 2-14-00; Ord. No. 06-20, Amend. No. 1, 7-24-06; Ord. No. 06-26, Amend. Nos. 2—4, 9-25-06; Ord. No. 10-02, Amend. No. 3, 1-11-10; Ord. No. 10-03, Amend. No. 3, 1-11-10; Ord. No. 10-04, Amend. No. 7, 1-11-10; Ord. No. 13-17, Amend. Nos. 4, 5, 7-22-13; Ord. No. 16-05, Amend. No. 6, 1-25-16)

APPENDIX I. - DESIGN STANDARDS FOR CITY ROADS⁽¹⁾

(a) *General.* In order to provide for roads of suitable location, width, and structural integrity, to coordinate roads so as to compose a convenient system, and avoid undue hardships to adjoining properties, the following design standards for roads are hereby required (road classification may be indicated on the official map; otherwise, it shall be determined by the city council.)

(b) *Right-of-way and paving widths.*

(1) *Roads.* The minimum width of the right-of-way and the paving shall not be less than those of an existing road or less than the following:

	Width (in feet) right-of-way	Paving (in feet)	Curb required
Main thoroughfares	80—100	44	Yes
Collector roads	60—80	36	Yes
Local roads	50	32	Yes
Local roads in RR zoning district	32	32	Yes

(See illustration.)

Council, after receiving a recommendation from the planning commission, may modify the right-of-way width, paving, and curb requirements in specific cases due to special conditions or practical difficulties or to accompany council's consideration of plans submitted under Article XXVII, Site Plan Approval, Chapter 32 of this Code.

(2) *Monuments.* Monuments shall be placed at such corners, angle points, points of curve, intermediate points as may be necessary to define and locate the road right-of-way.

(c) *Cul-de-sac.*

(1) The width of right-of-way shall be based upon maximum development of lots under permitted zoning requirements, but the minimum widths of the right-of-way and paving shall not be less than the following:

Number of families	Width (in feet)		Radius Turn around (in feet)	
	R W	Paving	R W	Paving
5—25	50	30	45	35
4	50	30	40	30

(2) *Minimum length of cul-de-sac.*

a. *Permanent:* Six times minimum lot width, serving no more than 14 families and not exceeding 500 feet in length.

b. *Temporary:* 12 times minimum lot width, serving no more than 25 families and not exceeding 1,000 feet in length.

c. Where the installation of a turnaround would cause undue hardship in land use, a "T" shaped turnaround may be approved. Such paved space shall extend the entire width of the street right-of-way and shall be at least 12 feet wide, with the flared portions rounded by at least 25 foot radii.

(d) *Grade and alignment.*

(1) The maximum grade shall be 10% although wherever possible grades in excess of 5% should be avoided. The minimum grade shall be 1%.

(2) Minimum grades are preferred for 50 feet to 100 feet back from any intersection.

(3) *Sight distance:* A sight distance of at least 250 feet shall be provided at driver's eye height of five feet, with respect to both horizontal and vertical alignment.

(4) *Horizontal curves:* Horizontal curves shall have a minimum radius of 300 feet on main thoroughfares, 200 feet on secondary streets, and 150 feet on residential streets. A long radius curve shall be used rather than a series of curves connected by short tangents. Reverse curves shall be separated by tangents of 100 feet or more to provide a proper transition. Minimum radius curves at end of long tangents shall be avoided.

(5) *Vertical curves:* Vertical curves shall be used at changes in grade of more than 1%. For proper transitions, the length of curve shall approximate 25 feet for each percent of change in grade.

(e) *Curb radii.*

Main thoroughfares55 feet back of curb

Collector roads and thoroughfares30 feet back of curb

Collector and collector25 feet back of curb

Collector and local20 feet back of curb

Local and cul-de-sac25 feet back of curb

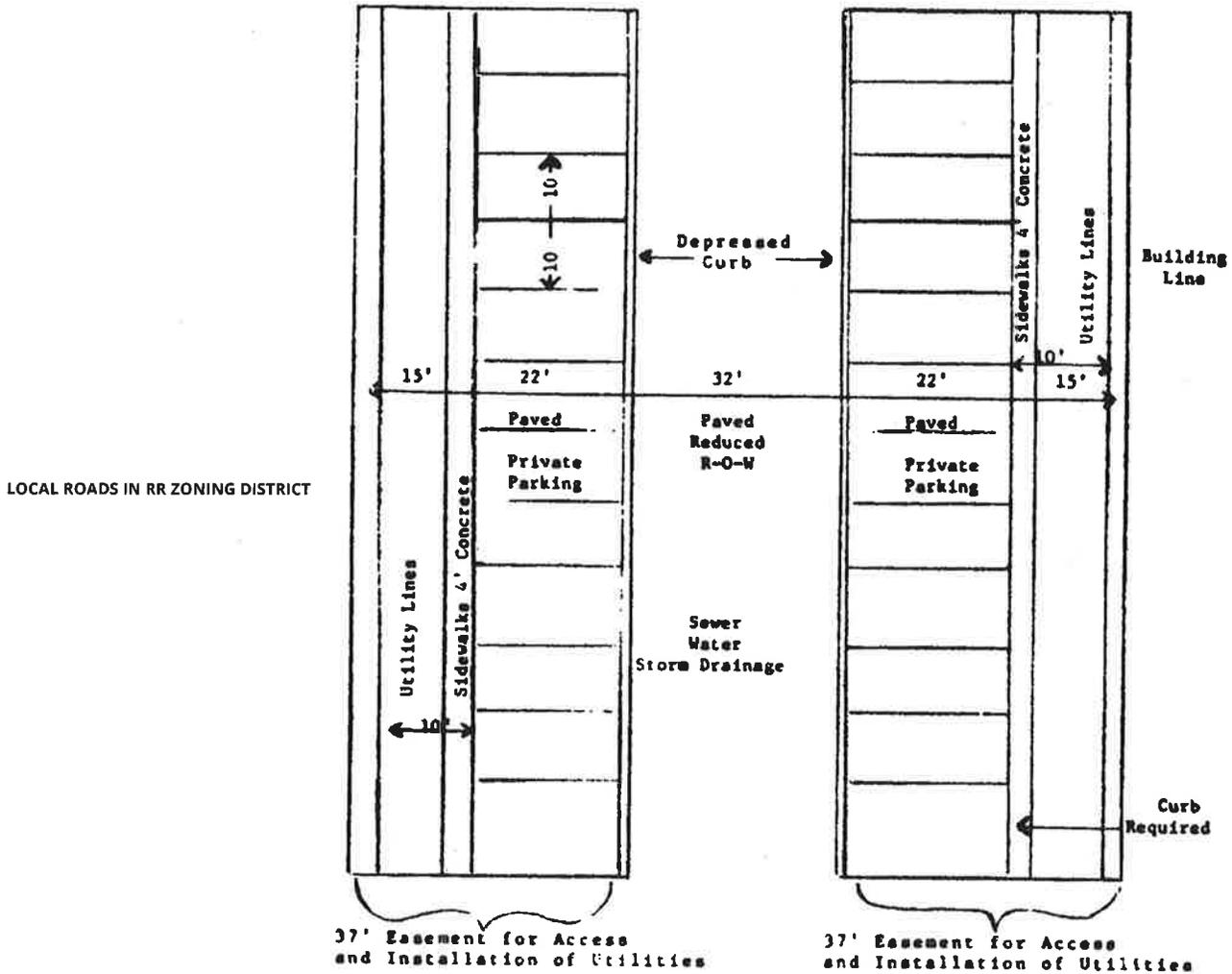
Local and alley12 feet back of curb

(f) *Pavement design.* The sections of streets, curbs, and gutters or city roadways shall conform to the city detail standards for standard street sections with related curbs and gutters, sidewalks, and handicapped ramps at intersections.

(g) *Local roads in RR zoning district.* Depressed curbs shall be shown between private parking and streets to better delineate "private" nature of parking area. (See

illustration.)

(h) *Standards for private ways.* All roadways and streets not dedicated to public use shall be constructed in accordance with standards set forth in Appendix I and in the City of Newark "Standard Specifications and Detail Standards."



Local Roads in RR Zoning District

- (1) Parking stalls are permitted to be perpendicular and adjacent to right-of-way. 37-foot-easements required adjacent to both sides of right-of-way to include private parking and front yard for installation of utility lines. Private parking paving to be maintained by residents of subdivision.
- (2) Parking space design as per Chapter 32 (Zoning), [Section 32-47\(i\)](#).

(Ord. No. 78-32, 9-11-78; Ord. No. 79-21, 5-14-79; Ord. No. 80-36, 6-23-80; Ord. No. 82-15, 5-24-82; Ord. No. 86-19, Amend. No. 1, 4-28-86; Ord. No. 95-18, 7-10-95)

Footnotes:
 --- (1) ---
 Cross reference—Street Easements, Ch. 26, Art. V.

APPENDIX XIII. - DESIGN REVIEW FOR DOWNTOWN COMMERCIAL PROPERTIES

- (a) *Purpose.* In conformity with the purposes of [Section 2-89](#), General powers and duties of the Planning Commission, and Chapter 32, Zoning, of this Code, and the land development goals of the Comprehensive Development Plan II, the purpose of this appendix is to promote the most appropriate use of land, to encourage the beautification of buildings, to encourage high quality business growth, and to encourage and foster civic beauty, for commercial construction in downtown Newark.
- (b) *Applicability.* This appendix is applicable to subdivision plans calling for construction of properties fronting on Main Street and located between Elkton Road/New London Road and Capitol Trail/Library Avenue.
- (c) *Submittal Requirements.* Applicable subdivision plans shall include:
- (1) Color scale elevations of all proposed buildings, showing the kind, color, and texture of materials to be used, for all sides of the building(s), visible from sidewalks and public areas, including parking lots;
 - (2) Color scale elevations showing all existing buildings, if applicable;
 - (3) Contextual color scale elevations showing front Main Street facades of all proposed buildings, the front Main Street facades of buildings immediately adjacent to the property; if applicable, the side or end facades of buildings on corner lots on Main Street and the front facades of buildings that do not front on Main Street adjacent to such corner properties, and, if applicable, the side or end facades of Main Street buildings visible from public ways with access to Main Street;
 - (4) All proposed signs, lighting, and related exterior features; and
 - (5) Other information may be required by the Planning Director to meet the purposes of this appendix.
- (d) In reviewing these standards, the Planning Commission and Council shall encourage flexibility and creativity of design and shall recognize that these standards are intended to guide downtown development. That is, this review criteria is not intended to restrict imagination, innovation, or variety, but rather to assist in developing creative building designs that enhance the visual appearance of downtown Newark. The Planning Commission and Council shall consider the following:
- (1) The appropriateness of the design elements of the building(s) in terms of the adjacent buildings and their relationship to each other. Appropriateness shall be considered in most cases to include evaluations of the following:
 - a. Height and bulk of buildings, that is, the scale and proportion of the building shall conform in general with adjacent buildings; facade modulation can help reduce the apparent bulk of a building.
 - b. Roof treatment of buildings; multifaceted roofs and awnings add visual interest.
 - c. Materials, colors, and texture of buildings.
 - d. Setback, in general, shall be consistent with that of adjacent buildings; parking in front of buildings is discouraged.
 - (2) The general architectural character, especially scale and stylistic features, including evaluations of the following:
 - a. Use of natural materials, including stone, brick and wood; imitation or synthetic materials are discouraged;
 - b. Use of the same or similar building materials for all building walls, wholly or partially visible from streets or public ways;
 - c. Signs, including identification signs of a prototype design and corporate logos, shall be designed as integral architectural elements of the building;
 - d. Exterior lighting, fixtures, standards, and all exposed accessory shall be designed as integral architectural elements of the building;
 - e. Screening from public view of mechanical equipment or utility hardware on roofs or grounds, with materials harmonious with the building; and
 - f. Screening from public view, refuse, waste removal areas, service yards, and related sites, using materials harmonious with the building.
 - (3) The Planning Commission and City Council may consider comments from the Design Committee of the Downtown Newark Partnership in reviewing downtown architectural plans and may also consult the Partnership's Design Guidelines for Main Street (1997).

(Ord. No. 98-4, Amend. No. 3, 3-23-98; Ord. No. 00-18, Amend. No. 1, 6-26-00)

APPENDIX XIV. - DESIGN REVIEW FOR MAJOR SUBDIVISIONS NOT LOCATED DOWNTOWN

- (a) *Purpose.* In conformity with the purposes of [Section 2-89](#), General powers and duties of the planning commission, and Chapter 32, Zoning, of this code, and the land development goals of the Comprehensive Plan, the purpose of this appendix is to promote the most appropriate use of land, to encourage the beautification of buildings, to encourage high-quality growth, and to encourage and foster civic beauty for construction in Newark.
- (b) *Applicability.* This appendix is applicable to major subdivision plans calling for construction of properties not covered by Appendix XIII; the review criteria in subsection (d) in this appendix also may be applicable to minor subdivision plans. If applicable, and as an alternative to the submittal and review requirements in this appendix, applicants may submit required building elevations and related information for city review through [Chapter 7](#), Building, [Section 7-16](#), Historic Buildings; or, Chapter 32, Zoning, Article XXVII, Site Plan Approval, of this code.
- (c) *Submittal requirements.* Applicable major subdivision plans shall include:
- (1) Color scale elevations of all proposed buildings, showing the kind, color, and texture of materials to be used for all sides of the building(s) visible from sidewalks and public areas, including parking lots; if several styles of buildings are proposed, typical examples of each type shall be provided.
 - (2) Color scale elevations showing all existing buildings on the site and existing public utilities visible from public ways, if applicable.
 - (3) Contextual color scale elevations showing front facades of all proposed buildings and the front facades of buildings immediately adjacent to the property.
 - (4) All proposed signs, lighting, and related exterior features.
 - (5) Visually prominent topographical features, including vistas, hilltops, ridges, stands of woodlands, and similar aspects of the natural landscape. An existing natural features plan or photographs showing such features may be required (see Appendix IX, Community Assets).
 - (6) Other information may be required by the planning director to meet the purposes of this appendix.
- (d) In reviewing subdivisions under these standards the planning commission and council shall encourage flexibility and creativity of design and shall recognize that these standards are intended to guide development. That is, these review criteria are not intended to restrict imagination, innovation, or variety, but rather to assist in developing creative building designs that enhance the visual appearance of Newark. In addition, these standards are not listed in priority order; their relative importance should be weighed by the commission and council for each subdivision depending upon the subdivision's characteristics and the nature of the site. The planning commission and council shall consider the following:
- (1) The appropriateness of the design elements of the building(s) in terms of the adjacent buildings and their relationship to each other. Appropriateness shall be considered in most cases to include evaluations of the following:
 - a. Height and bulk of buildings; that is, the scale and proportion of the building shall conform in general to adjacent buildings. In other words, the building's mass should respond or relate in some clear and obvious way to its immediate and distant neighbors. Facade modulation/articulation can help reduce the apparent bulk of a building.
 - b. Roof treatment of buildings; multifaceted roofs and awnings can add visual interest.

- c. Materials, colors, and texture of buildings.
- d. Setbacks, in general, shall be consistent with that of adjacent buildings; except for approved driveways, parking in front of buildings is discouraged.
- (2) The general architectural character, especially scale and stylistic features, including evaluations of the following:
 - a. Use of natural materials, including stone, brick, and wood is encouraged; synthetic stucco, vinyl, and metal siding should be used less frequently.
 - b. Use of the same or similar building materials for all building walls, wholly or partially visible from street or public ways.
 - c. Signs, including identification signs of a prototype design and corporate logos, shall be designed as integral architectural elements of the building.
 - d. Exterior lighting, fixtures, standards, and all exposed accessories shall be designed as integral architectural elements of the building.
 - e. Screening from public view of mechanical equipment or utility hardware on roofs or grounds, with materials harmonious with the building.
 - f. Screening from public view of refuse, waste removal areas, service yards, including screening when stored of city required refuse containers, and related facilities and sites, using materials harmonious with the buildings.
 - g. For residences, garages shall not be the dominant element of the front building facade.
 - h. Screening of off-street parking and loading areas, utilizing the landscape requirements of Chapter 32, Zoning, of this code.
 - i. Screening from public view, including underground installation, insofar as possible and subject to the approval of the subdivision advisory committee, of public utilities and their related appurtenances, but not to include utility pad-mount transformers and above-ground pedestals.
- (3) The preservation of natural light, natural resources, floodplains, woodlands, cultural features, and visually prominent topographical features. The features to remain shall be shown on the plan.
- (4) The utilization of existing circulation patterns and the provision of bike and pedestrian ways.
- (5) The planning commission and city council may consider comments from local and area architects and other design professionals requested to provide input as part of the design review process.

