

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

**August 23, 2016 – 7:00 PM
Council Chamber**

- 1. Call to Order**
- 2. Approval of the Minutes of the June 28, 2016 Boards and Commissions Review Committee Meeting**
- 3. Approval of the May 31 and June 28, 2016 Evaluation of the Planning Commission by the Boards and Commissions Review Committee**
 - A. Discussion and Potential Action Regarding Recusal Parameters for Members of the Planning Commission**
- 4. Board of Adjustment Presentation**
- 5. Discussion and Potential Action Regarding the Committee Review of the Board of Adjustment**
- 6. Public Comment**
- 7. Introduction of New Business**
 - A. Update on Council Action Regarding Previous Committee Evaluations**
 - B. Discussion Regarding November Meeting Date**
 - C. Other New Business**
- 8. Next Meeting Date – September 27, 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 – August 16, 2016

Attest:

Sworn by:

City Secretary

Notary Public

(Seal)

**CITY OF NEWARK
DELAWARE
BOARDS AND COMMISSIONS REVIEW COMMITTEE
MINUTES
JUNE 28, 2016**

Those present at 7:00 p.m.:

Members: Chair Rebecca Powers, At-Large
John Morgan, District 1
Jo Anne Barnes, District 2
Roberta Sullivan, District 4

Absent: Christopher Laird, District 3
Maria Aristigueta, District 5
M. Howland Redding, District 6

Guests: Alan Silverman, Chairman, Planning Commission
Will Hurd, Planning Commission, District 2

Staff: Renee Bensley, City Secretary
Maureen Feeney Roser, Planning & Development Director

1. **MEETING CALLED TO ORDER BY CHAIR REBECCA POWERS AT 7:00 P.M.**
2. **APPROVAL OF THE MINUTES OF THE MAY 31, 2016 BOARDS AND COMMISSIONS REVIEW COMMITTEE MEETING**

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

MOTION PASSED UNANIMOUSLY.
VOTE: 4 TO 0.
AYE: BARNES, MORGAN, POWERS, SULLIVAN
ABSENT: ARISTIGUETA, LAIRD, REDDING
3. **CONTINUED DISCUSSION AND POTENTIAL ACTION REGARDING THE COMMITTEE REVIEW OF THE PLANNING COMMISSION**

Governing Authority: No changes

Qualifications: No changes

Orientation/Training

Ms. Feeney Roser stated when reviewing areas for improvement, it was agreed the extensive videotaped training session done in April 2016 was great. However, additional training opportunities were available.

One was a formal training and every Planning Commissioner was invited to participate in any of the IPA (Institute for Public Administration) training sessions that UD offered. The Planning Department paid registration and mileage for them to attend. She reported three Planning Commissioners attended these sessions within the last year. These sessions were offered on a regular basis and would continue to be offered. Additionally, an extensive packet of information was provided to each new commissioner along with an orientation session with Ms. Feeney Roser. Ms. Barnes asked if training would be considered on a biannual basis.

Ms. Sullivan asked if the proposed annual training was realistic. Mr. Hurd thought the April 2016 training should be a biannual training. It discussed the scope and the authority of the Planning Commission and the role of Commissioners. He agreed that an annual training on changes to statute and case law and the effects they had would be valuable as well. Ms. Powers felt it was very important that training outside the scope of Delaware be encouraged and wanted to add in the comment section that Planning Commissioners take advantage of attending larger conferences, if possible. Dr. Morgan asked if four or more Planning Commissioners were to attend the same conference out of state would that constitute a quorum for FOIA purposes. Ms. Bensley stated it would not as they would not be discussing City business. Ms. Feeney Roser stated the larger conferences were quite expensive. Mr. Silverman believed continuing education to be beneficial. Dr. Morgan and Ms. Sullivan suggested saying the City should continue providing formal training for all newly appointed members of the Planning Commission and plan for annual retraining sessions for all new members. Ms. Powers suggested encouraging all members, not just new members. Ms. Feeney Roser suggested adding encouraging participation in national planning conferences when possible.

Rules of Procedure

Areas for Improvement: Ms. Sullivan stated the comment where a commissioner stated that three minutes was not enough time to express concerns is an opinion. She suggested rewording if it needs to be changed. Ms. Bensley reported the American Civil Liberties Union had determined all members of the public have to be treated equally when it comes to public comment in response to the suggestion that immediate neighbors be given more time than others to speak. After discussion, it was decided to keep Public Comment at three minutes per speaker.

Mr. Hurd stated under selection of chair and other officers if the secretary is elected from the planning commission what would the duties of the secretary be. Ms. Powers stated she believed it would be an internal decision. Dr. Morgan recommended the first duty of the secretary should be reading through the first draft of the verbatim transcript. Ms. Powers generally agreed, however currently that was the practice and it may not alter anything. Mr. Hurd asked that the roles and responsibilities of the secretary be defined. Ms. Sullivan noted the recommendations on the last page indicated defining the roles and responsibilities and processes for the whole commission. She further stated the Planning Commissioners would have to determine this which would include the role of a secretary.

Ms. Barnes was pleased and impressed by Mr. Silverman's draft procedures manual. Ms. Sullivan concurred but thought it was not appropriate for this Committee to designate this document as "the document" that should be followed. However, this could be included in the recommendation section of report.

Activity Level: No changes

Reporting

Ms. Sullivan asked if all had agreed to the posting of draft minutes. Ms. Feeney Roser reported the Planning Commission had started posting draft minutes the prior month and she believed it to be a good idea. Ms. Bensley suggested for existing reporting requirements, to include in areas of strength that, in addition to Delaware FOIA, Section 2-83 of City Code required Planning Commission compile and maintain minutes.

Dr. Morgan said the Planning Commission verbatim minutes are the most accurate minutes he has seen. He further stated there have been some cases in the last several years that Council has approved a project despite a negative recommendation by the Planning Commission. Mr. McIntosh, Planning Commissioner, stated in his comments that he felt the Planning Commission should be making decisions and not recommendations that could then be appealed to Council. However, that is not consistent with City Code.

Mr. Silverman felt it was not within the purview of the Planning Commission to ask Council why Council may vote a certain way on a project. He stated Delaware Law required the Planning Commission to give reasons why the commission votes a particular way, but that did not extend to Council.

Mr. Hurd agreed with Mr. Silverman. The precedent was set that the Planning Commission needed to state on record the reasoning for approval or non-approval of rezoning and comprehensive plan amendments. He was concerned that the only way to determine how Council felt about a particular issue was to read the Council meeting transcripts. He stated he would be in favor of a change to a super majority concept. (i.e. 5 of 7 would have to vote to counteract a Planning Commission recommendation).

Ms. Powers stated it was a good discussion generally but she wanted to reiterate the only option available to this Committee was to make recommendations on the Planning Commission. Ms. Sullivan suggested in the areas for improvement it would be useful to know and understand reasons Council may have for overturning Planning Commission recommendations. Ms. Bensley stated when Council voted on an item considered discretionary (i.e. Comprehensive Plan amendments, rezoning, etc.) they listed the statutory reasons when they were voting for or against. Planning Commission recommendations were not one of those statutory reasons. She further stated with regard to a major or minor subdivision plan that was Code conforming and did not require a discretionary Comprehensive Plan amendment or a rezoning, they were more limited in whether they could vote against if all Code requirements were met.

Stakeholder Viewpoints

Views of the department heads that work with the body: Ms. Sullivan asked if the following comment was as recommendation from the stakeholders, "perhaps it would be useful to compile a list of projects which are within the purview and control of the City." Ms. Feeney Roser noted it was a good comment, but was broader than it needed to be and was not feasible. Dr. Morgan suggested adding the portion of the comment that reads "and another list of those that are not." Ms. Sullivan did not believe it was possible to compile a list of every project that would be within the purview to review. Dr. Morgan stated it would be aspects of projects; health, safety. Ms. Barnes stated it sounded like a burdensome task. Mr. Silverman stated in the director's report it was germane where outside agencies were involved and specified in the report. Ms. Bensley thought the comment should be deleted and the practice in the Planning & Development reports of noting what was within the discretionary purview of the Planning Commission and what was not was adequate. After discussion, the comment was removed in this section and in the areas for improvement section. In the comments section, Ms. Barnes thought it was valuable to have the recommendation to have articulation of procedures to provide continuity to the body. It was agreed to

strike the last sentence that read, "Informality may be safer, especially since the Planning Commission only makes recommendations to Council."

Mr. Hurd said speaking as a commissioner the words "formal" and "scrupulously" made him nervous. However, having guidelines or bylaws that the commission could work with within is good. Ms. Barnes said she agreed with Mr. Hurd and believed consistency was necessary. Therefore, the word "scrupulously" would be changed to "consistently". Ms. Sullivan reminded Dr. Morgan this document came from the Committee so personal impressions should not be included. In addition, terminology mentioned such as "injudicious language" and "abusive language" should not be included, rather use terminology such as "procedures are formal" as much as possible and "follow rules of decorum." Dr. Morgan's concern was Council should not appoint a member to the Planning Commission that may have difficulties maintaining the rules of decorum in a meeting. After a discussion, the Committee decided it was not their place to suggest to Council members who to appoint based on criteria designated by this Committee. Therefore, the section in question should read, "The training session of new members and retraining sessions of old members should include emphasis on judicious language such that the about impartiality of any member of the Planning Commission or the seriousness to its deliberations not arise." In the areas for improvement, the section that began "On a few occasions..." would be stricken.