(Ord. No. 06-26, Amend. No. 5, 9-25-06)

APPENDIX XV. - TRAFFIC AND TRANSPORTATION ANALYSIS

- (a) *Purpose.* In conformity with the purposes of Chapter 32, Zoning, of this code, [Section 27-3](#), Policy, herein, and the land development goals of the Comprehensive Plan, the purpose of this appendix is to ensure, insofar as possible, that adequate traffic and transportation facilities are in place or will be available to meet the requirements of the proposed subdivision.
- (b) *Applicability.* A traffic impact study (TIS) shall be submitted for all major subdivisions as required under the applicable Delaware Department of Transportation (DelDOT) specifications and regulations for such studies and shall be subject to this appendix. Other major subdivisions may also require traffic impact analysis (TIS) or traffic impact commentary based on the recommendations of the planning department and/or subdivision advisory committee, in consultation with DelDOT.
- (c) *Traffic impact study requirements.* A TIS shall be prepared under the guidance and direction of DelDOT and in conformance with all applicable DelDOT specifications and regulations. The planning department and subdivision advisory committee may make suggestions to DelDOT regarding the scope of the TIS; these suggestions may include requests for specific analysis of traffic issues directly related to the proposed development and its location.
- (d) *Methodology and guidelines for determining adequacy of transportation services.* When reviewing DelDOT comments on required traffic impact studies, the planning commission and council shall consider the level of service (LOS) that will result from the subdivision with or without traffic and transportation mitigation measures. LOS typically is described as indicated below. These descriptions are for illustration purposes only to help the planning commission, council, and the community to understand, in a general sense, the traffic conditions typically associated with each level of service letter designation. LOS is, therefore, described as follows:

LOS is a traffic engineering scale that measures the amount of traffic that a roadway or intersection can accommodate, based on such factors as speed, travel time, traffic interruptions, maneuverability, comfort, and convenience. Level of service is in the form of letter designations as follows:

 - (1) [Level of Service A](#) indicates a relatively free flow of traffic, with little or no limitation on vehicle movement or speed.
 - (2) [Level of Service B](#) describes a steady flow of traffic, with only slight delays in vehicle movement and speed. All vehicle queues clear an intersection in a single signal cycle.
 - (3) [Level of Service C](#) describes a reasonably steady, high volume flow of traffic, with some limitations on movement and speed, and occasional backups at intersections.
 - (4) [Level of Service D](#) describes the level where traffic nears an unstable flow. Intersections still function, but short vehicle queues develop, and vehicles may have to wait through one signal cycle during short traffic peaks.
 - (5) [Level of Service E](#) represents traffic characterized by slow movement and frequent (although momentary) stoppages. This type of congestion is considered severe, but is not uncommon at peak traffic hours, with frequent stoppages, longstanding vehicle queues and blocked intersections.
 - (6) [Level of Service F](#) describes unsatisfactory stop and go traffic characterized by 'traffic jams' and stoppages of long duration. Vehicles at signalized intersections usually have to wait through one or more signal changes, and nearby intersections may be blocked by the long vehicle queues.
- (e) *TIS review criteria.* In reviewing traffic impact study comments from DelDOT, the planning commission and council shall consider the following:
 - (1) Subdivisions that result in a DelDOT indicated LOS of E or F, with traffic and transportation mitigation measures, do not meet the minimum acceptable standard. Subdivisions that result in a DelDOT indicated LOS of D may, depending upon the circumstances and location of the subdivision, require traffic and transportation mitigation measures.
 - (2) LOS D, E or F, however, may be considered acceptable in downtown Newark - the areas designated as 'Downtown Newark Development Districts' in the comprehensive plan, or at other locations, with the approval of council, based on special circumstances or conditions attributable to the site.
- (f) *Other transportation and transit facilities.* If appropriate, subdivision plans may include transit facilities, including bus stops, bus 'pull-offs,' bus shelters, park-and-ride areas, and related facilities. Bikeways and related bike and pedestrian facilities shall also be required as appropriate.

(Ord. No. 06-26, Amend. No. 6, 9-25-06)

Sec. 32-11. - RM districts (multifamily dwellings—garden apartments).

- (a) In an RM district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used, except for one or more of the following uses:
- (1) Garden apartments, subject to either site plan approval as provided in Article XXVII or the following regulations:
 - a. Number of dwelling units per gross acre. The maximum number of dwelling units per acre shall be 16 except as provided hereafter.
 - b. The planning commission, may recommend an increase in the permitted residential densities as specified in the procedures established in Article XXVII, Site Plan Approval, of this chapter, under the following standards:
 1. For the provision of improved common open space and for distinctiveness and excellence in site layout, design, and landscaping, as approved by the department of planning, a maximum increase in dwelling unit density of 5%.
 2. For the provision of covered parking spaces designed as partial or below grade units and incorporated within a principal garden apartment building or buildings, a maximum increase in dwelling unit density of 10%.
 - c. Increase in dwelling unit density, under paragraph 1 and 2 may be cumulative. If the planning commission should find that any of the following conditions would be created by an increase in residential density permitted by the preceding subsections, it may recommend either prohibiting or limiting any increase in residential density by an amount which is sufficient to avoid the creation of any of these conditions:
 1. Inconvenient or unsafe access to the planned development.
 2. Traffic congestion in the street adjoining the planned development.
 3. An excessive burden on existing parks, recreational areas, schools, and other public facilities which are intended to serve the proposed garden apartment development.
 - d. Lot coverage. The maximum lot coverage shall be 20% for any lot which is to be developed for garden apartments.
 - e. Number of dwelling units per building. The maximum number of dwelling units per building shall be twelve for buildings up to three stories in height.
 - f. Distance between buildings or groups of attached buildings. No part of any building, or groups of attached buildings, shall be nearer than 25 feet to any other building, or groups of attached buildings, and no portion of the front or rear of any buildings, or groups of attached buildings, shall be nearer than 50 feet to the front and rear of another building or groups of attached buildings. No more than three buildings shall be attached to one another.
 - g. Street frontage. The lot shall have at least 50 feet frontage along a public street.
 - h. Minimum lot size. One acre.
 - i. Open area. At least 40% of the lot area shall be devoted to open area.
 - j.

Parking and loading spaces. All uncovered parking and loading spaces shall be located at least ten feet from all abutting perimeter streets and property lines. Parking bays adjacent to interior private streets are permitted. Parking bays designed as subgrade units integral with apartment units shall be subject to the special density bonuses provision of this section.

- k. Partial or subgrade dwelling units. Partial or subgrade dwelling units are permissible provided the builder or developer agrees to sustain the cost of fee inspectors (consultants) who would in turn establish an appropriate basement grade such that there will be no danger of water seepage or excessive dampness. The builder or developer must also demonstrate that the soil at the particular location for the intended construction of subgrade units is of such type as will not cause excessive seepage or dampness. In all cases where subgrade apartments are constructed, the building basement area must be serviced by a sump and a sump pump with french drains installed around the foundation's perimeter according to instructions outlined in the building code.
- (2) One-family, semidetached dwelling.
 - (3) Boarding house, rooming house, or lodging house, but excluding all forms of fraternities and/or sororities, and further provided that the minimum lot area for each eight or remainder over the multiple of eight residents, shall be the same as the minimum lot area requirements for each dwelling unit in this district.
 - (4) Reserved.
 - (5) Reserved.
 - (6) Nursing home, rest home or home for the aged; provided that:
 - a. The minimum lot area required for each four, or remainder over a multiple of four, resident patients or resident guests shall be the same, the minimum lot area requirement for each dwelling unit in this district; provided, however, that no lot contains less than 10,000 square feet.
 - b. The minimum lot width shall be 100 feet.
 - c. No more than 50 patients or resident guests shall be accommodated at one time in any one building.
 - (7) Reserved.
 - (8) Reserved.
 - (9) Accessory buildings or structures, no impact, and accessory uses, no impact, including a private garage as defined and limited [in] article II and subject to the special regulations of article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property.
 - (10) Cluster or neo-traditional types of developments, including uses that may not be permitted in this district, as provided in Article XXVII, Site Plan Approval.
 - (11) One-family detached dwelling.
 - (12) The taking of nontransient boarders or roomers in any one-family dwelling by a family resident on the premises, but not including student homes, is not a use as a matter of right, but is a conditional use provided there is no display or advertising on the premises in connection with such use, provided there are not more than three boarders or roomers in any

one-family dwelling, and provided that such use by a nonowner occupant family resident on the premises and an owner occupant family resident taking in more than two roomers or boarders, is permitted subject to the following requirements:

- a. Rental permits are applied for and issued as provided in Chapter 17, Housing and Property Maintenance, of this code;
 - b. The owner or owner's agent make and continue to make every reasonable effort to ensure that boarders or roomers comply with Chapter 20A, Noise, and Chapter 22, Article IX, Disorderly Conduct and Offenses Against the Public, both of this code;
 - c. The owner and the agent of the owner, if any, shall be responsible for compliance with the occupancy limitations of this section as well as the occupancy limitations of particular dwellings as imposed by this code;
 - d. In no instance may an owner, agent, or other person in effective control of any such one-family dwelling permit, allow, facilitate, or cause more individuals to live in such dwelling than are permitted to do under the rental permit which applies to such dwellings.
- (13) Church or other place of worship, seminary or convent, parish house, or Sunday school building, and provided, however, that no lot less than 12,500 square feet shall be used for such purposes.
- (14) Public and private elementary, junior, and senior high schools.
- (15) Municipal park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.
- (16) Municipal tower, water storage tank, water reservoir, water pumping station and water treatment plant.
- (17) Municipal sewage pumping station and sewers.
- (18) Right-of-way, street.
- (19) Temporary building, temporary real estate or construction office, and temporary storage of materials provided that such use is located on the lot where construction is taking place or on a lot adjacent or part of the development site thereto, and that such temporary use is to be terminated upon completion of construction.
- (20) Utility transmission and distribution lines.
- (21) Public transportation bus or transit stops for the loading and unloading of passengers.
- (22) One-family town or rowhouse subject to the requirements of Sections 32-13(a)(1) and 32-13(c)(1).
- (23) Student home, provided the following requirements are met:
- a. Rental permits are applied for and issued as provided in Chapter 17, Housing and Property Maintenance, of this code;
 - b. The owner or owner's agent make and continue to make reasonable efforts to ensure that tenants comply with applicable noise, disorderly conduct, alcoholic beverage, and other requirements of such rental permits, as stipulated in Chapter 17 of this code;
 - c. The owner and owner's agent, if any, shall be responsible for compliance with the occupancy limitations set forth in this code;
 - d.

A student home shall be located on a lot any portion of which is no closer to any portion of another lot lawfully used for another student home than a distance determined by multiplying times 10 the required lot width for a single-family detached dwelling in the district in which the building lot is located; for purposes of this calculation, nonowner-occupant single-family detached, semidetached, and row homes with rental permits for the taking of boarders and roomers and existing on the date of adoption of this ordinance, shall be considered student homes; and

e. A student home shall be occupied by no more than three persons.

(24) No impact home businesses in a residential dwelling shall be permitted subject to the following special provisions:

- a. A no impact home business is permitted in a dwelling provided the person(s) so engaged is (are) a resident(s) of record in the dwelling.
- b. A no impact home business shall be subject to the following standards:
 1. The home business shall be clearly incidental and subordinate to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
 2. There shall be no interruption, congestion or change to the character of the surrounding area in terms of appearance, noise, traffic, vehicular parking and employee/customer congregation resulting from the operation of the home business.
 3. No persons other than those residing on the premises shall be engaged or employed within the dwelling.
 4. No external alterations inconsistent with the residential use of the dwelling unit shall be permitted; there shall be no evidence of the home business visible from the street or adjacent properties.
 5. No storage of materials or products outside of the residential dwelling unit shall be permitted unless completely housed.
 6. No sign or display of products or advertising shall be visible from outside the building.
 7. Machinery and/or equipment that causes noises, vibrations, glare, fumes, odor and dust detectable at the property line is prohibited. Machinery and/or equipment that causes electrical interference with radio or television reception is also prohibited.
 8. No traffic shall be generated in greater volume than would normally be expected in the residential area. The home business shall not involve the use of commercial vehicles for delivery of materials to or from the premises in a manner different from normal residential package delivery service.
 9. There shall be no increased demand on city services at the site as a result of the business.
 10. A City of Newark business license, accompanied by a no impact home business application and affidavit issued by the planning and development department is required and must be available for inspection.

(b) The following uses require special use permits as provided in Article XX, Section 32-78 of this chapter:

(1)

Conversion of a one-family dwelling into dwelling units for two or more families, if such dwelling is structurally sound but too large to be in demand for one-family use, and that conversion for the use of two or more families would not impair the character of the surrounding area, subject to conformance with the following requirements:

- a. There shall be a lot area of at least 4,000 square feet for each family to be accommodated thereon.
 - b. There shall be a gross floor area, computed as the sum of those areas enclosed by the outside faces of all exterior walls surrounding each story used for residence exclusive of any area for an attached private garage, of at least 1,000 square feet per family to be accommodated therein.
 - c. No dwelling shall be so converted unless in connection therewith it be placed in a reasonable state of repair and modernization.
 - d. No addition shall extend within the front yard, side yards, or rear yard required for the district within which it is located.
 - e. Fire escape and outside stairways leading to a second or higher story shall, where practicable, be located on the rear of the building, and shall not be located on any building wall facing a street.
 - f. Two off-street parking spaces shall be provided for each additional dwelling unit created.
- (2) Substation, electric, and gas facilities, provided that no storage of materials and trucks is allowed. No repair facilities are allowed except within completely enclosed buildings.
- (3) Physicians' and dentists' offices, subject to the following special requirements:
- a. The maximum allowable number of professional practitioners shall be six with a minimum of 6,250 square feet of lot area per practitioner; "practitioner" meaning each individual physician and/or dentist using the building whether full-time or part-time.
- (4) If approved by the council, property in a residential zone adjacent to an area zoned "business" or "industrial" may be used for parking space as an accessory use to a business use, whether said business use be a nonconforming use in the residential zone or a business use in said adjacent area zoned "business" or "industrial."
- (5) Police and fire stations, library, museum, and art gallery.
- (6) Country club, regulation golf course, including customary accessory uses subject to the following special requirements:
- a. All buildings shall have a minimum setback of 120 feet from all street and property lines.
 - b. The golf facilities shall be used only during daytime hours.
- (7) Professional office in a residential dwelling permitted subject to the following special provisions:
- a. Professional office is permitted only for the resident-owner of a single-family dwelling.
 - b. Professional occupations shall be subject to the following standards:
 1. Three off-street parking spaces in addition to those otherwise required in this chapter.
 2. No more than one person shall be employed by the practitioner of the professional occupation to provide secretarial, clerical, technical, or similar assistance.
 3. The area used for the practice of a professional shall occupy no more than 25% of the

- total floor area, including garages.
 - 4. No storage of materials or products outside the single-family dwelling unit shall be permitted unless completely housed.
 - 5. The profession shall be clearly incidental to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
 - 6. No external alterations inconsistent with the residential use of the dwelling unit shall be permitted.
 - 7. No display of products shall be visible from outside the building.
- (8) Customary home occupations subject to the following special requirements in addition to all other applicable requirements of this chapter:
- a. The practice of a home occupation shall be permitted in a dwelling provided the person so engaged is a resident thereof.
 - b. All home occupations shall be subject to the following standards:
 - 1. The area used for the practice of home occupation shall occupy no more than 25% of the total floor area.
 - 2. No storage of materials or products outside the dwelling shall be permitted unless completely housed.
 - 3. The home occupation shall be clearly incidental to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
 - 4. No external alterations inconsistent with the residential use of the dwelling shall be permitted.
 - 5. No display of products shall be visible from outside the building.
 - 6. One display sign affixed to the building not exceeding a total of two square feet, nor projecting more than one foot beyond the building, and not illuminated, that will indicate from the exterior that the building is being utilized in part for purposes other than that of a dwelling, shall be permitted.
 - 7. No employees shall be permitted in the operation of the home occupation other than two resident occupants of the dwelling.
- (9) Public transportation bus or transit shelters may be permitted subject to review by the planning department as to design and location.
- (10) Public transportation bus or transit off-street parking facilities may be permitted for users of a public transportation service subject to review by the planning department.
- (11) Swimming club, private (nonprofit).
- (12) Day care centers, kindergartens, preschools, day nursery schools, and orphanages; provided that:
- a. At least 100 square feet of outdoor play space per child shall be provided.
 - b. Outdoor play space shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or land unsuited by other usage or natural features for children's active play space. Fencing or other enclosures shall be a minimum of four feet in height.
 - c.

35 square feet of indoor area shall be provided per child, not including toilet rooms, kitchens, offices, storage spaces, hallways, furnace and mechanical rooms, or other areas not used by children for sleep or play on a routine basis; the minimum lot area shall be no less than 6,250 square feet.

- (13) Accessory buildings or structures, with impact, and accessory uses, with impact, including a private garage as defined and limited in Article II and subject to the special regulations of Article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property.

(c) *Area regulations.*

- (1) *Minimum lot area.* Except as specified in Article XVI, Section 32-56.2(a) of this chapter, the minimum lot area shall be one acre with 2,725 square feet per family for garden apartments, unless certain density bonuses are granted as specified in this section. In no case shall the minimum lot area be less than 2,350 square feet per family for a garden apartment. The minimum lot area for any other permitted use, together with accessory buildings, shall be 6,250 square feet.
- (2) *Maximum lot coverage.* In an RM district, the maximum lot coverage for any building, exclusive of accessory buildings, shall be 30%, except that for garden apartments, the maximum lot coverage shall be as noted in this section.
- (3) *Minimum lot width.* Except as specified in Article XVI, Section 32-56.2(b) of this chapter, the minimum width of a lot shall be 50 feet.
- (4) *Height of buildings.* Except as specified in Article XVI, Section 32-56.2(c)(1), (2) of this chapter, the height of a building or structure hereafter erected or altered shall not exceed three stories or 35 feet.
- (5) *Building setback lines.* Except as specified in Article XVI, Section 32-56.2(d)(1), (2), (3), (4) of this chapter, each story or part of a building exclusive of cornices and uncovered steps and uncovered porches, shall be set back from the line of the street on which the building fronts by at least minimum distance of 15 feet, except that for an apartment building, each story or part of a building, exclusive of cornices, balconies, and uncovered steps and uncovered porches, shall be set back at least:
- 30 feet from the line of all perimeter streets.
 - 25 feet from the line of all interior streets.
 - 25 feet from all exterior lot lines.
- (6) *Rear yards.* Except as specified in Article XVI, Section 32-56.2(e)(1), (2), (3) of this chapter, a rear yard of 15 feet shall be provided on every lot, except that for apartments, the minimum depth of a rear yard shall be 25 feet.
- (7) *Side yards.* In an RM district, two side yards shall be provided on every lot as follows:
- On an interior lot, the minimum width of such side yards shall be seven feet, with a minimum aggregate width of the two side yards of 15 feet, except as provided in b. below.
 - For apartments in an RM district, the minimum side yard shall be 20 feet.
 - In case of a building more than two and one-half stories in height, each side yard shall be not less than one-third the height of the building.
 - On a corner lot, the side yard along the interior side lot line shall have a minimum width as required in a. above, but the width of the side yard along the street line shall be governed by the building setback requirements in this article.

- e. Side yard provisions shall not apply to an interior unit in a row or group dwelling or to the attached side of a one-family, semidetached dwelling.

(Ord. No. 70-31, Art. IV, § 3, 7-21-70; Ord. No. 72-62, 11-27-72; Ord. No. 78-33, Amend. No. 4, 9-11-78; Ord. No. 79-40, Amend. No. 1, 9-24-79; Ord. No. 82-2, Amend. No. 3, 2-8-82; Ord. No. 85-16, Amend. No. 1, 4-1-85; Ord. No. 87-6, Amend. No. 3, 2-9-97; Ord. No. 91-32, Amend. Nos. 6—10, 10-14-91; Ord. No. 95-17, Amend. No. 2, 7-10-95; Ord. No. 95-17, Amend. No. 6, 7-10-95; Ord. No. 96-22, Amend. Nos. 5, 6, 12-16-96; Ord. No. 98-14, Amend. Nos. 4, 9a, 6-22-98; Ord. No. 99-14, Amend. Nos. 6, 8, 5-24-99; Ord. No. 02-21, Amend. No. 2, 9-23-02; Ord. No. 14-22, Amend. No. 4, 12-8-14; Ord. No. 15-18, Amend. No. 5, 9-14-15)

Sec. 32-12. - RA districts (multifamily dwellings—high-rise apartments).

- (a) In an RA district, no building or premises shall be used and no building shall be altered which is arranged, intended, or designed to be used, except for one or more of the following uses:
- (1) High-rise apartments, subject to either site plan approval as provided in Article XXVII or the following regulations:
 - a. Lot coverage. The maximum lot coverage shall be 20% of any lot which is to be developed solely for high-rise apartments.
 - b. Number of dwelling units per gross acre. The maximum number of dwelling units per gross acre for buildings of over three stories in height with elevator service shall be 36. Provisions for increases above the maximum allowable density shall apply under the regulations stated in section 32-12(a)(2)b, c below.
 - c. Distance between buildings or groups of attached buildings. No part of any building, or groups of attached buildings, shall be nearer than 25 feet to any other building, or group of attached buildings, and no portion of the front or rear of any buildings, or groups of attached buildings, shall be nearer than 80 feet to the front and rear of another building, or groups of attached buildings.
 - d. Street frontage. Each high-rise apartment development shall have at least 50 feet frontage along a public street.
 - e. Minimum lot size. Two acres, with 1,200 square feet per family for a multifamily dwelling in the form of an elevator apartment more than three stories in height.
 - f. Open area. At least 40% of the lot area for high-rise apartments shall be devoted to open area.
 - g. Parking and loading. All uncovered parking and loading spaces shall be devoted to open area.
 - (2) Garden apartments, subject to either site plan approval as provided in Article XXVII or the following regulations:
 - a. Number of dwelling units per gross acre. The maximum number of dwelling units per acre shall be 16 except as provided hereafter.
 - b. The planning commission, upon granting preliminary approval of the subdivision plan, may recommend an increase in the permitted residential densities under the following standards:
 1. For the provision of improved common open space and for distinctiveness and excellence in site layout, design and landscaping, as approved by the department of planning, a maximum increase in dwelling unit density of 5%.
 2. For the provision of covered parking spaces designed as partial or below grade units and incorporated within a principal garden apartment building or buildings, a maximum increase in dwelling unit density of 10%.
 - c.

Increase in dwelling unit density, under paragraphs 1 and 2 may be cumulative. If the planning commission should find that any of the following conditions would be created by an increase in residential density permitted by the preceding subsections, it may recommend either prohibiting or limiting any increase in residential density by an amount which is sufficient to avoid the creation of these conditions:

1. Inconvenient or unsafe access to the planned development.
 2. Traffic congestion in the street adjoining the planned development.
 3. An excessive burden on existing parks, recreational areas, schools, and other public facilities which are intended to serve the proposed garden apartment development.
- d. Lot coverage. The maximum lot coverage shall be 20% for any lot which is to be developed for garden apartments.
 - e. Number of dwelling units per building. The maximum number of dwelling units per building shall be 12 for buildings up to three stories in height.
 - f. Distance between buildings or groups of attached buildings. No part of any building, or groups of attached buildings, shall be nearer than 25 feet to any other building, or groups of attached buildings, and no portion of the front or rear of any buildings, or groups of attached buildings, shall be nearer than 50 feet to the front and rear of another building or groups of attached buildings. No more than three buildings shall be attached to one another.
 - g. Street frontage. The lot shall have at least 50 feet frontage along a public street.
 - h. Minimum lot size. One acre.
 - i. Open area. At least 40% of the lot area shall be devoted to open area.
 - j. Parking and loading spaces. All uncovered parking and loading spaces shall be located at least ten feet from all abutting perimeter streets and property lines. Parking bays adjacent to interior private streets are permitted. Parking bays designed as subgrade units integral with apartment units shall be subject to the special density bonuses provision of this section.
 - k. Partial or subgrade dwelling units. Partial or subgrade dwelling units are permissible provided the builder or developer agrees to sustain the cost of fee inspectors (consultants) who would in turn establish an appropriate basement grade such that there will be no danger of water seepage or excessive dampness. The builder or developer must also demonstrate that the soil at the particular location for the intended construction of subgrade units is of such a type as will not cause excessive seepage or dampness. In all cases where subgrade apartments are constructed, the building basement area must be serviced by a sump and a sump pump with french drains installed around the foundation's perimeter according to instructions outlined in the building code.
- (3) Boarding house, rooming house, or lodging house, but excluding all forms of fraternities and/or sororities, and further provided that the minimum lot area for each eight or remainder over the multiple of eight residents, shall be the same as the minimum lot area requirements for each dwelling unit in this district.
 - (4) Reserved.
 - (5) Reserved.
 - (6) Nursing home, rest home or home for the aged; provided that:

- a. The minimum lot area required for each four, or remainder over a multiple of four, resident patients or resident guests shall be the same as the minimum lot area requirement for each dwelling unit in this district; provided, however, that no lot contains less than 10,000 square feet.
 - b. The minimum lot width shall be 100 feet.
 - c. No more than 50 patients or resident guests shall be accommodated at one time in any one building.
- (7) Reserved.
 - (8) Reserved.
 - (9) Accessory buildings or structures, no impact, and accessory uses, no impact, including a private garage as defined and limited [in] Article II and subject to the special regulations of Article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property.
 - (10) Church or other place of worship, seminary or convent, parish house, or Sunday school building, and provided, however, that no lot less than 12,500 square feet shall be used for such purposes.
 - (11) Public and private elementary, junior, and senior high schools.
 - (12) Municipal park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.
 - (13) Municipal tower, water storage tank, water reservoir, water pumping station, and water treatment plant.
 - (14) Municipal sewage pumping station and sewers.
 - (15) Right-of-way, street.
 - (16) Swimming pool, private, swimming pool, public.
 - (17) Temporary building, temporary real estate or construction office, and temporary storage of materials provided that such use is located on the lot where construction is taking place or on a lot adjacent or part of the development site thereto, and that such temporary use is to be terminated upon completion of construction.
 - (18) Public transportation bus or transit stops for the loading and unloading of passengers.
 - (19) No impact home businesses in a residential dwelling shall be permitted subject to the following special provisions:
 - a. A no impact home business is permitted in a dwelling provided the person(s) so engaged is (are) a resident(s) of record in the dwelling.
 - b. A no impact home business shall be subject to the following standards:
 1. The home business shall be clearly incidental and subordinate to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
 2. There shall be no interruption, congestion or change to the character of the surrounding area in terms of appearance, noise, traffic, vehicular parking and employee/customer congregation resulting from the operation of the home business.
 3. No persons other than those residing on the premises shall be engaged or employed within the dwelling.
 - 4.

No external alterations inconsistent with the residential use of the dwelling unit shall be permitted; there shall be no evidence of the home business visible from the street or adjacent properties.

5. No storage of materials or products outside of the residential dwelling unit shall be permitted unless completely housed.
6. No sign or display of products or advertising shall be visible from outside the building.
7. Machinery and/or equipment that causes noises, vibrations, glare, fumes, odor and dust detectable at the property line is prohibited. Machinery and/or equipment that causes electrical interference with radio or television reception is also prohibited.
8. No traffic shall be generated in greater volume than would normally be expected in the residential area. The home business shall not involve the use of commercial vehicles for delivery of materials to or from the premises in a manner different from normal residential package delivery service.
9. There shall be no increased demand on city services at the site as a result of the business.
10. A City of Newark business license, accompanied by a no impact home business application and affidavit issued by the planning and development department is required and must be available for inspection.

(b) The following uses require special use permits as provided in Article XX, Section 32-78 of this chapter.

- (1) Police and fire stations, library, museum, and art gallery.
- (2) Physicians' and dentists' offices subject to the following special requirements:
 - a. The maximum allowable number of professional practitioners shall be six with a minimum of 6,250 square feet of lot area per practitioner; "practitioner" meaning each individual physician and/or dentist using the building whether full-time or part-time.
- (3) Physicians' and dentists' offices in a multifamily residential building.
- (4) Substation, electric, and gas facilities, subject to the following special requirements:
 - a. No storage of materials and trucks is allowed. No repair facilities are allowed except within completely enclosed buildings.
- (5) Public transportation bus or transit shelters may be permitted subject to review by the planning department as to design and location.
- (6) Public transportation bus or transit off-street parking facilities may be permitted for users of a public transportation service subject to review by the planning department.
- (7) Swimming club, private (nonprofit).
- (8) Day care centers, kindergartens, preschools, day nursery schools, and orphanages; provided that:
 - a. At least 100 square feet of outdoor play space per child shall be provided.
 - b. Outdoor play space shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or land unsuited by other usage or natural features for children's active play space. Fencing or other enclosures shall be a minimum of four feet in height.
 - c.

35 square feet of indoor area shall be provided per child, not including toilet rooms, kitchens, offices, storage spaces, hallways, furnace and mechanical rooms, or other areas not used by children for sleep or play on a routine basis; the minimum lot area shall be no less than 6,250 square feet.

- (9) Accessory buildings or structures, with impact, and accessory uses, with impact, including a private garage as defined and limited in Article II and subject to the special regulations of Article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property.

(c) *Area regulations.*

- (1) *Minimum lot area.* Except as specified in Article XVI, Section 32-56.2(a) of this chapter, the minimum lot area in an RA district for any dwelling, together with accessory buildings, shall be 6,250 square feet, except for those uses otherwise regulated, which shall be subject to the area regulations specified for that use.
- (2) *Maximum lot coverage.* In an RA district, the maximum lot coverage for any building, exclusive of accessory buildings, shall be 40%, except for those uses otherwise regulated, which shall be subject to the area regulations specified for that use.
- (3) *Minimum lot width.* Except as specified in Article XVI, Section 32-56.2(b) of this chapter, the minimum width of a lot shall be 50 feet, except for those uses otherwise regulated, which shall be subject to the area regulations specified for that use.
- (4) *Height of buildings.* Except as specified in Article XVI, Section 32-56.2(c)(1), (2) of this chapter, a multifamily dwelling in an RA district may be erected to a height not exceeding seven stories or 80 feet. This maximum height limit can be exceeded up to ten stories or 110 feet, under the following special conditions:
- a. Within the minimum required setback, an additional floor may be permitted for each floor whereon 60% of a floor is used for off-street parking purposes and/or building mechanical equipment; provided, that no more than three additional floors may be allowed, and that the height of such additional floors shall not exceed an average of 11 feet each.
 - b. Within the minimum required setback and yard requirements, an additional floor may be permitted for each floor whereon 60% of the floor space is used as an exhibition, lobby, gallery, recreation area, or terrace, provided that no more than three additional floors may be allowed, and that the height of such additional floors shall not exceed an average of 11 feet each.

An exhibition, lobby, gallery, recreation area, or terrace may consist of:

1. An enclosed or partially enclosed area which is primarily intended for the use of the building occupants and contains sitting, lounge, and exhibition-information areas, or
2. An enclosed or partially enclosed area which is primarily intended to act as a transition floor between residential uses and either parking and/or building mechanical equipment uses and contains either sitting, lounge, or exhibition areas, or
3. An enclosed or partially enclosed area which is solely intended for the use of the building occupants and is devoted primarily to recreational activities.
4. An open area of at least 4,000 square feet primarily intended for the use of the building occupants, and not to be used for parking, and which either is bounded on one side by a front line or is connected to the frontage street by means of an arcade or an open area not less than 20 feet wide.

5. A terrace area which may consist of an open area not located on the ground floor, accessible to the public and containing either sitting, exhibition, fountain, works of art and landscaped rest areas, or an open area located on the ground floor, accessible to the public, developed and landscaped as an adjunct use to an adjacent permitted use (i.e., a terraced area used as an outdoor swimming pool for an adjacent apartment hotel or civic function).
- (5) *Building setback lines.* Except as specified in Article XVI, Section 32-56.2(d)(1), (2) of this chapter, each story or part of a building exclusive of cornices and uncovered steps and uncovered porches, shall be set back from the line of the street on which the building fronts by at least a minimum distance of 15 feet, except that for an apartment building, each story or part of a building, exclusive of cornices, balconies, and uncovered steps and uncovered porches, shall be set back at least:
 - a. 30 feet from the line of all perimeter streets.
 - b. 25 from the line of all interior streets.
 - c. 25 feet from all exterior lot lines.
- (6) *Rear yards.* Except as specified in Article XVI, Section 32-56.2(e)(1), (2) of this chapter, a rear yard of 12 feet shall be provided, except that for apartments, the minimum depth of a rear yard shall be 25 feet.
- (7) *Side yards.* In an RA district, two yards shall be provided on every lot as follows:
 - a. Seven feet, with a minimum aggregate width of the two side yards of 15 feet, except as provided in b below.
 - b. For apartments in an RA district, the minimum side yard shall be 20 feet.
 - c. In case of a building more than three stories in height, side yards shall be not less than one third the height of the building.
 - d. On a corner lot, the side yard along the interior side lot line shall have a minimum width as required in this section, but the width of the side yard along the street line shall be governed by the building setback requirements in this section.

(Ord. No. 70-31, Art. IV, § 4, 7-21-70; Ord. No. 72-62, 11-27-72; Ord. No. 74-7, 2-25-74; Ord. No. 78-33, Amend. No. 5, 9-11-78; Ord. No. 82-2, Amend. No. 4, 2-8-82; Ord. No. 85-16, Amend. No. 2, 4-1-85; Ord. No. 91-32, Amend. Nos. 11—15, 10-14-91; Ord. No. 98-14, Amend. Nos. 5, 9b, 6-22-98; Ord. No. 02-21, Amend. No. 3, 9-23-02; Ord. No. 14-22, Amend. No. 5, 12-8-14; Ord. No. 15-18, Amend. No. 6, 9-14-15)

Editor's note— Ord. No. 14-22, Amend. No. 5, adopted December 18, 2014, enacted provisions intended for use as subsection (a)(12). Inasmuch as there are already provisions so designated, and at the discretion of the editor, said provisions have been redesignated as subsection (a)(19).

Sec. 32-45. - Off-street parking requirements.

- (a) All uses permitted under this zoning chapter shall be subject to the following minimum off-street parking requirements in addition to any special requirements contained in each zoning district. However, a parking plan option may be substituted in the BB zoning district as provided in Section 32-45(b) of this chapter.

Type of Uses	Standards
Retail stores, all types; supermarkets; adult bookstores/entertainment centers; department stores	One off-street parking space per 200 square feet of floor area used or designed for sales on ground floor, plus one off-street parking space per 300 square feet of floor area used or designed for sales on all other floors, plus one off-street parking space for each employee.
New and used car and boat sales, mobile dwelling unit sales, truck and trailer sale, outdoor equipment and machinery sales, commercial nurseries	Four off-street parking spaces per salesperson, plus one off-street parking space per two other employees during period of greatest employment.
Furniture and appliance stores	One off-street parking space per 400 square feet of floor area devoted to sales.
Personal service establishments	One off-street parking space per 200 square feet of gross floor area.
Undertakers	One off-street parking space per 60 square feet of floor area available for seating accommodations, plus one per employee.
Banks and other financial institutions	One off-street space per 200 square feet of gross floor area, plus one space for each employee.
Hotels and motels	One off-street parking space for each guest room, plus one off-street parking space for each employee.