Ms. Powers did not necessary advocate this position but wanted to add in the comment section a reference to her belief that there was a perception among the public that the Planning Commission tended to "greenlight large development." Ms. Feeney Roser noted the Planning Commission was required to review any applications submitted for rezoning, subdivisions, etc. Therefore, the Planning Commission could not control the number of plans that came before the commission. Mr. Hurd agreed with Ms. Powers' comment about public perception. However, he noted when certain large developers showed up they presented a plan that worked. After discussion, it was agreed to insert the comment but when the full Committee is present at the next meeting the pros and cons should be discussed at that time.

Scope of Duties

Areas for Improvement: Ms. Sullivan stated the comment "current listed acquisitions..." was not appropriate. It was agreed it should be stricken. In the comments sections, Ms. Bensley suggested rephrasing and stating, "Although State Code allows but does not require each city to have a Planning Commission, the City Charter requires a Planning Commission which provides another opportunity for public input in the development process." In addition, she stated the Planning Commission is not similar to Council in that Council is the final decision maker. The Planning Commission provided recommendations and input into the decision making process. After discussion, the comment would be stricken.

Overall Recommendations:

1. Will remain as is. There were other concepts such as rules, responsibilities, etc. that can be administratively or done as part of training rather than a Code Amendment.
2. Will remain as is.
3. Will remain as is; except Mr. Hurd suggested changing the word in the last sentence to nominated rather than appointed.
4. This item was stricken. Mr. Hurd stated it was his opinion a better use of the revenue would be for continuing education for the commission.
5. Ms. Feeney Roser stated after the last Planning Commission meeting she suggested the City Solicitor attend every Planning Commission from this point forward. She also stated it is the City

Solicitor that asks for outside Council to be hired when he feels he may be “out of his comfort zone” with a particular topic. Ms. Bensley suggested the City Solicitor is the individual capable of determining whether or not additional outside Council is needed. Ms. Bensley thought it was a discretionary matter and should not be included in the report. After discussion, number 5 should read: Consideration should be given to providing outside counsel to the Planning Commission when it is considering controversial proposal. It could be helpful for the City Solicitor.

6. It was suggested to combine items 6 and 7.
7. See above.
8. Item 8 was stricken.

Ms. Powers suggested revisiting the matter of racial and gender diversity in more detail at a later date.

4. PUBLIC COMMENT

Mr. Hurd suggested a parking steering group to analyze the parking issues in the City.

5. INTRODUCTION OF NEW BUSINESS

A. Update of Council Direction Regarding DNP Review

Ms. Bensley reported Council decided to give direction to the Boards and Commissions Review Committee which followed the staff recommendation to make the DNP either the final committee reviewed or review them in six months, whichever was sooner. After discussion, the Committee decided to review the Personnel Review Committee and the Board of Business License Review on the same night.

B. Update on Council Consideration of Committee Recommendations

At the July 11 Council meeting, Council would consider the recommendation for consolidation of the Board of Building Appeals, Property Maintenance Appeals Board and Board of Sidewalk Appeals. Council would review the recommendations on Community Development/Revenue Sharing on July 25 (*Secretary's Note: This recommendation was considered at the August 8 Council meeting*) and the Conservation Advisory Commission on August 8 (*Secretary's Note: This recommendation will be considered in September*). If all was finalized with the Planning Commission at the next meeting of this Committee, the next meeting on August 22 would have Planning Commission recommendations (*Secretary's Note: Since the July Boards and Commissions Review Committee meeting was canceled, the Planning Commission recommendations would not be forwarded to Council until after the August 23 Boards and Commissions Review Committee meeting*).

6. DISCUSSION REGARDING SUMMER MEETING DATES

After discussion it was decided the July meeting would be cancelled and the next meeting will be held Tuesday, August 23, 2016. Ms. Bensley would send out an email to solicit a volunteer to do the Board of Adjustment initial review.

7. THE MEETING WAS ADJOURNED AT 9:39 P.M.

Renee K. Bensley
City Secretary

/tas



BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT

Name of Board/Commission/Committee: Planning Commission

Representatives Present For Review: Alan Silverman (Chair, District 5); Will Hurd (District 2); Planning & Development Director Maureen Feeney Roser

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Governing Authority	State + City Code and/or resolutions governing the body	The regulations in Title 22, Chapter 7, §701 to 711 of the State Code, in Article IX, Sections 901 to 904 of the City of Newark's Charter, and in Article VIII, Sections 2-78 to 2-90 of Newark's Municipal Code are generally clear.	Article IX, Section 901 of Newark's Charter and Article VIII, Section 2-78 of Newark's Municipal Code are unclear about which individual member(s) of Council should appoint members of the Planning Commission.	Council should consider revising Article VIII, Section 2-78 to bring it into alignment with the traditional practice of Councilmembers nominating members of the Planning Commission from their own districts, while maintaining consistency with the State Code's requirement that the members of the Planning Commission be appointed by the Mayor, subject to confirmation by City Council.
Qualifications	Are the required qualifications appropriate for the body?	No qualifications are prescribed in Title 22, Chapter 7, §701 of the State Code. The qualifications described in Article VIII, Section 2-79 of Newark's Municipal Code seem appropriate.	None.	
Orientation/ Training	Existing orientation and/or training for the body	An extensive training session was held on April 13, 2016, with presentations by former Planning Director Roy Lopata and Special Counsel Max Walton.		The City should continue providing formal training for all newly appointed members of the Planning Commission, provide annual retraining sessions for all members to keep them informed of developments in Delaware's statutes and case law and encourage participation in national planning conferences.
	Level of participation by members of the body in the above training	All current members attended the training session on April 13, 2016.		

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Rules of Procedure	Selection of chair and other officers	The Chairperson is elected annually by the members, in conformity with Title 22, Chapter 7, §701 of State Code.	The requirement in the State Code that the Secretary also be elected annually “from among its own number” has been overlooked recently, and is inconsistent with Section 2-82 of Newark’s Code.	Going forward, the Planning Commission should elect a Secretary from among its own members, and Council should revise Section 2-82 of Newark’s Code to bring it into conformity with the requirements of State Code.
	Meeting procedures	The traditional meeting procedures seem effective and reasonable. Meetings normally last 2 hours or less. In the recent past interested members of the public have been given adequate opportunities to express concerns about proposed changes to Newark’s zoning code and about development projects.		
Activity Level	Amount of active participation by members	Relatively high. Many meetings have been attended by all members of the Planning Commission, and none recently has been cancelled for lack of a quorum. Most members who do attend meetings participate actively in asking questions and discussing issues.	No problems are apparent.	
Reporting	Existing reporting requirements	Delaware FOIA and City Code Section 2-83 require Planning Commission compile and maintain minutes of its meetings. Draft minutes are posted on the City website in advance of the meeting where they are considered.		
	Compliance with existing reporting requirements	The verbatim transcripts of meetings of the Planning Commission are generally very accurate.	The Planning Commission should comply with the recently reinstated requirement to submit its work program to Council by October 1 of each year.	
	Appeal process for decisions of the body	Chapter 7, §710 of State Code provides for appeal of recommendations of the Planning Commission to the Chancery Court. In practice, this has not been done, since a dissatisfied applicant can proceed directly to Council and ask it not to follow the recommendation of the Planning Commission.	None is apparent.	

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Stakeholder Viewpoints	Views of members of the body being evaluated	Generally positive about how the Planning Commission has been operating recently.	Chairman Silverman believes it would be helpful for the Planning Commission to have formal bylaws and administrative procedures, and a compendium of past practices.	If there will be formal bylaws or other procedural requirements, it is important that they be consistently followed to avoid complaints about violations of procedures.
	Views of department heads who work with the body	Maureen Feeney Roser has a generally favorable view of the work of the Planning Commission in recent years.	Ms. Feeney Roser has expressed her belief that on some occasions some members of the Planning Commission have focused their attention on details which are outside the City's ability to control, or have questioned the findings of professional staff.	
	Views of the public who interact with the body	All members of the Planning Commission have been actively engaged in considering proposals brought to it by City staff and/or developers. Chairman Silverman brings a wealth of knowledge and experience to the Planning Commission.	There is a perception of some members of the public that the Planning Commission greenlights development	The training sessions of new members and retraining sessions of old members should include emphasis on the use of judicious language such that questions about the impartiality of any member of the Planning Commission or the seriousness of its deliberations do not arise.
Necessity	Scope of duties	The scope of the duties of the Planning Commission listed in Section 2-89 of the City's Code is extensive: zoning, the Comprehensive Plan, Capital Improvement Projects, legislation for relieving congestion of population and traffic, historic preservation, etc.		Although State Code allows, but does not require, each city to have a Planning Commission, the City of Newark's Charter requires that it have a Planning Commission, providing another opportunity for public input in the planning and development process.
	Similarity to other bodies			N/A

Activity Level

- 1. When is this board or commission required to meet? Monthly Quarterly Annually As Needed Other (Explain) _____
- 2. In the past five years, this board or commission has met 53 times. Its last two meetings were on July 5, 2016 and August 2, 2016.
- 3. Do the minutes of this board or commission maintained by the City appear to be complete and up-to-date? Yes No
If no, identify any apparent deficiencies:
- 4. How many members are on this committee? 6
- 5. How many vacancies are currently on this committee (number and percentage)? 1