Bowling establishments	Five off-street parking spaces for each alley plus one for each employee.
Business, governmental and professional offices; instructional business; trade schools; and, studios	One off-street parking space per 300 square feet of gross floor area.
Medical and dental offices	One off-street parking space per 200 square feet of gross floor area.
Churches	One off-street parking space per five seats or one off-street parking space per 90 lineal inches of pew space.
Indoor recreation and commercial outdoor recreation; swimming club, private	One off-street parking space for each 150 square feet of gross floor, building, or ground area devoted to such use or one off-street parking space per four seats of facilities available for patron use, whichever is applicable to the facility.
Drive-in or curb service establishment	25 off-street parking spaces minimum, plus one off-street parking space for each 150 square feet of gross floor area.
Restaurants and diners	One off-street parking space per three seating accommodations, plus one off-street parking space per employee on shift of greatest employment.
Dwelling, one family	Two off-street parking spaces per dwelling unit. See <u>Section 32-47(j)</u> , "Existing Single Family Type Rental Dwellings."
Dwelling, garden apartment, duplex, high-rise apartment, or group housing	Two off-street parking spaces per dwelling unit, plus one additional off-street parking space for each dwelling unit with more than three bedrooms.

Dormitory	One off-street parking space per one and five-tenths residents.
Rooming and boarding house	One off-street parking space per roomer or boarder, in addition to normal requirements for the dwelling unit.
Nursing home, convalescent home, rest home, sanitorium	One off-street parking space per four patient beds, plus one off-street parking space per employee on the shift of greatest employment.
Automobile service station or public garage	One off-street parking space per 1,000 square feet of lot area, plus one off-street parking space per employee during period of greatest employment.
Railroad passenger stations or bus terminal	One off-street parking space per four seating accommodations for waiting passengers, plus one off-street parking space per employee on the shift of greatest employment.
Hospital	Two off-streets parking spaces per three beds intended for patients (except bassinets or beds in student nurses' quarters), plus one off-street parking space per medical staff member, plus one off-street parking space per employee on the shift of greatest employment.
Museum and art gallery, and similar uses	One off-street parking space per four seats in rooms for public assembly or for each 150 square feet of gross floor area for use by the public, whichever is greater, plus one off-street parking space for each employee on shift of the greatest employment.

<p>Public library</p>	<p>One off-street parking space per 400 square feet of gross floor area for public use, plus one off-street parking space per employee on the shift with the greatest employment.</p>
<p>Fire station</p> <p>Auditorium, stadium, assembly hall, gymnasium, theatre (excluding drive-in), community recreation center</p> <p>Social club, fraternal, social service, union, and civic organization building</p> <p>Public or private school</p> <p>Post office</p>	<p>25 off-street parking spaces.</p> <p>One off-street parking space per four fixed seats in largest assembly room area or for each 40 square feet of floor area available for the accommodation of movable seats in the largest assembly room, or one off-street parking space per 150 square feet of gross floor area, whichever is applicable to the facility.</p> <p>One off-street parking space per adult attendant, plus one off-street parking space per 500 square feet gross floor area devoted to such uses.</p> <p>Three off-street parking spaces per room used for administrative offices, plus one off-street parking space per room used for class instruction, plus one off-street parking space for each five seats in auditorium and other places of assembly or facility available to the public.</p> <p>One off-street parking space per 200 square feet of gross floor area devoted to patron use, plus two off-street parking spaces per three employees on the shift of greatest employment.</p>

- Whether the applicant has demonstrated that the proposed use is not highway oriented in character or significantly dependent on automobile or truck traffic as a primary means of conducting business;
- d. If the proposed use will not adversely affect the health or safety of persons residing or working in the vicinity, will be detrimental to the public welfare, or injurious to property or improvements in the vicinity;
 - e. The planning commission may also consider the availability of off-street parking facilities, the availability of nearby adjacent public parking facilities (within 500 feet) that may be shared by the applicant, and an existing or proposed use. In considering this subsection, the planning commission may require that the applicant submit an appropriate deed restriction, satisfactory to the city, that ensures either the continued validation of and/or the continued use of shared parking spaces in connection with the uses and structures they serve; and
 - f. The planning commission shall consider the advice and recommendation of the planning director.
- (3) Property owners, land developers, or other land users of BB zoned property, may apply at their option to the planning department for the off-street parking standard waiver as specified herein by submitting the following:
- a. A letter, statement, or report from the owner, or land developer, requesting the off-street parking standard reduction, including the applicant's evaluation of the proposed reduction in terms of the conditions to be reviewed by the planning commission stated herein.
 - b. 15 copies of a site plan showing the existing and proposed use and building, existing and proposed off-street parking, and adjacent or nearby to-be-shared or utilized public or private off-street parking facilities, bearing the certificate, signature, and seal of a Delaware registered engineer or land surveyor. The plan shall conform to all other related zoning code, subdivision and development regulations, and municipal code requirements.
 - c. 15 copies of an area map showing the location of the proposed use and its relationship to adjoining properties.
- (4) The planning commission shall hold a public hearing to consider the proposed off-street parking standard reduction. The planning commission shall approve, approve with conditions, or disapprove the application.
- (5) If the planning commission disapproves the application for an off-street parking standard reduction, the applicant, within 30 days, may request that city council review the application for a final determination. In reviewing a resolution of approval of such an application, council shall consider the criteria established in Section 32-45(b)(2) herein.
- (6) Within 45 days, the city council may also review, modify, or deny the planning commission's approval, disapproval, or approval with conditions upon the recommendation of the a member of council, planning director and/or the city manager. In reviewing the planning commission's action, the council shall consider the criteria established in Section 32-45(b)(2) herein.
- (7) Applications for off-street parking standard reductions may be considered in conjunction with applications for rezonings and subdivision approval.

- (8) If an application is disapproved by the planning commission and/or subsequently disapproved by city council on appeal, an application for the same property cannot be considered for a period of two years from the date of final determination by the city.
- (9) Required parking waiver in lieu of spaces payments. Applicants receiving off-street parking standard reductions shall be required to pay to the city a fee in lieu of the required spaces subject to the following:
 - a. Payments shall be assessed for a percentage of the cost of construction of off-street surface level spaces required for each use category based on the following fee schedule:

FEE SCHEDULE FOR REQUIRED NON-RESIDENTIAL SPACES

Parking Space Standard Reduction	Cost of Construction
First five spaces	Five percent
Six to 25 spaces	Up to 50 percent
Each space over 25	Up to 100 percent

FEE SCHEDULE FOR REQUIRED RESIDENTIAL SPACES

Parking Space Standard Reduction	Cost of Construction
First five spaces	25 percent
Six to 25 spaces	Up to 75 percent
Each space over 25	Up to 100 percent

- b. The cost of surface level parking spaces shall be computed by the planning and development department, with the assistance of the public works department, through the off-street parking standard waiver process, and included in the planning and development department report to the planning commission concerning the parking standard reduction. In developing such costs, the planning and development department may also include in its report to the planning commission, applicant's in-kind services, land donations, granting of easements or rights-of-way, or similar parking improvement activities that the commission may consider in assessing the payments required [in] this Section.

(Ord. No. 70-30, Art. XIV, § 1, 7-21-70; Ord. No. 74-7, 2-25-74; Ord. No. 76-10, Amend. No. 2, 3-1-76; Ord. No. 76-22, Amend. No. 5, 5-10-76; Ord. No. 77-51, Amend. No. 2, 10-24-77; Ord. No. 78-33, Amend. No. 17, 9-11-78; Ord. No. 79-37, Amend. No. 1, 8-27-79; Ord. No. 86-20, Amend Nos. 1—3, 4-28-86; Ord. No.

89-28, Amend. No. 1, 8-14-89; Ord. No. 91-14, Amend. No. 6, 3-25-91; Ord. No. 95-16, Amend. No. 2, 7-10-95; Ord. No. 97-21, Amend. No. 2, 8-25-97; Ord. No. 00-8, Amend. No. 2, 4-24-00; Ord. No. 00-17, Amend. No. 1, 6-26-00; Ord. No. 02-21, Amend. No. 4, 9-23-02; Ord. No. 02-22, Amend. No. 4, 9-23-02; Ord. No. 06-02, Amend. No. 1, 1-9-06; Ord. No. 08-11, Amend. No. 1, 6-9-08; Ord. No. 09-31, Amend. No. 1, 12-14-09)

Sec. 32-47. - General provisions.

- (a) *Parking spaces in driveways.* Driveways shall be considered as constituting off-street parking space for one-family dwellings in residential districts, provided that sufficient space is available in such driveways to meet the requirements of this article.
- (b) *Location of parking space.* Parking spaces shall be located so no spaces are a greater distance than 600 feet from the building to which they are assigned; except for uses located within BB districts, where no parking spaces shall be located a greater distance than 500 feet from the building or use to which they are assigned. The distance between land uses and spaces shall be measured on a straight line between the nearest points of the lots involved. The consent of the owner of the property on which off-premises parking spaces are located must be provided in writing, indicating the continued availability of such parking spaces. In addition, all off-premises parking shall be appropriately signed indicating the building and/or land uses to which the spaces are available.
- (c) *Parking spaces assigned to more than one use.* Parking spaces for separate buildings or uses, except in shopping centers as defined herein, satisfying the location requirement of [Section 32-47\(b\)](#), may be combined in a single lot provided the number of parking spaces in the lot shall equal the sum of the parking spaces required for each building and use; except that the parking spaces required for places of assembly may include parking spaces assigned to other use provided that the place of assembly shall not be used at a time when the other uses are carried on.
- (d) *Barriers required.* Barriers shall be erected on all parking lots; the barriers to be so designed and located to prevent parked vehicles from extending beyond property lines.
- (e) *Parking lot and garage maintenance.* Ground cover, shrubs and trees shall be located and maintained so as not to interfere with vehicular and pedestrian traffic on the property or with sight clearance at entrances and exits.
- (f) *Fractional space.* When the application of a unit of measurement for parking space or loading space to a particular use of structure results in a fractional space, any fraction under one-half shall be disregarded and fractions of one-half or over shall be counted as one parking space or loading space.
- (g) *Boat and trailer parking.* In any residential district, no house trailer, camper, boat or boat trailer shall be parked within the front yard. Parking of such campers, trailers or boats is allowed in the rear yard five feet from the property line and in the side yard three feet from the property line, provided it does not take up the space normally occupied by a car.
- (h) In a BB district parking may be allowed within the front or side areas of any lot provided all other requirements of this chapter are met.
- (i) *Design of parking spaces.* Each parking space shall be nine feet by 18 feet (162 square feet in area). Paved parking spaces shall be delineated with paint or other markings acceptable to the directors of the public works and building departments. Exceptions to this design requirement are permitted as follows:
 - (1) Property owners, land developers, or land users of any parcels in the BB (central business district) zoning district may install off-street spaces with modified designs with planning commission approval as per the requirements of [Sections 32-45\(b\)](#), Parking plan option.
- (j)

Existing single family type rental dwellings. Two off-street parking spaces shall be required per unit for every nonowner occupant, one-family and/or two-family dwelling type structure converted for the taking of boarders and roomers as permitted in this chapter and requiring rental permits as specified in Chapter 17, Housing and Property Maintenance, Code of the City of Newark, Delaware; except that any owner-occupant of such dwellings may use their structure for rental purposes, including the taking of boarders and roomers, on a temporary and nonrenewable basis, not to exceed one year, upon the submission of a signed affidavit to the building department verifying the owner occupant's temporary relocation from the dwelling as a result of a sabbatical leave, military service, business transfer, or similar temporary requirement to convert the dwelling from owner-occupant to nonowner-occupant status; rental permits, as specified in Chapter 17 of this code, shall be required for any such temporarily converted units. This subsection to take effect July 1, 1990.

(Ord. No. 70-31, Art. XIV, Amend. No. 3, 7-21-70; Ord. No. 73-26, 6-11-73; Ord. No. 78-33, Amend. No. 18, 9-11-78; Ord. No. 79-37, Amend. No. 2, 8-27-79; Ord. No. 80-35, Amend. No. 2, 6-23-80; Ord. No. 80-47, Amend. No. 5, 8-25-80; Ord. No. 83-24, Amend. No. 1, 11-14-83; Ord. No. 88-32, Amend. Nos. 4, 5, 10-24-88; Ord. No. 89-28, Amend. No. 2, 8-14-89; Ord. No. 92-1, 1-13-92; Ord. No. 97-21, Amend. No. 3, 8-25-97; Ord. No. 00-8, Amend. No. 1, 4-24-00)

Sec. 32-59. - General provisions.

(a) *Signs permitted without limitations.* The following signs shall be permitted in all districts, except as modified herein:

- (1) *Public signs.* Signs of a noncommercial nature and in the public interest, erected by, or on the order of a public officer in the performance of his duty, such as safety signs, danger signs, memorial plaques, official court and public notices, signs of a historical interest, development identification, and the like.
- (2) *Institutional.* For any public, charitable, educational, or religious institutions, flags, emblems, insignia, or similar signs displaying the name of the institution or the organization, except as otherwise regulated in this Article.
- (3) *Integral.* Names of buildings, dates of erection, monumental citations, commemorative tablets and the like when carved into stone, concrete, or similar material and made of bronze, aluminum, or other permanent-type construction and made an integral part of the structure.
- (4) *Address sign,* giving only street name and numerical designation for premises on which it appears. Such a sign shall be limited to one square foot.
- (5) *Exterior merchandise signs.* Signs permitted in business zoning districts having a maximum area of not more than one square foot on merchandise displayed within six feet of the front of the building of the business selling the merchandise.
- (6) *Reserved.*

(b) *Signs prohibited.* The following signs shall be prohibited.

- (1) Signs which contain statements, words, or pictures of an obscene, indecent, or immoral character, such as will offend public morals or decency.
- (2) Signs which contain or are in imitation of an official traffic signal or sign or contain the words "stop," "go slow," "caution," "danger," "warning," or similar words.
- (3) Signs of a size, location, movement, content, coloring, or manner of illumination which may be confused with or construed as a traffic control device or which hide from view any traffic or street signal or sign.
- (4) Signs which advertise an activity, business, product, or service no longer conducted on the premises upon which the sign is located.
- (5) Signs which move in any manner, either by mechanical means or by wind pressure, swinging signs, spinners, or similar moving devices, are included in this prohibited use.
- (6) Signs which consist of ribbons, streamers, posters, and strings of light bulbs, except as permitted in [Section 32-60\(a\)](#) for temporary signs.
- (7) Signs which flash, except for time and temperature indicators.
- (8) Signs which produce noise or sounds capable of being heard even though the sounds produced are not understandable.
- (9) Signs which emit visible smoke, vapor, particles or odor.
- (10) Signs erected, constructed, or maintained so as to obstruct, or be attached to any fire-fighting equipment, window, door, or opening used as a means of ingress or egress for fire fighting purposes, or placed so as to interfere with any opening for proper lighting and ventilation.
- (11) Signs which cause radio, television, or other communication interference.
- (12) Advertising signs within 400 feet of a public park or which confine, obstruct, or obscure a view of such park or a scenic area.

(c) *Signs not covered.*

- (1) Any sign for which the purpose, location, type or definition is not clearly permitted or prohibited by this chapter shall be considered as being a sign of the most closely resembling purpose, location, type, or definition as established by this chapter.

(d) *Nonconforming signs.*

- (1) Any sign, or parts thereof, installed in accordance with city regulations and existing of April 1, 1982, not in conformance with the requirements of this article may be continued to be used except as follows:
 - a. Signs expressly prohibited in [Section 32-59\(b\)](#); and
 - b. Existing nonconforming signs which are structurally altered, relocated or replaced shall comply with all provisions of this article.
- (2) Any person who paid an annual fee of five times the conforming sign fee under previously existing [Section 32-59\(d\)\(1\)](#) shall be refunded without interest the fee paid in excess of the fee paid for conforming signs if (1) and application for refund is made prior to December 31, 1983, and (2) proof of payment by the applicant or his predecessor in title satisfactory to the finance director is submitted by the applicant.

(e) *Sign exceptions.*

- (1) A sign, having purpose, location, and dimensions similar to those of nonconforming signs existing in the immediate geographical area for which the sign is proposed, and within the confines of the special sign districts delineated in [Section 32-60\(b\)](#), may be permitted if approved by the board of adjustment as a special exception.
- (2) A ground or roof sign in a business special sign district, constructed under a sign exception, shall not extend more than 25 feet above grade. A roof or projecting sign, constructed under a sign exception, shall not extend above the top line of the roof, or the top of the parapet of the building on which it is supported.
- (3) Applications for time and temperature signs that do not meet the provisions of this code shall require the approval of the board of adjustment pursuant to [Section 32-66](#) of the code.

(f) *Structural requirements.*

- (1) All signs shall comply with structural requirements as established by the Code of the City of Newark, [Chapter 7](#), 1970 Building Officials Conference of America Basic Building Code, Article 14.

(g) *Permits.* See BOCA building code for permit requirements.(h) *Insurance.*

- (1) No sign shall be erected, installed, removed or rehung until a valid certificate of insurance has been filed in writing with the building inspector. However, such certificate shall only apply to signs overhanging or within public property or a public right-of-way.
- (2) The obligation herein specified shall remain in force and effect during the life of every sign so covered and shall not be canceled until after 30 days' notice to the building inspector.