Board Membership

- 6. How long is a committee member's term on this committee? 1 year 2 years 3 years Other (Explain) _____
- 7. Is City residency a qualification for membership on this committee? Yes No
- 8. If City residency is not a requirement, does this committee have any members who are not City residents? Yes No
- 9. How long is the committee chair's term on this committee? 1 year 2 years 3 years Other (Explain) _____
- 10. How is the Chair selected for this committee? Volunteer Elected by Committee Appointed by Mayor

Compensation

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

Final overall recommendations of the Boards and Commissions Review Committee:

1. RECOMMEND THE FOLLOWING UPDATES TO CITY CODE:

- A. Section 2-89: List of powers and duties of the Planning Commission (including roles, responsibilities and procedures) should be updated, in line with staff's recommendation.
- B. Section 2-82: Regarding the position of Planning Commission Secretary, recommend City Code which currently states the Secretary "who need not be a member" of the Planning Commission, be revised to conform to Delaware State Code Title 22, Chapter 7, §701, which states "Such a planning commission shall elect annually a chairperson and a secretary from among its own number"

C. Council may also wish to revise Section 2-82 to replace election of a Vice-Chairman with the current practice of the most senior member of the Planning Commission chairing a meeting in the absence of the elected Chairman.

D. Section 2-78, Article VIII: Regarding the membership of the Planning Commission, we recommend the City Code should be revised to make the appointment of members fully compliant with the requirements of State Code Title 22, Chapter 7, §701, which says "Such members shall in cities be appointed by the mayor, subject to confirmation by the city council." We suggest the following revision to this section of the Code: "There is hereby created a planning commission for the city consisting of seven members appointed by the mayor, one member to be nominated from each of the six districts into which the city has been divided for election proposes by the Council member for that district, and one member to be appointed by the mayor on an at-large basis, all of whom are subject to confirmation by City Council."

2. RECOMMEND USE OF ATTORNEYS AS NEEDED, BOTH IN-HOUSE AND OUTSIDE COUNSEL, DEPENDING ON THE MATTER UNDER CONSIDERATION.

A. The City Solicitor should be ready to attend Planning Commission meetings on an as-needed basis, when invited by the Chair or the Director of Planning and Development.

B. Consideration should be given to providing outside counsel to the Planning Commission when it is considering a controversial proposal. It could be helpful to the City Solicitor.

3. RECOMMENDATIONS CONCERNING PROBLEMATIC VOTES:

A. We recommend clarification in the Planning Commission rules regarding tie votes. In the absence of 1 or 3 members of the Planning Commission, clarification is needed spelling out the status of a tie vote. In other words, does a tie vote (3-3 or 2-2) constitute a "recommendation" to Council?

B. We recommend clarification in the Planning Commission rules regarding a recommendation which doesn't receive sufficient votes to pass. If a motion to recommend a development project fails to receive an "Aye" vote from a majority of the members (e.g., 3 Ayes - 4 Nays, etc.), does this mean the Commission recommends that Council *not approve* the project, or does it mean simply that the Commission is neutral about the project and makes no recommendation either for or against? If there is a distinction between a recommendation of Do Not Approve and a neutral recommendation that is neither For or Against, this distinction should be made clear in City Code.

4. RECOMMENDATIONS CONCERNING TRAINING AND CONTINUING EDUCATION

A. The Planning Commission should continue to provide training for newly appointed commissioners, and regularly scheduled (annually or bi-annually, to be determined by the Planning Commission) continuing education for all commission members.

B. Planning Commission members should be made aware of and encouraged to attend national planning conferences.

5. RECOMMENDATION REGARDING PROCEDURES MANUAL

We recommend the Planning Commission develop and adopt a procedures manual that would capture all the relevant rules and procedures outlined in City Code, as well as detail the responsibilities and roles of the officers (chairman, vice-chairman and secretary) and members of the body.

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:



**CITY OF NEWARK
DELAWARE**

August 5, 2016

TO: Boards & Commission Review Committee Members

FROM: Renee Bensley, City Secretary *RB*

VIA: Carol Houck, City Manager *CH*
Maureen Feeny Roser, Planning & Development Director *Maureen*
Michael Fortner, Development Supervisor *MF*

CC: Mayor and Council

SUBJECT: Board of Adjustment Review Information and Staff Recommendation

Governing Authority

The Board of Adjustment is governed by Delaware State Code Title 22, Chapter 3, Subchapter II (attached), City Code Chapter 32, Article XIX (attached) and City Code Appendix B-1 (attached).