(i) *Inspection, removal and safety.*

- (1) *Inspection.* Signs for which a permit is required shall be inspected at least once each year by the building department. This inspection shall ensure compliance with this chapter and other associated codes of the City of Newark.
- (2) *Maintenance.* All signs and components thereof shall be kept in good repair and in safe, clean, and attractive condition.
- (3) *Sign removal.* The building director may order the removal of any sign erected or maintained in violation of this code. He shall give 15 days' notice in writing to the owner of such sign, or of the building, structure, or premises on which such sign is located, to remove the sign or bring it into compliance; however, the building director may give 24 hours' notice in writing if such signs are portable, temporary, or otherwise easily removable. The building director may remove a sign immediately and without notice if, in his opinion, the condition of the sign is such as to present an immediate threat to the safety of the public.
- (4) *Abandoned signs.* A sign shall be removed by the owner or lessee of the premises upon which the sign is located when the business which it advertises is no longer conducted on the premises. If the owner or lessee fails to remove it, the building department, City of Newark, shall give the owner 15 days' written notice to remove it. Upon failure to comply with this notice, the building director or his duly authorized representative may remove the sign at cost to the owner.
- (5) Where a successor to a defunct business agrees to maintain the conforming signs as provided in this chapter, this removal requirement shall not apply.

- (6) Notice to remove illegal sign(s) shall be deemed continuing for one year following the time of receipt of a written notice by certified letter from the city. The owner or person in control, or the agent of the owner or person in control of any property where an illegal sign(s) is constructed which has for any year received notice above set forth in this subsection, shall be deemed to have notice for the remainder of the year, and no additional notices will be made by the city. A summons shall be issued for any violation after the initial notice to remove an illegal sign in any year.
- (j) *Shopping center identification sign.* A shopping center identification sign may be allowed without regard to size or shape if the sign or signs are approved by the planning commission and council as part of the subdivision approval procedure. Such signs would be considered to be conforming signs. Existing shopping centers may apply for amendment to their subdivision plan for the purpose of making their shopping center identification sign a conforming sign. Existing shopping centers without an approved subdivision plan which were in existence prior to the adoption of the subdivision regulations, may apply for a shopping center identification sign by submission of an application for approval of a sign plan to the planning commission for recommendation to city council.
- (k) *Subdivision development signs used for the purpose of advertising the sale of lots or other parcels of land.* Such signs shall be subject to the following conditions:
- (1) Standards shall be as follows:
 - a. Maximum number unlimited, but minimum distance between such signs shall be 1,000 feet.
 - b. Maximum area shall be 60 square feet.
 - c. Maximum height shall be ten feet.
 - d. Maximum width shall be ten feet.
 - e. Maximum setback shall be the same as for a residence in the same zoning district. There shall be at least one vacant lot between such a sign and occupied lots.
 - f. Illuminated signs not permitted.
 - g. Insurance required.
 - h. Permit required.
 - (2) Any such sign may advertise only the area on which the sign is located and areas connected directly thereto, and not the sale of lots elsewhere, or the realtor's, developer's, or owner's business in general.
 - (3) Such signs shall be limited to those developers or owners having for sale a minimum number of 12 lots in one unbroken development area. Such lots must be in one contiguous area with no more than 25% of the lots having building improvement erected thereon at the time of application for a sign permit.
 - (4) Such signs shall be removed when 75% of the lots have building improvements erected upon them.
 - (5) Such sign shall be made by a professional sign painter and maintained in good order and condition. The area within 15 feet shall be kept free of weeds and tall grass.
 - (6) Such a sign shall be removed within two years of erection.
- (l) *Banners, pennants, and noninstitutional flags.*
- (1) Pennants shall be permitted to control ingress or egress to undeveloped property or property under construction, or to designate restricted areas within such property, for properties under construction or repair, or for purposes of public safety. No sign permit shall be required. Otherwise, pennants shall not be permitted.
 - (2) Banners shall be permitted in business or industrial zoning districts for advertising a special sales event, grand openings, or similar activities if attached to a wall; maximum area shall be determined by the following formula:
 - a. Zero feet to 30 feet of front footage—30 square feet or two and one-half times the linear front footage, whichever is greater.
 - b. 31 feet to 100 feet of front footage—75 square feet or two times the linear front footage, whichever is greater.
 - c. 101 feet and above of front footage—200 square feet or one and one-half times the linear front footage, whichever is greater.

In the case of a property or business facing more than one street, signs shall be permitted as per the standard on each frontage and in the case of businesses in shopping centers, the front footage shall be calculated based on the width of the business; maximum number of one per business, except as otherwise regulated; banners on walls shall not be combined with flags or freestanding banners. In the case, however, of any business providing alcoholic beverages for consumption on and off the premises banners shall not contain any message regarding happy hours, reduced priced alcoholic beverage specials or any other form of alcoholic beverage promotional information. This subsection regarding alcoholic beverage banners to take effect within 180 days of its adoption. No sign permit required.
 - (3) *Noninstitutional flags and/or freestanding banners attached to poles,* shall be permitted so long as they do not contain statements or commercial messages of any kind; such flags shall be set back five feet; maximum number of one per 25 feet of street frontage, with flags permitted on all street frontages for, property facing more than one street; the maximum area for each flag shall not exceed 24 square feet; noninstitutional flags or freestanding banners shall not be combined with wall banners; a sign permit is not required.
 - (4) Other temporary signs not the same or similar to those described in this section shall be regulated as per the requirements of [Section 32-60\(a\)](#) for temporary signs.
- (Ord. No. 76-27, 6-14-76; Ord. No. 76-36, Amend. Nos. 1, 2, 7-26-76; Ord. No. 81-12, Amend. No. 1, 2, 3-23-81; Ord. No. 82-18, Amend. Nos. 1, 2, 6-28-82; Ord. No. 83-25, Amend. Nos. 1—11, 11-14-83; Ord. No. 88-4, Amend. Nos. 2, 3, 2-22-88; Ord. No. 91-36, Amend. No. 2, 3, 11-25-91; Ord. No. 98-2, Amend. No. 1, 1-12-98; Ord. No. 01-7, Amend. No. 4, 5-14-01; Ord. No. 02-14, Amend. No. 2, 7-8-02)

Sec. 32-78. - Special use permit.

- (a) The following procedures shall apply governing the implementation of special use permits:
- (1) Special use permits may be issued for any of the conditional uses for which a special use permit is required by the provisions of this chapter; provided that the council shall find, after a duly advertised hearing held in accordance with the provisions of Article XXI, Section 32-80, that the applicant has demonstrated the conditional use will not:
 - a. Affect adversely the health or safety of person(s) residing or working within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware;
 - b. Be detrimental to the public welfare or injurious to property or improvements within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; and
 - c. Be in conflict with the purposes of the comprehensive development plan of the city.In granting any special use permit the council shall designate such conditions in connections therewith as will, in its opinion, assure that the use will conform to the foregoing requirements and that such use will continue to do so.
 - (2) Construction or operation shall be commenced within one year of date of issuance or a special use permit shall become void. "Construction," as that term is employed in this section, shall mean that a valid building permit has been issued and work called for in the permit has begun. Expiration of a building permit or abandonment of the work sanctioned by the permit, or the failure to commence work during the one year time period immediately subsequent to the issuance of a special use permit, shall mean that the permit becomes void. "Operation," as that term is employed in this section, shall refer to those uses for which building permits are not required. For such uses, operation shall mean that a valid certificate of occupancy has been issued and the use has become open and available for the public.
 - (3) A reapplication for a special use permit for the same lot shall not be considered by the council within a period of 360 days from its last consideration. This provision, however, shall not impair the right of the council to propose a special use permit on its own motion.
 - (4) Written application for a special use permit, plans, and supporting materials shall be filed with the planning department. Every application shall be accompanied by a fee of \$150.00 for residential districts and \$650.00 for university, business, and industrial districts. All applications for uses proposed to be constructed on properties one acre or more in size shall be referred to the planning commission for consideration and recommendation; all other applications shall be forwarded directly to council for consideration. The time of council hearing shall be within one month of the special use permit application filing date for properties less than one acre in size; the time of the hearing for properties larger than one acre shall be within one month of the planning commission recommendations. A reasonable effort shall be made to give 10 days notice by mail of Planning Commission and/or City Council public hearings to all property owners of record, according to ownership data available at Newark, whose property is immediately adjacent to or within 300 feet of the property for which the special use permit is requested.

(5) If a special use permit is granted under the provisions of this section, the council shall direct the building inspector to issue the special use permit as instructed.

(Ord. No. 70-31, Art. XX, § 6, 7-21-70; Ord. No. 78-4, Amend. Nos. 1, 2, 1-9-78; Ord. No. 95-7, Amend. No. 1, 2-13-95; Ord. No. 98-28, Amend. No. 1, 10-12-98; Ord. No. 07-01, Amend. No. 1, 1-8-07; Ord. No. 07-10, Amend. No. 1, 3-26-07; Ord. No. 15-18, Amend. No. 20, 9-14-15)

ARTICLE XXI. - AMENDMENT

Sec. 32-79. - Amendment procedure.

- (a) The council may, from time to time, on its own motion, on the motion of the planning commission, or on petition by owner, amend, supplement, change, modify, or repeal the zoning regulations, restrictions, and boundaries in a manner and in accordance with the procedure hereinafter provided.
- (b) All proposals for amending, supplementing, changing, modifying, or repealing the zoning regulations, restrictions or boundaries, before being acted upon by the council, except those originating on motion of the planning commission, shall be referred to the planning commission for consideration and recommendation. The planning commission shall study all such proposals, whether originating with the planning commission or otherwise, conduct a public hearing thereon after having given notice thereof required for the agenda of the planning commission, and in the case of proposals to amend the zoning map, a reasonable effort shall be made to give ten days' notice by mail to all property owners of record, according to ownership data available at Newark, whose property is proposed to be changed by said amendment, and to those immediately adjacent thereto, extending 300 feet therefrom and to those directly opposite thereto, extending 300 feet back from the street frontage of such opposite lots. However, failure to notify by mail any individual or individuals qualifying for notice shall not invalidate any action taken. The planning commission shall report its findings and recommendations to the council.
- (c) In addition to the notification and advertising requirements herein, in the case of proposals to amend the zoning map and for major subdivisions, notice shall also be given by posting on the property by the applicant with a sign, at least 15 days prior to the Planning Commission public hearing, subject to the following requirements:
- (1) *Location.* The sign shall be placed in an unobstructed view on the property in a location fully visible from a public right-of-way; preferably near the front property line in the midpoint of the parcel's width.
 - (2) *Size and design.* The sign shall be double-faced with each side consisting of a four-foot by four-foot laminated structure, with yellow background, and two-inch block letters, except for the heading, which shall be at least two and one-half-inch high lettering. All lettering shall be black in color and in bold face, in an Arial font.
 - (3) *Content.* The sign shall contain only the following information:
 - a. Heading—the requested action—"Rezoning," "Annexation," or "Major Subdivision" with the words "Public Notice."
 - b. For annexations and rezonings:
 - i. Existing and proposed zoning;
 - ii. Proposed new use.
 - c. For major subdivisions:
 - i. Residential—Type and number of units;
 - ii. Commercial and industrial—Building footprint square footage and building height.
 - d. Acreage of property.
 - e. Name and phone number of applicant.

- f. Date, time and location of Planning Commission public hearing. Council action to follow.
 - g. The words: "Information Call Newark Planning and Development Department at (302) 366-7030."
- (4) *Maintenance*. The applicant shall be responsible for maintaining the complete sign in legible form until after the final City Council public hearing.
- (5) *Sign removal*. The applicant shall remove the sign within five days of the final Council public hearing on the matter.
- (d) The planning commission is hereby granted the authority to require, as a condition to consideration of any proposal, other than one originating with the council, that a petition be submitted accompanied by such maps, charts, sketches, and other information as the planning commission deems necessary for the proper and effective consideration of such proposal, and to refuse to consider any proposal not complying with such requirement.
- (e) No proposed amendment, change modification, or repeal of any zoning regulation, restriction, or boundary, shall become effective until after a public hearing in relation thereto shall have been held by the council, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Newark.
- (f) In the event of a protest against such changes signed by the owners of 20% or more, either of the area of the lots included in such proposed change, or of those immediately adjacent thereto extending 100 feet therefrom, or of those directly opposite thereto, extending 100 feet back from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the council. All protests under this section must be filed with the city secretary by the close of the business day preceding the hearing date published under section 32-79(d).
- (g) If, after due consideration, a proposal is denied, such proposal shall not be eligible for reconsideration for a period of two years after final action by the council, except upon the favorable vote of three-fourths of planning commission or council.
- (Ord. No. 70-31, Art. XXI, § 1, 7-21-70; Ord. No. 71-18, 5-24-71; Ord. No. 76-48, 11-8-76; Ord. No. 77-36, 9-25-77; Ord. No. 99-2, Amend. No. 1, 1-11-99; Ord. No. 09-32, Amend. No. 1, 12-14-09)

Sec. 32-80. - Hearing required; notice thereof.

No change or amendment shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have had an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in the City of Newark. In all cases in which a proposed amendment would change the zoning map, a reasonable effort shall be made to notify by mail all property owners of record, according to ownership data available at Newark, whose property is proposed to be changed by said amendment, and to those immediately adjacent thereto, extending 300 feet therefrom and to those directly opposite thereto, extending 300 feet back from the street frontage of such opposite lots. However, failure to notify by mail any individual or individuals qualifying for notice shall not invalidate any action taken by council.

(Ord. No. 70-31, Art. XXI, § 2, 7-21-70; Ord. No. 71-41, 12-13-71; Ord. No. 76-53, 12-13-76; Ord. No. 99-2, Amend. No. 2, 1-11-99)

Sec. 32-80.1. - Alternative hearing notice may be provided for by council.

Notwithstanding any notice requirement to the contrary, the council, by resolution, may provide for alternative notice so long as all notice requirements contained in the state law are followed. Said alternative notice shall contain the date of the public hearing and may be included with the electric bill regularly mailed by the city.

(Ord. No. 78-3, 1-9-78)

Sec. 32-81. - Filing fees.

- (a) *Application—petition fee.* A nonrefundable fee of \$100.00 shall accompany each application or petition for rezoning, except for those petitions which have been initiated by the council or by the planning commission.
- (b) *Same—review fee.* After modification by the planning department that the application or petition for rezoning has been received, the applicant shall be required to submit the following review fee:
- (1) \$25.00 per acre or fraction thereof for the first 100 acres;
 - (2) \$10.00 per acre or fraction thereof for the next 40 acres;
 - (3) \$5.00 per acre or fraction thereof for the next 50 acres;
 - (4) \$1.00 per acre for the remainder of the tract.
- (c) *Waiving of fees.* Planning commission may recommend to city council waiving any and all of the above fees if it is determined that an applicant would suffer any unnecessary financial hardship or inconvenience.

(Ord. No. 70-31, Art. XXI, § 3, 7-21-70; Ord. No. 74-20, Amend. Nos. 1, 2, 6-10-74)

Sec. 32-82. - Reserved.^[1]

Footnotes:

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Editor's note— Section 32-82, Relative to expiration of zoning approval, derived from Ord. No. 7031, Art. XXI, § 4, adopted July 21, 1970, was repealed by Ord. No. 80-1, enacted Jan. 14, 1980.

ARTICLE XXVII. - SITE PLAN APPROVAL

Sec. 32-97. - Purpose.

(a) Provisions for site plan approval are hereby made for the area and density regulations for all permitted uses within a zoning district as described in this chapter, and to permit additional uses not otherwise permitted within a zoning district. Uses not otherwise permitted within a district are restricted to those provided for in this article and to properties with a minimum size of five acres and that shall accompany residential subdivisions with a minimum of 10 dwellings. In addition, for energy conservation only as stipulated below, site plan approval shall apply for permitted uses within business and industrial districts for all new construction and the expansion of existing buildings more than 50% of their existing size. It shall be the purpose and intent of site plan approval to provide alternatives for new development redevelopment proposals, to encourage variety and flexibility, for new development and redevelopment, and to provide the opportunity for energy efficient land use by permitting reasonable variations from the use and area regulations stated in this chapter. Site plan approval shall be based upon distinctiveness and excellence of site arrangement and design and including, but not limited to:

- (1) Common open space;
- (2) Unique treatment of parking facilities;
- (3) Outstanding architectural design;
- (4) Association with the natural environment including landscaping;
- (5) Relationship to neighborhood and community and/or;
- (6) Energy conservation defined as site and/or construction design that the building department has certified meets or exceeds the 'certified' level as stipulated in the LEED (Leadership in Energy and Environmental Design) United States Green Building Council Program or a comparable building department approved energy conservation program.

(b) It is not the purpose and intent of this article to abrogate in any manner the powers or jurisdiction of the board of adjustment as provided in [Section 32-66](#) of this chapter.

(Ord. No. 72-62, 11-27-72; Ord. No. 80-13, Amend. No. 4, 2-11-80; Ord. No. 95-17, Amend. No. 1, 7-10-95; Ord. No. 08-02, Amend. Nos. 1, 2, 2-25-08)

Sec. 32-98. - Procedure.

Any person applying for subdivision approval, rezoning, or a building permit, who wishes to develop a site or erect a structure different from that which is specified in the applicable zoning district as specified in this article shall, after conferring with the planning director, submit the following:

- (a) An application for site plan approval, as well as a detailed site plan drawn to an appropriate scale and related data. The site plan must accompany all applications and show elements of the proposed development of this site. Site plan approval submittal requirements shall include all information specified in [Chapter 27](#), Subdivisions, of this code.
- (b) Site plan approval applications based on energy conservation as defined in [Section 32-97\(a\)\(6\)](#) shall also include the following:
 - (1) The extent to which the proposed plan uses energy efficiently and conserves energy resources;
 - (2) For development using solar energy, whether active or passive, site design, and building orientation to protect solar access, pursuant to the Subdivision and Development Regulations, Appendix XI, Design Standards for Energy Conservation and/or Solar Access, including a shadow plan showing shadows cast by proposed buildings, by existing buildings on or adjacent to the site, and by vegetation on or adjacent to the site. Where landscaping is proposed, shadows from such landscaping shall also be included in shadow plans.
 - (3) Materials, plans, and related information pursuant to the requirements of the Subdivision and Development Regulations, Appendix XI, Design Standards for Energy Conservation and/or Solar Access.
- (c) Site plan approval applications including uses not otherwise permitted within a zoning district shall also include the following:
 - (1) Color scale elevation drawings of all proposed building materials and types;
 - (2) Detail descriptions of the uses proposed;
 - (3) Descriptions of the relationship of the proposed development to the design criteria specified in this article;
 - (4) Proposed plazas, bikeways, community identification signage, recreation, and similar amenity areas; and
 - (5) Other information that may be required by the planning director to meet the purposes of this article.
- (d) The planning director shall review the site plan and determine its correlation to the Zoning Code permitted uses, area and density regulations and planning policies of the Subdivision and Development Regulations and the Comprehensive Development Plan. The developer, and if appropriate, the developer's engineer and architect, shall then confer with the planning director to further develop the submitted site plan. The site plan approval review process may be combined with the procedural requirements of Chapter XXVII, Subdivisions of this code.
- (e) The planning director shall transmit engineering, utility, and other details of the plan, for review and comment, to the city departments of public works, water and waste water, electric, building, city fire marshal, city police department, and city manager's office. These departments shall review those aspects of the plan which correspond in function to the respective departments. These departments shall then transmit reviews and comments back to the planning director.
- (f) The planning director shall submit a report to the planning commission, which shall contain, if appropriate, an evaluation of the plan, and other comments delineating the plan's relationship to planning policies, recommendations, and conditions, along with reviews from the above-mentioned departments.
- (g) The planning commission shall review the plan and consider recommendations made by the planning director and other aforementioned departments. The commission may recommend, in approving the plan, conditions and variations pertaining to permitted uses, lot size, yard dimensions, distance between buildings, height of buildings, density, the placement of signs, etc. Conditions and variations may only be recommended after a public meeting or hearing has been held, in accordance with Article XXI, [Section 32-80](#) of this chapter. In recommending approval of the site plan, the planning commission may designate such conditions in connection therewith, as will, in its opinion, assure that the improvement and development will conform to the foregoing requirements, or modifications thereof, including, but not limited to, provisions for the protection of adjacent property, access and design for off-street parking and loading as shall be deemed necessary to secure the general intent of the district and the best development of the neighborhood, and to reduce injury to the value of the property in the neighborhood. Any excess land area thus produced shall be deemed common open space or public right-of-way, available to each resident or user within the proposed development or transferred by title to the city for general public use. Action by the planning commission shall be considered preliminary site plan approval, approval with conditions, or disapproval.
- (h) The planning director shall submit recommendations of the planning commission to city council, along with all necessary reports and supporting data. City council shall consider the recommendations of the planning commission at a regularly scheduled public meeting or hearing. In approving and accepting a site plan, the council may designate such conditions in connection therewith as will, in its opinion, assure that the improvement and development will conform to the foregoing requirements, or modifications thereof, including, but not limited to, provisions for protection of adjacent property, access and design for off-street parking and loading as shall be deemed necessary for the general intent of the district and the best development of the neighborhood, and to reduce injury to the value of property in the neighborhood.

- (i) Action by city council shall be final site plan approval, approval with conditions, or disapproval.

(Ord. No. 72-62, 11-27-72; Ord. No. 80-13, Amend. No. 5, 2-11-80; Ord. No. 95-17, Amend. No. 1, 7-10-95)

Sec. 32-98.1. - Permitted uses.

With site plan approval, the following uses shall be permitted in addition to those permitted within each residence zoning district. Non-residential uses, however, shall only be permitted in conjunction with residential uses:

- (a) Nursing home.
- (b) Offices for professional services and administrative activities.
- (c) Personnel service establishments.
- (d) Restaurants, except fast-food restaurants are not permitted.
- (e) Retail and retail food stores, not to exceed 5,000 square feet.
- (f) Studios for artists, designers, photographers, musicians and sculptors, not to exceed 5,000 square feet.
- (g) Banks, finance institutions, loan companies, except drive-in windows shall not be permitted.
- (h) In RH, RT, RS, RD, RR, and RM districts, residential dwellings of all types as permitted in each district shall be permitted in any of these residential districts, subject to the density bonuses in this article.

(Ord. No. 95-17, Amend. No. 1, 7-10-95)

Sec. 32-98.2. - Density bonus.

With site plan approval the total number of dwelling units shall be permitted as specified below:

- (a) In RH district-up to four dwelling units per acre, with 20% of the total site under review for site plan approval set aside for parkland/open space.
- (b) In RT districts-up to six dwelling units per acre, with 30% of the total site under review for site plan approval set aside for parkland/open space.
- (c) In RS districts-up to eight dwelling units per acre, with 40% of the total site under review for site plan approval set aside for parkland/open space.
- (d) In RD districts-up to fourteen dwelling units per acre, with 70% of the total site under review for site plan approval set aside for parkland/open space.
- (e) Density bonuses for RR and RM districts shall be subject to the requirements of this article and Sections RM 32-11(a)(1)b and RR 32-13(c)(1) of this chapter.
- (f) Parkland and open space shall meet the conditions and criteria specified in Chapter 27, Subdivisions, Appendix VI.

With site plan approval for new uses in business and industrial districts and/or the expansion of existing buildings more than 50% of their current size that comply with Subsection 32-97(a)(6), such buildings may be increased in gross floor area up to 15% beyond their permitted size in their respective zoning districts. That is, area requirements, including parking, height limitations, etc., shall not apply up to 15% of the existing limitations for such buildings.

(Ord. No. 95-17, Amend. No. 1, 7-10-95; Ord. No. 08-02, Amend. No. 3, 2-25-08)

Sec. 32-98.3. - Review criteria and performance standards.

When reviewing plans for site plan approval calling for uses not otherwise permitted in a district, in addition to considering the purposes of this chapter, Chapter 27, Subdivisions, and the Comprehensive Development Plan, the planning commission and city council shall consider the following review criteria and performance standards guidelines. In considering these standards, the planning commission and city council shall encourage flexibility and creativity of site design and shall recognize that these standards are intended to guide alternative approaches to growth and development.

(a) *Architecture.*

- (1) The appropriateness of the design elements of the buildings in terms of the nearby community and adjoining properties and in relationship to each other. Appropriateness shall be considered in most cases to include evaluations of the following:
 - a. Height of buildings;
 - b. Bulk of buildings;
 - c. Roof treatment;
 - d. Materials, colors, and textures of building;
 - e. Fencing.
- (2) The general architecture character, especially scale and stylistic features. In general, styles and character of normally not permitted uses shall correspond to and complement the styles and character of the proposed residential buildings.
- (3) Use of natural materials, including stone, brick, and wood.
- (4) Use of the same exterior building materials for all building walls wholly or partially visible from streets or public ways.
- (5) At the developer's expense, screening from public view of mechanical equipment or utility hardware on roofs or ground, with materials harmonious with the buildings.
- (6) At the developer's expense, screening from public view of refuse, waste removal areas, service yards, and related sites, using materials harmonious with the building.
- (7) For residences, garages should not be the dominant element of the front building facade.

(b) *Site design.*

- (1) The relationship of the proposed streets and buildings to the contours and form of the site. In general, streets and buildings shall follow contours.
- (2) Preservation of natural features that enhance the attractiveness of the development including heavily wooded areas and large rock outcroppings; utilization of environmentally sensitive areas as site amenities.
- (3) Residences backing onto street shall be discouraged.
- (4) Landscape treatment to enhance architectural features; materials natural to the area are preferred.
- (5) Exterior lighting, when used for use not otherwise permitted within a zoning district, shall enhance the building and site design and shall be screened or directed to limit impact on adjacent or nearby residences.

(c) *Signage.* In addition to meeting all the requirements for signage in this chapter, signage for site plan approval developments shall:

- (1) Be designed as integral architectural elements of the buildings and/or site.
- (2) Be compatible with signs on adjoining premises; including prototype and corporate logo signs.

(d) *Transportation and roadways.*

- (1) Traffic impact on nearby roadways and intersections.
- (2) Circulation patterns which minimize conflicts among vehicles, bicycle, pedestrian traffic, and accommodate emergency vehicles.
- (3) Parking shall not be permitted in front yards of any uses not otherwise permitted in the district, except for approved driveways.
- (4) Street system design shall discourage inappropriate through traffic, but connect to existing street patterns whenever possible.
- (5) Street system design which provides for public transit service.
- (6) The provisions of bike paths.
- (7) Pedestrian ways integrated into the site.
- (8) To limit vehicular speeds and minimize stormwater run off, local roads and right-of-way widths for streets may be reduced as provided below. Such roadway and right-of-way width reductions shall conform to all applicable state and city fire prevention requirements, and receive any necessary waivers from such requirements. Local roads in this article are those intended to provide vehicular access to abutting traffic and are intended to connect to collector roads. Collector roads carry traffic from local streets to arterial roadways, usually state highways in Newark.

	Right-of-Way Width (feet)	Paving Width (feet)	Curb Required	Radius Turnaround	
				RW	Paving
Local Road	44	26	Yes	N/A	N/A
Cul-de-sac	42	24	Yes	40'	30'

- a. On-street parking may be prohibited or limited on local roads and culs-de-sac.
- b. Local roads in this article shall be limited to serving no more than 25 dwellings.
- c. Culs-de-sac, as permitted in this article, shall be limited to serving no more than 10 dwelling units.
- d. For developments with more than six units per acre, alleys may be permitted. Alleys are defined as secondary accessways intended to provide rear access to parking or garages at residential properties. Alleys are suggested for properties with narrow lot widths-50 feet or less. Rear loading parking may allow for the elimination of numerous driveways, and on-street parking. No parking is allowed in alleys. Alleys may be used for municipal refuse collection. All alleys shall be privately maintained. Alleys should conform to the following requirements:

	Right-of-Way Width (feet)	Paving Width (feet)	Curb Required
Alley	16	12	No

- e. All residential structures shall be located within a radius of at least 100 feet from a fire emergency vehicle set-up area. Such set-up area shall be located within the right-of-way, unobstructed, parking shall not be permitted, and they shall be appropriate signed.

(e) *Open and common space design.*

- (1) Design of open areas to provide adequate active and passive recreational space for the proposed development in conformance with the requirements of this article and [Chapter 27](#), Subdivisions.
- (2) Integration of open space and common areas into the site design taking advantage of the site's contours and natural advantages.
- (3) Open space and common areas designed and located to minimize maintenance requirements.
- (4) Open space and common areas integrated with proposed uses not normally permitted.
- (5) Open space and common areas consisting of expanded pedestrian facilities and traffic islands, small public squares, or similar community green spaces.
- (6) Open space and common areas located in view of public streets, insofar as possible.
- (7) For commercial portions of a development containing more than two such commercial or nonresidential uses, 25% of the total area devoted to such normally not permitted uses shall be set aside as public open space, meeting the conditions specified in [Chapter 27](#), Subdivisions.

(f) *Landscaping and tree planting.*

- (1) All residential site plan approval development shall meet the following tree planting standards:
 - a. One ten-foot high, one and one-half inch caliper deciduous, and one six foot high evergreen tree shall be added to existing plantings for each dwelling on lots 9,000 square feet or larger.
 - b. One ten-foot high, one and one-half inch caliper deciduous or one six-foot high evergreen tree shall be added to existing plantings for each dwelling on lots less than 9,000 square feet.
 - c. One ten-foot high, one and one-half inch caliper tree shall be required every 50 feet along local road street frontage.
 - d. For parcels with rear yards on streets and roadways, a 20-foot wide landscape buffer shall be provided. Existing trees shall be preserved in the buffer. Selective pruning, removal of noxious weeds and other required plant maintenance, however, shall be permitted. Supplementary evergreens and ornamental plants shall be added to screen residences from roadways.
 - e. Variety of tree species shall be encouraged for street trees. Species shall be approved by the parks, electric, and water and waste water departments taking into account potential impact on utilities, rights-of-ways, and sight distances at intersections.
- (2) All commercial site plan approval development shall meet the requirements of Article XXV, Landscaping Screening and Treatment, of this chapter, except that where trees on street frontages are required in subsection [32-98.3\(f\)\(1\)c.](#), such trees shall be required.

- (g) *Other city requirements.* All developments granted site plan approval shall meet all other applicable municipal code standards, including requirements for fire-safety, housing, management and drainage, and utilities service, except as otherwise regulated in this article.

(Ord. No. 95-17, Amend. No. 1, 7-10-95)

Sec. 32-99. - Time limit.

- (a) If building permits have not been issued and/or construction has not been initiated within 18 months after final approval, the approved plan shall expire. A new application for site plan approval may be then submitted in accordance with the provisions of this article.

(Ord. No. 72-62, 11-27-72)

Sec. 32-100. - Modifications after approval.

- (a) The city manager, after conferring with the planning director and the director of public works, may approve minor modifications in an approved site plan, as field conditions may require. Council will be notified of all such modifications; approval will be granted unless objections thereto are raised by city council not later than the second successive regular meeting. The city manager shall have no authority to approve changes in boundaries of streets and other areas to which title has been transferred or for which agreement has been made to transfer to the city or other public agency. Moreover, the city manager may declare any proposed modifications as major and thereby refer the site plan back to the planning commission and city council for reconsideration, citing the reasons therefor.

(Ord. No. 72-62, 11-27-72)

Sec. 32-101. - Fees.

- (a) Each applicant shall remit a nonrefundable fee payable to the city of \$100.00 when filing application to the city for site plan approval, plus:
 - \$1.00 per 1,000 square feet of office and commercial space, and,
 - \$1.00 per dwelling unit.

(Ord. No. 72-62, 11-27-72)



BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT

Name of Board/Commission/Committee: PLANNING COMMISSION

Representatives Present For Review: EDGAR JOHNSON

CATEGORY	ASPECTS	COMMENTS
Governing Authority	City Code and/or resolutions governing the body	
Qualifications	Are the required qualifications appropriate for the body?	<p align="center">NO SPECIAL QUALIFICATIONS SHOULD BE REQUIRED CITIZEN OF CITY OF NEWARK IS ALL THAT IS REQUIRED COMMON SENSE & A HISTORY OF THE CITY IS HELPFUL</p>

CATEGORY	ASPECTS	COMMENTS
Orientation/ Training	Existing orientation and/or training for the body	SUFFICIENT
	Level of participation by members of the body in the above training	SUFFICIENT
Rules of Procedure	Selection of chair and other officers	NOT EVERYONE WANTS TO SERVE, SO THE CHAIR SHOULD BE A COMMISSION MEMBER WHO WANTS TO SERVE IN THAT CAPACITY. CHAIR SHOULD NOT FORCE HIS OWN AGENDA ON GROUP
	Meeting procedures	SATISFACTORY AS IS
Activity Level	Amount of active participation by members	EVERYONE CHOOSES THEIR OWN LEVEL ... MAKES FOR A DIVERSE GROUP.

CATEGORY	ASPECTS	COMMENTS
Reporting	Existing reporting requirements	Sufficient
	Compliance with existing reporting requirements	"
	Appeal process for decisions of the body	"
Stakeholder Viewpoints	Views of members of the body being evaluated	
	Views of department heads who work with the body	IN PUT FROM DEPT. HEADS IS MOST HELPFUL & SHOULD CONTINUE AS REQUIRED.
	Views of the public who interact with the body	WE WORK FOR THE CITIZENS — THEY HAVE ADEQUATE INPUT; IT IS VALUED AND RESPECTED. "CHANGE" CREATES APPREHENSION & FEAR; VOICING OPPOSITION TO "CHANGE" / "DEVELOPMENT" IS A PART OF THE PROCESS AND SHOULD BE RESPECTED.

CATEGORY	ASPECTS	COMMENTS
Necessity	Scope of duties	
	Similarity to other bodies	<p>GOING TO THE BOARD OF ADJUSTMENT PRIOR TO PLANNING COMMISSION IS SOMEWHAT PROBLEMATIC TO THE PROCESS. IF WE ARE "ADVERSARY", SHOULDN'T OUR "RECOMMENDATIONS" BE HEARD PRIOR TO BOARD OF ADJUSTMENT OR CITY COUNCIL?</p>

THAT'S MY OPINION !!



BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT

Name of Board/Commission/Committee: Planning

Representatives Present For Review: _____

CATEGORY	ASPECTS	COMMENTS
Governing Authority	City Code and/or resolutions governing the body	
Qualifications	Are the required qualifications appropriate for the body?	