Qualifications

22 Del. C. §322(b) states that a board of adjustment can consist of 5 members "who shall be residents of the city or incorporated town and who shall have knowledge of and experience in the problems of urban and rural development, and who, at the time of appointment, shall not be candidates-elect for or incumbents of an elective public office." City Code Section 32-65(a) provides for the same.

Orientation/Training

Individual training for new Board of Adjustment members is provided by the City Solicitor when the members are appointed. Members are also provided the opportunity to attend the UD Institute of Public Administration trainings for Boards of Adjustment and FOIA. A training workshop for the Board members was provided in 2013.

Rules of Procedure

The Board of Adjustment has rules of procedure outlined in City Code Appendix B-1. Please note that the filing fees listed in Appendix B-1 are outdated and superseded by City Code Section 32-63. For those items not covered in the rules of procedure, Robert's Rules of Order are used as the parliamentary authority.

Activity Level

The Board is required by City Code to meet at the call of the chairman and at such other times as the board may determine (Section 32-69). As a practical matter, the Board holds meetings when appeals are filed. That typically results in 6-10 meetings per year. There has been an uptick in meetings over the past three years due to the requirements of more complex appeals, such as The Data Centers, LLC and Trader's Alley projects.

There are five members on the Board with no vacancies. Four members are appointed for four year terms and the Chair is appointed at the pleasure of the Mayor as outlined in 22 Del. C. §322(b) and City Code Section 32-65(a). As mentioned previously, members are required to be residents of the City in the Code. There is no compensation for this committee at this time. However, Section 32-65(b) of City Code notes that "Each member of the board shall be entitled to compensation in consideration for his services as determined by Council."

Reporting

Currently, the Board is required to keep minutes under the State of Delaware Freedom of Information Act and Section 32-69 of the City Code. Minutes are up-to-date and have been posted on the City website since 2007. Per 22 Del. C. §328, appeals to Board of Adjustment decisions may be filed in Superior Court.

Stakeholder Viewpoints

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

Jeff Bergstrom is the chair of the Board of Adjustment. He noted that the qualifications for Newark's Board of Adjustment were similar to that of other jurisdictions. He also noted that there was universal participation from all Board members and universal compliance with all reporting requirements.

Kevin Hudson is an at-large member to the Board of Adjustment and typically leads the meetings in the absence of Chairman Bergstrom. He noted that he felt that the qualifications for the Board were adequate, but that more training on City Code and Robert's Rules of Order would be helpful.

David Levandoski is an at-large member to the Board of Adjustment. He felt that his service on the Board has been personally rewarding and enjoyed the opportunity to serve the community. He noted that the Board was functioning extremely well as a group and members are always respectful of others' opinions and decisions. The Board followed the meeting agendas while using Robert's Rules of Order and he felt that the legal representation provided assured that specific rules of procedure were being adhered to. He noted that he thought that additional training opportunities should be considered for the Board, including a more formalized onboarding for new and potential members as well as a minimum yearly training on topics to be determined by the Board with the City's legal representation.

Bill Moore is an at-large member to the Board of Adjustment. He felt that the qualifications for the Board members were appropriate and were met by the current members of the Board. He noted that he received orientation and training from the City Solicitor when he joined the Board, but felt that additional training should be provided, including regular updates and reports from the City Solicitor's office regarding Court decisions and City and State legislation that impact the Board's practices. He thought all current members actively participated in the discussion on matters that came before the Board. He complimented the work of Secretary Tara Schiano, City Solicitor Bruce Herron and Development Supervisor Mike Fortner in staffing the Board.

Jim McKelvey is an at-large member to the Board of Adjustment. He felt that the training he has received from both the City and IPA trainings were very helpful. He noted that there was good participation in the membership in the meetings and reasonable questions and discussion prior to votes. He found that the department heads gave perspective and clarified Code rules and regulations as they pertained to the issues at hand. He thought there was little public participation for this Board as compared to City Council and Planning Commission.

Maureen Feeney Roser is the Planning and Development Director and acts as representative for the City to the Board of Adjustment. She noted that they are a dedicated and hardworking Board that takes their job very seriously. She thought they took considerable time to understand the often complicated issues surrounding the applications, their meetings were well run and matters were efficiently handled. She noted that members should be knowledgeable of zoning and development issues, but that it was not necessary to be a planner, developer, builder or inspector and that the members of this particular Board met the requirements. She noted that the 2013 training was very helpful and it would be helpful to provide it on a regular basis to members. She stated that most members make every meeting and she has never known of a quorum issue.

Necessity

The Board is not similar to any other boards or commissions. It is necessary as it is required by State Code and provides an appeal process for City zoning code interpretations without appellants having to go directly to Superior

Court.