CATEGORY	ASPECTS	COMMENTS
Orientation/ Training	Existing orientation and/or training for the body	Seems appropriate
	Level of participation by members of the body in the above training	
Rules of Procedure	Selection of chair and other officers	
	Meeting procedures	It might be useful to have time limits on a citizen's comment on a given issue
Activity Level	Amount of active participation by members	Healthy

CATEGORY	ASPECTS	COMMENTS
Reporting	Existing reporting requirements	
	Compliance with existing reporting requirements	
	Appeal process for decisions of the body	Final decision of the PC should be given some weight and either require a super-majority to reverse or if a majority of Council, then it should relate to some standard
Stakeholder Viewpoints	Views of members of the body being evaluated	Good balance of skills and knowledge. if review But this Commission lacks diversity. All middle to late aged white men so does not reflect the community
	Views of department heads who work with the body	Maureen is top notch. Knowledgeable, helpful, good instincts.
	Views of the public who interact with the body	Pretty narrow slice. Other than applicants tends to be some one or two people, although neighbors turn out.

CATEGORY	ASPECTS	COMMENTS
Necessity	Scope of duties	<i>Mission Critical</i>
	Similarity to other bodies	<i>The Board of Adjustment hears some similarity and at times constrains what we can do. That is unfortunate.</i>



BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT

Name of Board/Commission/Committee: Planning Commission

Representatives Present For Review: Comments by Alan Silverman, Chair

CATEGORY	ASPECTS	COMMENTS
Governing Authority	City Code and/or resolutions governing the body	<p>The roles and responsibility of the city Planning Commission are clearly laid out in state statute and city code. Additional definition and refinement are provided through State court decisions.</p> <p>No bylaws, administrative procedures, rules or a compendium of past practices exist to guide the commission in its day-to-day or future activities. The lack of such written documentation deprives the sitting commissioners and the public of continuity of actions, transparency and context.</p> <p>See suggested administrative procedures attachment.</p>
Qualifications	Are the required qualifications appropriate for the body?	<p>There are no qualifications in the sense of a job description. A job description should be developed.</p>

CATEGORY	ASPECTS	COMMENTS
Orientation/ Training	Existing orientation and/or training for the body	The Planning Director provides each Commissioner with a ring binder containing both State and City Codes and excerpts from a variety of sources dealing with the roles and responsibilities of the Planning Commission. The Director also provides a one-on-one orientation for a new Planning Commissioner. As part of the Planning Commission's Annual Work program continuing education is provided. Programs are made available, at no cost, to the commissioners through the UD's Institute for Public Administration. The Commission, from time to time, provides continuing education up dates dealing with the Commissions administrative procedures, FOIA and recent legal planning decisions. The update sessions are conducted as a special meeting and are open to the public.
	Level of participation by members of the body in the above training	All commissioners receive a copy of the resource ring binder. Only three of the six commissioners have taken advantage of the recent IPA course offerings. All the commissioners were present for the recent special update meeting.
Rules of Procedure	Selection of chair and other officers	State Law requires a position of chair, vice chair and secretary. The City Code provides further definition with respect to the position of secretary. The Planning Director is by City Code the administrator for the commission. Currently, the chair is selected annually from among the Commissioners. There are no qualifications or stipulations. For the 2015/16 term, no Commissioner was willing to serve as a vice chair. There was a consensus decision among the commissioners that in the absence of a chairperson, The role of acting chair position would be based on the most senior chairperson present.
	Meeting procedures	Meeting procedures are based on past practices. There are no written procedures. There are no references ("rules-of-order") used for personal conduct. It is my practice as chair, at the beginning of each meeting, as appropriate, to: 1) describe the flow of information and interaction among the presenters, Commissioners and the public; 2) review my expectations of personal conduct in the <u>style</u> of Roberts Rules.
Activity Level	Amount of active participation by members	Commissioners are given the opportunity to interact by custom at three points in the hearing process: 1) to the planning director's report; 2) to the applicant's presentation;)3 with members of the public during open questions and comments. As chair, I do not require a commissioner to describe their reasoning which led to their vote. Although, legal counsel and discussion at the recent continuing education special meeting recommended that each commissioner's justification for their vote be made part of the record.

CATEGORY	ASPECTS	COMMENTS
Reporting	Existing reporting requirements	State Law specifies reporting requirements dealing with specific planning issues. An annual report is also prepared for city Council. Every October, the City Code requires a work program of the Commission for the upcoming year be presented to city Council.
	Compliance with existing reporting requirements	Planning Director is the City Code designated administrator for the Planning Commission. All State reporting requirements are met through the work of the administrator. This year, the Commission presented an annual work program to City Council. The work program was discussed as an agenda item at several public meetings and was available for public discussion and comment.
	Appeal process for decisions of the body	I believe actions of the Commission are appealed directly to the State Superior Court. It should be kept in mind, that by law, the actions of the Planning Commission are advisory to the City Council. The City Council consideration of the recommendations of the Planning Commission are taken under advisement by the City Council. Hence, the City Council is in effect an appeal body.
Stakeholder Viewpoints	Views of members of the body being evaluated	Blank
	Views of department heads who work with the body	Blank
	Views of the public who interact with the body	Blank

CATEGORY	ASPECTS	COMMENTS
Necessity	Scope of duties	Defined by State Law, City Code and by requests of City Council. City Council, from time to time, may asked the Planning Commission to conduct a workshop on a land-use or comprehensive plan item brought before Council. The Planning Commission is the first opportunity the public has to comment on land use and comprehensive planning items or discussions which may be brought before the City Council, or on proposals or recommendations by the city administration. The Hillside Road stormwater management proposal is an example.
	Similarity to other bodies	The Planning Commission is unlike most commissions or boards in that it provides a legally required advisory opinion before city Council can act on land use issues. It's duties are defined in both State and City code.

Draft • For Discussion Only

CITY OF NEWARK, DE • PLANNING COMMISSION

PLANNING COMMISSION ADMINISTRATIVE RULES OF PROCEDURE FOR QUASI-JUDICIAL AND LEGISLATIVE HEARINGS OF THE CITY OF NEWARK, DE

To provide transparency, clarity and guidance in the planning hearing process and personal conduct for Planning Commissioners and the public.

By Alan Silverman, Chair

May 11, 2016

1
2
3
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Draft 1.5

1 PLANNING COMMISSION ADMINISTRATIVE RULES OF PROCEDURE FOR
2 QUASI-JUDICIAL AND LEGISLATIVE HEARINGS OF THE CITY OF
3 NEWARK, DE

4
5 PURPOSE: To provide transparency, due process, clarity and guidance
6 in the planning hearing process for the City of Newark, DE.

7 Legal Authority: TITLE 22 - DELAWARE CODE - MUNICIPALITIES -
8 CHAPTER 7. PLANNING COMMISSION; Newark,
9 Delaware, Code of Ordinances, Chapter 2 -
10 ADMINISTRATION - ARTICLE VIII. PLANNING
11 COMMISSION, Sec 2-78 through 2-90 inclusive.
12 Attorney General Opinions:FOIA

13 NOTE: Additional rules, regulations and legal requirements dealing
14 with the planning commission and commissioners are found in
15 the legal authority.

16 These Administrative procedures are not adopted by Ordinance and do
17 not have the force of law. They are advisory guidelines only.
18 Consequently, should the Planning Commission waive or
19 suspend or otherwise deviate from these bylaws during the
20 course of a meeting, such deviation shall not be grounds for
21 invalidating a hearing held during such meeting or any decisions
22 made at such meeting. They are not actionable (law: giving a
23 reason to bring an action or a lawsuit against someone).

24 SECTION 1 HEARING TYPES

25 A. **Legislative Public Hearings** - The purpose of a legislative
26 public hearing isto obtain public input on legislative
27 decisions on matters of policy. Legislative public hearings
28 are required for such things as amendments to the zoning
29 code or comprehensive land use plan. These public hearings
30 are generally less formal than quasi-judicial public hearings
31 and do not involve the legal rights of specific, private
32 parties in a contested setting, but rather affect a wider
33 range of citizens.

34 B. **Quasi-judicial Public Hearings** - Quasi- judicial hearings
35 are subject to stricter procedural requirements than
36 legislative hearings as they involve the legal rights of

1 specific parties. As such, decisions made because of such
2 hearings must be based upon and supported by the "record"
3 developed at the hearing. Most quasi-judicial hearings
4 include land use matters such as conditional uses,
5 preliminary Land development plats, variances, and tract
6 specific rezones. Usually, single or several coterminous
7 parcels are the subject of the application.

8
9 SECTION 2. CONFLICT OF INTEREST, EX-PARTE CONTACT AND
10 APPEARANCE OF FAIRNESS

11 A. Conflict of Interest • Any communication between any party
12 and a Planning Commission member that may have the
13 appearance of or potential to lead to bias or partiality
14 should be disclosed as soon as possible at the quasi-judicial
15 hearing on the matter. The issue of unfairness of any
16 member of the Planning Commission may be raised during
17 the hearing.

18 B. Ex-Parte •The Commission members shall not communicate,
19 directly or indirectly, with any party or his representatives
20 in connection with any issue involved except upon notice
21 and opportunity for all parties to participate. They shall not
22 take notice of any communication, official or unofficial
23 reports, staff memoranda, or other materials not provided
24 to all Commissioners, nor shall an individual Commissioner
25 inspect the site or its surroundings after the commencement
26 of hearings, with any party or his representative, unless all
27 parties are given an opportunity to be present.

28 C. A challenge must include the facts relied on by the
29 challenging party, relating to the commissioners alleged
30 bias, prejudgment, or personal interest, or other basis by
31 which the party has concluded that the member cannot
32 participate in a recommendation in an impartial manner.

33 1. In the event of a challenge under this subsection, the
34 challenged member shall respond in a statement,
35 which shall be part of the record, or step down from
36 participating in the hearing on the matter. The
37 statement shall respond to the challenge and include

1 the reasons why he or she should be allowed to
2 participate. Only the challenged member may request
3 an opinion from the City Ethics Board. "When a
4 councilman or other official or employee has doubt as
5 to the applicability of any provision of [the] code of
6 ethics to a particular situation, he/she should apply to
7 the board for an advisory opinion and be guided by the
8 opinion given.(City Code Sec 2-97.19)

9 2. The statement regarding continuing to participate in
10 the hearing shall not be subject to commission
11 examination but shall be subject to rebuttal by the
12 challenging party.

13 3. In the event of a rebuttal, the member shall be given
14 an opportunity to respond making special reference to
15 the facts alleged in rebuttal, or shall disqualify himself
16 or herself and state the reasons.

17 4. Therefore, if because of conflicts, ex-parte contact
18 and/or appearance of fairness, a quorum of the entire
19 Planning Commission cannot be assembled for the
20 purposes of conducting a hearing, the *Doctrine of*
21 *Necessity* shall be applied. When it is necessary for a
22 Board to invoke the Doctrine of Necessity, the Board
23 shall state publicly that it is doing so, the reason that
24 such action is necessary, and the specific nature of
25 the conflicts of interest.

26 SECTION 3 DUTIES OF CHAIRMAN AND VICE CHAIRMAN; APPOINTMENT
27 OF TEMPORARY CHAIRMAN TO PRESIDE AT MEETINGS

28 A. If present and able, the Chairman shall preside at all
29 meetings and hearings. If the Chairman is absent or unable
30 to preside, the Vice Chairman shall preside. If both are
31 absent or unable to preside, the members present shall
32 appoint a Temporary Chairman to preside. In accordance
33 with these and other applicable rules, the presiding officer
34 shall decide all points of procedure and order, unless
35 otherwise directed by vote of a majority of the members in
36 attendance. When necessary, in deciding points of order,

1 Roberts Rules of Order (RONR), newly revised, shall be used
2 by the Chairman as a guide.

3 B. The Chairman shall maintain order and decorum, and to that
4 end, may order removal of disorderly or disruptive persons.
5 Persons threatening bodily harm shall be removed by an
6 officer of the Newark Police Department.

7 C. RONR shall be the guide for the participation of the Chair
8 (Art. IX. Committees and Boards-50) See Appendix A.
9

10 SECTION 4. CONDUCT OF HEARINGS

11

12 A. The Planning Commission in conducting a quasi-judicial
13 hearing, shall acknowledge that Parties are entitled to an
14 opportunity to appear in person or by a representative or by
15 Counsel, to present and rebut testimony and evidence to an
16 impartial approval authority, to have the proceedings
17 recorded and to receive notice of the date, time and place
18 the City Council will decide the matter. Although defined as a
19 "public meeting", the hearings are in fact administrative
20 proceedings. (Attorney General Opinion No.14-IB03)

21

22 B. The planning commission shall hold *regular business*
23 *meetings* at least once per month in the city hall, the day
24 and time to be set annually at the first meeting of the
25 planning commission after September 16. A record of all
26 minutes and business shall be kept by the secretary and
27 copies provided to members of the planning commission and
28 council. The record may be summary minutes, verbatim
29 transcripts or electronic recordings. The planning commission
30 may also hold such "*informal conferences*" as it deems
31 necessary and proper, provided that no business shall be
32 done at such conferences and that they shall be for
33 informational purposes only. No minutes need be kept at
34 such conferences. (City Code, Sec 2-83)

35

- 1 C. Any party to a quasi-judicial proceeding may challenge the
2 partiality of a Planning Commissioner at the time of the
3 hearing.
4
- 5 D. The Planning Commission may call as a witness a person
6 having technical or specialized knowledge regarding an
7 issue in the matter before them.
8
- 9 E. There is no requirement in FOIA which requires the
10 Commission to permit public participation in its *informal*
11 *conferences*. (cited in Attorney General Opinion No.14-IB03)
12
- 13 F. No person shall testify without 1) receiving recognition from
14 the Planning Commission Chairperson, and 2) Stating his or
15 her full name, whom they represent and if they are a
16 resident of the City. All discussion and communication shall
17 take place through recognition by the Chair. Members of the
18 audience and those giving testimony may not address one
19 another directly. A member of the public shall only
20 communicate with the Chair or a Commissioner verbally and
21 after being recognized by the Chair. This is to insure all
22 business communications are on the public record. A
23 speaker may not yield his/her time to another speaker. A
24 commissioner may not yield time to a speaker.
25
- 26 G. After the applicant's presentation and to minimize
27 repetition, and gain a comprehensive perspective, testimony
28 for or against the application may be taken in the following
29 order:
- 30 1. Federal government or Federal agency officials
 - 31 2. State government or State agency or elected Officials
 - 32 3. Special-interest group advocates
 - 33 4. Community groups or association spokesperson
 - 34 5. Neighborhood groups or association spokesperson
 - 35 6. Individual residents
 - 36 7. Others

- 1 G. Members of the public are expected to remain quietly
2 seated. There shall be no audience demonstration,
3 applause, cheering, singing, displaying of signs or placards,
4 or other conduct, or movement of persons disruptive to the
5 hearing and the rights of the applicant to make an
6 application to the Planning Commission, or to the public
7 safety of those in attendance. Wearing of street clothes, of
8 a particular color symbolizing a position and/or displaying
9 messages are permitted as an expression of free speech.
10 Disruptive conduct may be cause for appropriate action as
11 determined by the Planning Commission, or City Attorney or
12 building official. Actions include including removal of
13 disorderly or disruptive persons threatening bodily harm by
14 an officer of the Newark Police Department.
- 15 H. The number of persons in attendance at the hearing venue
16 shall be limited to the occupancy limit determined by the
17 local building official or fire marshal.
- 18 I. Planning Commission Hearings shall conclude no later than
19 10 pm on any evening, unless a majority of the Planning
20 Commission present, votes to extend the hearing.

21 SECTION 5. PLANNING COMMISSION ROLE - CHAIRPERSON

- 22 A. In addition to the responsibilities described above and in
23 City Ordinances, the Planning Commission, *through the*
24 *actions of Chairperson*, shall:
- 25 1. Regulate the course and decorum of a hearing;
 - 26 2. Rule on procedural matters;
 - 27 3. Rule on the relevance of evidence and testimony;
 - 28 4. Seek the opinion of the City Attorney on legal
29 questions pertaining to any matter before the Planning
30 Commission;
 - 31 5. Shall use RONR as the guide for the conduct of the
32 Commission (Art. IX. Committees and Boards-50) See
33 Appendix A.
 - 34 6. Take other action necessary to conduct a lawful
35 hearing. If members of the public in attendance at a
36 meeting are disruptive and make further conduct of

1 the meeting infeasible, they may be removed.
2 However, the discretion to order removal of a
3 disruptive person from a meeting must be exercised
4 reasonably.

5 SECTION 6. RULES OF EVIDENCE

6 A. Evidence received at a hearing shall be of the quality that a
7 reasonable person would rely upon on in the conduct of
8 affairs.

9 B. Irrelevant, incomprehensible or repetitive testimony or
10 evidence shall not be permitted or admitted.

11 C. The Commission shall not be responsible for retaining as
12 part of the official record, exhibits, out-sized photographs,
13 models, any physical form or object or non-printed evidence
14 referred to or provided as part of a presentation or
15 testimony.

16

17 SECTION 7. ORDER OF PROCEDURE

18 A. The Planning Commission Chair (Chair) conducts the public
19 hearing generally in the following order of procedure:

20 B. The Planning Commission Chair opens the hearing with the
21 following statements:

22 1. The case number of the application(s) to be heard;

23 2. The name(s) of the property owner and applicant;

24 3. The address of the property in question, or, if there is
25 no address, the specific location of the property;

26 4. Identify the nature of the application.

27 5. Instruct the audience that only testimony or evidence
28 directed to the approval criteria will be accepted.

29 6. Instruct the audience of time limits on testifying and
30 speaking from the podium

31 7. Call for disclosure by Planning Commission Members of
32 any conflict of interest or ex parte contact as provided
33 in Section 2.