Recommendations

Staff recommends that the Boards and Commissions Review Committee submit a positive review to Council regarding the work of the Board. However, the Committee should consider recommending additional regular training for Board members as advocated by Messrs. Hudson, Levandoski and Moore and Ms. Feeney Roser.

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

/rkb

Title 22 - Municipalities

regulations shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 60-days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality.

(80 Del. Laws, c. 224, § 5.)

Subchapter II Boards of Adjustment

§ 321 Creation and powers.

The legislative body of cities or incorporated towns shall provide for the appointment of a board to be known as the board of adjustment and in the rules and regulations adopted pursuant to the authority of this chapter shall provide that the board may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 321.)

§ 322 Composition; terms of office.

(a) In cities or incorporated towns not having heretofore adopted a home rule charter pursuant to Chapter 8 of this title, the board of adjustment shall consist of the following members or their authorized agents:

- (1) The chief engineer of the street and sewer department or the public works commissioner;
- (2) The city solicitor; and
- (3) The mayor.

If the city or incorporated town has no city engineer or public works commissioner, or city solicitor, then the mayor or chief executive of such city or town shall appoint 2 members, each to be appointed for a term of 3 years and removable for cause by the appointing authority upon written charges and after public hearing, who, with the presiding officer of the zoning commission, shall constitute the board of adjustment for such city or town. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(b) In cities or incorporated towns having heretofore or hereafter adopted a home rule charter pursuant to Chapter 8 of this title, the legislative body thereof may establish a board of adjustment consisting of 5 members who shall be residents of the city or incorporated town and who shall have knowledge of and experience in the problems of urban and rural development, and who, at the time of appointment, shall not be candidates-elect for or incumbents of an elective public office. The mayor or chief executive officer of such city or incorporated town, with consent of the legislative body thereof, shall appoint 4 members for terms of 4 years, provided that the terms of the original members shall be established in a manner that 1 shall expire each year. The mayor or chief executive officer of such city or incorporated town, with the consent of the legislative body thereof, shall appoint 1 member who shall be chairperson and who shall serve at the pleasure of that appointing official. The members shall be entitled to compensation as determined by the city or incorporated town.

(c) In the event that a city or incorporated town qualifying under subsection (b) of this section fails to establish a board of adjustment as permitted in subsection (b) of this section, the board of adjustment shall consist of those persons designated in subsection (a) of this section.

(d)(1) Anything heretofore in this section to the contrary notwithstanding, any city or town, by its legislative body, may establish a board of adjustment consisting of not less than 3 nor more than 5 members who shall be residents of the city or town and who shall have knowledge of the problems of urban and rural development and who, at the time of appointment and throughout the term of office, shall not be candidates nor members of the legislative body nor employees of the city or town. The mayor or chief executive officer of such city or town shall appoint such members of the board of adjustment, and all such appointments shall be confirmed by a majority vote of the elected members of the legislative body.

(2) All appointments shall be for a period of 3 years, provided that the terms of the original members shall be established in such a manner that the term of at least 1 member shall expire each year and the successor shall be appointed for a term of 3 years. The board of adjustment so selected shall elect from among their own number a chairperson and a secretary.

(3) Any member of the board of adjustment may be removed from office by the legislative body for cause after a hearing by a majority vote of all the elected members of the legislative body of such city or town. A vacancy occurring otherwise than by the expiration of term shall be filled for the remainder of the unexpired term in the same manner as an original appointment.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 322; 57 Del. Laws, c. 717; 58 Del. Laws, c. 276; 59 Del. Laws, c. 137, § 1; 64 Del. Laws, c. 284, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 211, § 1.)

§ 323 Rules; meetings; administration of oaths; records.

The board of adjustment shall adopt rules in accordance with any ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing

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to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 323; 70 Del. Laws, c. 186, § 1.)

§ 324 Appeals to board.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 324.)

§ 325 Stay of proceedings.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with the officer that, by reason of facts stated in the certificate, a stay would in the officer's opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court having jurisdiction on application on notice to the officer from whom the appeal is taken and on due cause shown.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 325; 70 Del. Laws, c. 186, § 1.)

§ 326 Notice and hearing on appeal.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person, by agent or by attorney.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 326.)

§ 327 Determinations of board.

(a) The board of adjustment may:

(1) Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto;

(2) Hear and decide special exceptions to the terms of the ordinance upon which the board is required to pass under such ordinance;

(3) Authorize, in specific cases, such variance from any zoning ordinance, code or regulation that will not be contrary to the public interest, where, owing to special conditions or exceptional situations, a literal interpretation of any zoning ordinances, code or regulation will result in unnecessary hardship or exceptional practical difficulties to the owner of property so that the spirit of the ordinance, code or regulation shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning ordinance, code, regulation or map; provided, however, that notwithstanding any provision of law to the contrary, the legislative body of any city or incorporated town may, by ordinance, vest a designated town official or department with authority to administratively grant a dimensional variance for existing conditions that do not exceed 1 foot of the required dimension restrictions without the application being considered by the board of adjustment, subject to the standards, procedures and conditions set forth in the ordinance granting such authority.