- 1 8. Call for any public challenge to the partiality of any
2 member.
- 3 9. Planning Staff to describe the nature of the proposal
4 and summarize the Staff Report and Recommendation.
- 5
- 6 C. Chair calls for the Presentation Portion:
- 7 1. Planning Staff to describe the nature of the proposal
8 and summarize the Staff Report and Recommendation.
- 9 2. Applicant to present his/her proposal.
- 10 3. Chair opens the Public Testimony Portion, alternating
11 between proponent and opponent speakers
- 12 4. *Proponents* (those testifying in support of an
13 application) shall have three to five minutes each, per
14 person of testimony. Additional time may be granted
15 at the discretion of the Chair if the evidence and
16 testimony is not repetitious, irrelevant, or immaterial.
- 17 5. Call for the presentation of testimony and evidence by
18 any party in *opposition* to the application. Those
19 testifying in opposition to an application have three to
20 five minutes each, per person of testimony. Additional
21 time may be granted at the discretion of the Chair if
22 the evidence and testimony is not repetitious,
23 irrelevant, or immaterial.
- 24 6. Applicant provided an opportunity for rebuttal, which
25 shall be limited to responding to applicable testimony
26 raised by the opponents. There will be no discussion
27 between the applicant and the proponents or
28 opponents.
- 29 7. Provide opportunity for City Staff to add to or clarify
30 the information presented.
- 31 8. Chair *closes* the Public Testimony portion of the
32 hearing.
- 33 9. Chair calls for Planning Commission questions of the
34 applicant, Staff, or public.
- 35 10. Chair calls for deliberation.

1 11. Upon a motion, being passed by a majority of the
2 Planning Commission the Chair *closes* the Hearing. A
3 commissioner must vote for or against the proposal.
4 Abstentions are not permitted.

5 D. In the event the Chair uses his or/her discretion to accept
6 additional testimony or evidence after the close of the
7 Public Testimony portion of the hearing, the Chair should
8 reopen the Public Testimony portion of the hearing and
9 may limit testimony to a specific issue and time-frame.

10 SECTION 8. RECOMMENDATIONS

11 A. Except as otherwise provided, the Planning Commission
12 shall deliberate and make a recommendation to the City
13 Council to approve, approve with conditions, or to deny an
14 application at the conclusion of the presentation of evidence
15 and testimony on each application.

16 B. The Planning Commission shall adopt, or modify and adopt,
17 Findings and conclusions proposed by City Staff or shall
18 direct the City Staff to prepare other findings based on the
19 record to support the recommendation. A recommendation
20 to approve or deny must be accompanied by findings
21 supporting the recommendation.

22 C. Any hearing before the Planning Commission may be
23 continued to a date and time certain, whereupon a
24 recommendation on that application shall be made or the
25 hearing further continued to a date certain.

26 SECTION 9. SETTING THE AGENDA

27 A. The Staff Liaison Coordinator in conjunction with the
28 Planning Commission Chairman or in his or her absence the
29 Vice-Chairman, will prepare a preliminary agenda for each
30 Planning Commission Meeting specifying the time and place
31 of the meeting and setting forth a brief general description
32 of each item to be considered by the Planning Commission.

33 B. An item for a regular Planning Commission meeting may be
34 placed on the preliminary agenda by any of the following
35 methods:

36 1. By Planning Commission consensus.

- 1 2. By any two Planning Commission members, in writing;
2 by email or text; or by phone with confirmation
3 signatures by fax, no later than 12:00 pm, three days
4 prior to publishing the notice of the meeting. The
5 names of the requesting Planning Commission
6 members shall be set forth on the agenda.
- 7 3. By the City Manager or designee.
- 8 4. By a Planning Commission Committee.
- 9 5. By direction from the City Council.
- 10 6. By the Chair.
- 11 C. Agenda items continued from one meeting to another will
12 have preference on the future agenda to the extent
13 possible.
- 14 D. The agenda may have a reference to a clock time before
15 which action on an agenda item cannot begin.

16

17 SECTION 10. DEFINITION AND MEANING OF WORDS

- 18 A. The Planning Commission shall use the online Merriam-
19 Webster dictionary (<http://www.merriam-webster.com>) for
20 reference.

21

22

23

24

25

1 **Appendix A**

2 *Robert's Rules Online: RulesOnline.com Robert's Rules of*
3 *Order Revised • Robert's Rules of Order Newly Revised,*
4 *11th ed. (Da Capo Press, 2011)*

5 Art. IX. Committees and Boards

6 50. Boards of Managers or Directors, Boards of Trustees, 7 Executive Committees, etc.

8 In large boards business is transacted the same manner, as in
9 the society [plenary] meetings; but in small boards the same
10 formality is not necessary or usual, the informality of committees
11 being generally allowed. In a board meeting where there are not
12 more than about a dozen [board Members] present, for instance,
13 it is not necessary to rise in order to make a motion, nor to wait
14 for recognition by the chair before speaking or making a motion,
15 nor for a motion to have a second; nor is there any limit to the
16 number of speeches, nor does the chair leave the chair when
17 making a motion or discussing the question. The formalities
18 necessary in order to transact business in a large assembly would
19 hinder business in so small a body.

20 The rules of the assembly, as far as possible, apply to the
21 committee, but motions to close or limit [Commissioner] debate
22 are not allowed, and there is no limit to the number of times a
23 member may speak, and unless the committee is very large, it is
24 not necessary for anyone to rise and address the chair before
25 making a motion or speaking. or does the chairman rise to put
26 the question, nor does he leave the chair to speak or make
27 motions, nor are motions seconded. These formalities are
28 unnecessary because the committee is so small, but, unless
29 agreed to by general consent (writer's underline), all questions
30 must be put to vote. Instead of the chair abstaining from

1 speaking on questions, he is, usually, the most active participant
2 in the discussions and work of the committee.

3 "RONR" is the standard abbreviation parliamentarians use to cite
4 Henry M. Robert III and others, *Robert's Rules of Order Newly*
5 *Revised*, 11th ed. (Da Capo Press, 2011). The standard citation
6 to particular pages and lines is "RONR

8 *Parliamentary Procedure: Toward the Good*
9 *Order of the University*

10 Advice from Dr. John A. Cagle,
11 Parliamentarian of the Academic Senate
12 and Professor Emeritus of Communication
13 at California State University, Fresno

14 **Boards and Committees**

15 The rules for small committee and board
16 meetings are different from the rules
17 that apply to large meetings of
18 assemblies or plenary bodies. The
19 Associated Students Senate is a board of
20 directors and probably its business is
21 best transacted normally using the rules
22 for boards. On the other hand, the Fresno
23 State's Academic Senate is a much larger
24 body and operates normally under general
25 plenary rules, as would many student
26 organizations (such as fraternities and
27 sororities) at meetings.

- 28 1. Members are not required to obtain the
29 floor before making motions or speaking,
30 which they can do while seated.
- 31 2. Motions need not be seconded.
- 32 3. There is no limit to the number of times a
33 member can speak to a question, and
34 motions to close or limit debate

1 generally are not allowed. [Note: In
2 practice, even these motions are in fact
3 usually allowed.]

- 4 4. Informal discussion of a subject is
5 permitted while no motion is pending
- 6 5. The chair can speak in discussions; make
7 motions and usually votes on all
8 questions.
- 9 6. Sometimes, when a proposal is perfectly
10 clear to all present, a vote can be taken
11 without a motion having been introduced.
12 Unless agreed by general consent, however,
13 all proposed actions of a committee must
14 be approved by vote under the same rules
15 as an assembly

16
17 **OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE Attorney General Opinion**
18 **No. 14-IB03 June 16, 2014**

19 **VIA EMAIL AND REGULAR MAIL**

20 Richard H. Morse

21 American Civil Liberties Union Foundation 100 West 10th Street Suite 103
22 Wilmington, Delaware 19801 rmorse@aclu-de.org Counsel for Petitioners

23 Jennifer Wallace 19 Sue Lane
24 Newark, Delaware 19711 Petitioner

25 Amy W. Roe 19 Sunset Road Newark, Delaware 19711 amywroe@gmail.com Petitioner

26 **RE: FOIA Complaint Concerning the Newark Board of Adjustment**

27
28 Dear Mr. Morse, Ms. Roe and Ms. Wallace:

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30 On April 1, 2014, the American Civil Liberties Union Foundation of Delaware (the "**ACLU**"), on behalf of
31 Newark Residents Against the Power Plant ("**NRAPP**"), and its members, Amy Roe and Jennifer
32 Wallace (collectively, the "Petitioners"), petitioned for review of the action of the Board of Adjustment of
33 the City of Newark (the "**Board**") in holding a public hearing at a facility that the Petitioners claim the
34 Board had reason to know was insufficient in size to handle the number of citizens likely to attend (the
35 "**Petition**"). Counsel for ACLU provided copies of the Petition to counsel for the City of Newark (the
36 "**City**") and the Board. The City, the Board, and The Data Centers, LLC filed timely responses. The
37 Petitioners then filed a timely reply on May 6, 2014, to which the City, the Board, The Data Centers, LLC
38 filed sur-replies, the last of which was sent by Counsel to the Board on May 28, 2014.

BACKGROUND

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3 The Petition arises from a March 19, 2014 hearing (the "**Hearing**") before the Board relating to the
4 proposed construction and operation of a data center (the "**Data Center**") on the University of Delaware
5 Science and Technology (STAR) Campus, and request to construct a gas-fired power plant as part of the
6 Data Center. The purpose of the Hearing was to consider the appeal of a zoning verification (the
7 "**Zoning Verification**") issued by the City's Planning and Development Department. The Hearing was a
8 formal legal hearing, and there was no opportunity for public comment. The Petitioners were among the
9 Appellants who challenged the Zoning Verification,

10 The Board scheduled the Hearing to be held at 6:00 p.m. on March 19, 2014 in the auditorium of Newark
11 High School at 750 East Delaware Avenue, Newark, Delaware (the "**Facility**"). The Petitioners claim the
12 capacity of the Facility is approximately 700 persons. Board hearings are generally held in City Council
13 Chambers, a venue that holds approximately seventy-five to one hundred people; however, because the
14 proposed Data Center has drawn significant public interest, the venue of the Hearing was moved to the
15 Facility, which is the largest non-University public venue available within the City.

16 The Petitioners allege the Board had reason to know that the facility was too small to hold many of the
17 citizens who wanted to attend, based upon a statement by State Representative John Kowalko to Carol
18 Houck, the manager of the City of Newark, that the Facility would not be large enough to hold the many
19 Newark residents who were expected to attend the Hearing. Petitioners allege Ms. Houck did not
20 acknowledge the need to move the hearing to a larger facility and did not move the hearing.

21 To assure that the Auditorium did not become overcrowded, City Police Officers periodically stopped
22 admitting people to the Facility. The parties dispute whether anyone who desired to attend the Hearing
23 was turned away.

RELEVANT STATUTES

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26 FOIA's "Declaration of Policy" provides that "citizens shall have the opportunity to observe the
27 performance of public officials and to monitor the decisions that are made" 29 Del. C § 10001. The
28 Board is a public body. See 29 Del. C § 1000(2)(h). "Every meeting of all public bodies shall be open to
29 the public except those closed" for a permissible executive session. 29 Del. C § 10004(a).

ANALYSIS

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33 The Petitioners assert the Board violated the law when it decided to go forward with the Hearing at the
34 Facility after it knew that the room was too small to hold everyone who was expected to attend. There is
35 no dispute that the Board knew of the heightened interest in the subject matter of the hearing, or that it
36 arranged to move the Hearing to a much larger facility. The Petitioners argue that 29 Del. C § 10004(a)
37 gives members of the public the right to be present. *Att'y Gen. Op.*, 02-IB09, 2002 Del. AG LEXIS 8, *5
38 (April 12, 2002). This means that "if a public body has reason to know that a large number of citizens is
39 likely to attend a meeting, then FOIA requires the public body to find another, larger place for the
40 meeting." *Id.* at 5-6. Even if we interpret the statute as the Petitioners' urge, neither FOIA nor our earlier
41 decisions require that a public body predict in advance the exact number of people who will attend. The
42 only requirement is that "the public body find another, larger place for the meeting," and the size of the
43 venue chosen is "reasonable." *Att'y Gen. Op.* 98-IB12. The Board was not required to use a venue that
44 could "accommodate any possible number of persons who might attend." *Id.* Given the information made
45 available to the Board at the time the venue was selected, it cannot be said that the decision to use the
46 Facility was unreasonable. See, *Gutierrez v. City of Albuquerque*, 631 P.2d 304 (N.M. 1981) (FOIA
47 requirements met even where crowd exceeded capacity of large venue); *Gerwin v. Livingston County Bd.*,

1 802 N.E.2d 410, 417 (Ill.App.3d 2003) (requirement that all interested parties be accommodated would
2 permit invalidation of action by public body by the simple method of overflowing the venue, citing
3 *Guterrezat* 306). See also *Maxwell v. Carney*, 548 S.E.2d 293, 295 (Ga. 2001) (requirement of
4 "adequate" seating doesn't require seating for everyone in the county). Under the facts of this case, the
5 public policy concerns under 29 Del C § 10001 are satisfied. The matter before the Board was oral
6 argument of an appeal of a Zoning Verification. Though defined as a "public meeting," this was an
7 administrative proceeding at which the parties were to present the legal arguments supporting their
8 respective positions on appeal and the testimony of just two expert witnesses. There were approximately
9 700 people who attended the Hearing who had the opportunity to observe the conduct of the Hearing.

10 As the Delaware Court of Chancery has observed:

11 *Although FOIA entitles citizens to notice of public meetings and to attend meetings of*
12 *public bodies, FOIA does not mandate that public bodies allow for public comments at*
13 *any or all meetings. **There is nothing in the text of the declaration of policy or the***
14 ***open meeting provision requiring public comment or guaranteeing the public***
15 ***the right to participate by questioning or commenting during meetings. What is***
16 *provided by FOIA generally, and by the open meetings provision in particular, is*
17 *public access to **attend and listen** to meetings. [writer's Italics] *Reederv. Dept. of**
18 *Insurance*, 2006 Del. Ch. LEXIS 46, 11-12 (footnotes omitted).

19 Even if some people were turned away from the Hearing, a point over which the parties disagree, it
20 cannot be said that the public at large was denied the opportunity to attend and observe the Hearing,
21 nor can it be said that the presence of those persons who may have been turned away would have
22 changed the outcome of the Hearing.

23

24 CONCLUSION

25 We therefore conclude that no violation of FOIA occurred with respect to the Board Hearing on March 19,
26 2014.

27

28 Very truly yours,

29 */s/ Edward K Black*

30 Edward K. Black Deputy Attorney General

31 Approved:

32 */s/ Allison E. Reardon*

33 Allison E. Reardon, State Solicitor

34 Cc: John W. Paradee, Esquire Max B. Walton, Esquire Richard A. Forsten, Esquire

35 Category: 10001 Declaration of Policy, 10002(h) Public BodyOpinions -

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Renee K. Bensley

From: Frank McIntosh <fjmplncom@gmail.com>
Sent: Wednesday, May 11, 2016 2:30 PM
To: Renee K. Bensley
Subject: Commission Review

Hi Renee,

Per your request, my answers to the questions posed are below:

Governing Authority: We put much effort into each applicant that comes before us. Over time, we have developed an expertise in these matters that the counsel is less likely to have. I wonder why our decision is only advisory. It seems to me that it should be the verdict and the counsel should be used as an appeal agent. Otherwise, in my mind, it is just political.

Qualifications: I think they could be better. I am suspect about my own qualifications and made that clear from the outset. I know very little about the technical aspects of what is presented and have little desire to learn what I would need to know in order for it to make a difference. On the other hand, I listen carefully, am reasonably intelligent, and ask good questions. I have no agenda other than what is best for Newark. So I guess it works in that regard. I think I have been able to contribute effectively within the scope of my knowledge to the process. Perhaps you should advertise for people who would like to serve on the commission and let them tell council why they would be qualified to serve. Remove politics as much as possible from selection. Give the commission teeth. I think the community would be better served.

Orientation/Training: A-This piece is quite lacking for a commission of this importance. Aside from a solid overview by Maureen at the outset which I requested there was no training until couple of weeks ago. This training was OK but it can be better. A person who is versed in training should put together, with the Planning Office and perhaps Council, a thorough and formal session before anyone serves. In my personal work experience, I was CEO of Junior Achievement in this region. All of our board members went through an intense 3 to 4 hour training session that was regularly updated. The most common comment made by these CEO's/senior level executives and educators was that they were impressed with the content and delivery. Interestingly, almost to a person over some 25 years, they indicated that they never received anything like it on any other board that they ever served on.

B-All members participated in the recent training

Rules and Procedures: A-Time on the commission should not be the deciding factor in any leadership selection. Leadership should be selected on ability to lead and interest in leading, period.

B-Most are OK and our chair has got much better at it over time. There should be some limit on how much time a person can talk. People should not be allowed to speak on a subject unless they sign up. Public comment should only come for citizens of Newark unless the commission requests an outside individual due to some particular knowledge they possess.

Activity Level: I think all are dedicated to attending meetings.

Reporting: Not sure what you are asking for here.

Viewpoints: Again, not sure what you are asking for here and the FAQ was no help.

Necessity: A-This commission is very necessary and important to the city. It should have more clout. Because of this, more attention should be paid to small details including what commissioners can comment on or question about. The role of a commissioner is specific in nature and is not about an individual's personal agenda.

B-You would no better than I about similarity.

Hope this helps Renee. Please contact me if you have questions.

Best,
Frank