(b) In exercising the powers provided in subsection (a) of this section the board may, in conformity with this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 327; 65 Del. Laws, c. 61, § 1; 76 Del. Laws, c. 371, § 1.)

§ 328 Appeal to Superior Court from board's decision.

(a) Any person or persons, jointly or severally aggrieved by any decision of the board of adjustment, or any taxpayer or any officer, department, board or bureau of the municipality may present to the Superior Court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the Court within 30 days after the filing of the decision in the office of the board.

(b) Upon the presentation of the petition, the Court may allow a writ of certiorari directed to the board to review such decision of the board and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the Court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the Court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(c) The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 328.)

§ 329 Priority of proceedings.

All issues in any proceeding under this subchapter shall have preference over all other civil actions and proceedings.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 329.)

§ 330 Hearing on appeal.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 330; 70 Del. Laws, c. 186, § 1.)

§ 331 Record on appeal.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. The cost of a transcript of the hearing appealed from is the responsibility of the person appealing the decision, unless the cost is awarded against the board as provided in § 332 of this title.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 331; 73 Del. Laws, c. 38, § 1.)

§ 332 Costs on appeal.

Costs shall not be allowed against the board of adjustment, unless it appears to the Court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from. For purposes of this section, the word "costs" includes all fees paid or owed to the Prothonotary's Office in connection with the appeal to the Superior Court and all documented out-of-pocket expenses incurred by the board of adjustment in preparing, filing and serving sufficient copies of the record of the proceedings appealed from, including but not limited to expenses for photocopying, copying and/or duplication of survey drawings or plots, audio tape recordings, video tape recordings, computer discs, and expenses for preparing the transcript of the hearing.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 332; 73 Del. Laws, c. 38, § 2.)

ARTICLE XIX. - BOARD OF ADJUSTMENT

Sec. 32-62. - Appeals to board of adjustment.

Appeals to the board may be taken by any person aggrieved or by any other officer, department, board or bureau of the municipality affected by a decision of the building inspector, in the administration of this zoning chapter. Such appeal shall be taken within 30 days by filing with the building inspector, and with the board of adjustment a notice of appeal specifying the grounds thereof. The building inspector shall forthwith transmit to the board all the papers constituting the record upon which the action appealed was taken.

(Ord. No. 70-31, Art. XIX, § 1, 7-21-70)

Sec. 32-63. - Filing fee.

A fee of \$100.00 shall accompany each appeal for a variance in a residential district, and a fee of \$500.00 shall accompany each appeal for a variance in all other zoning districts; provided, however, the filing fee may be refunded at the board of adjustment's discretion under the following conditions. A fee of \$100.00 shall accompany each applicant's request for a continuance of an appeal for a variance in a residential district, and a fee of \$500.00 shall accompany each applicant's request for a continuance of an appeal for a variance in all other zoning districts; provided, however, the continuance fee may be refunded or reduced at the board of adjustment's discretion under the conditions contained in subsections (a) and (b) below.

- (a) The applicant must apply at the meeting of the board of adjustment when his application is heard; and
- (b) The applicant must show:
 - (1) The appeal was filed as a result of a valid order of the City of Newark requiring the applicant to reconstruct or repair a dwelling so as to comply with the minimum housing code; or
 - (2) The applicant is a charitable organization qualified for tax-exempt status by the Internal Revenue Service; or
 - (3) The board of adjustment determines that it does not have jurisdiction to decide the applicant's appeal.

(Ord No. 70-31, Art. XIX, § 2, 7-21-70 Ord, No. 77-66, 12-12-77; Ord. No. 81-8, Amend. No. 1, 2-9-81; Ord. No. 07-24, Amend. Nos. 15, 16, 8-13-07)

Sec. 32-64. - Effect of appeal upon proceedings.

An appeal shall stay all proceeding in furtherance of the action appealed from, unless the building inspector certifies to the board after the notice of appeal is filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the building inspector for due cause shown.

(Ord. No. 70-31, Art. XIX, § 3, 7-21-70)

Sec. 32-65. - Board of adjustment.

- (a) The board of adjustment shall consist of five members who shall be residents of the City of Newark and who shall have knowledge of and experience in the problems of urban and rural development. No member shall be at the time of his appointment a candidate, candidate elect for or incumbent of any elective public office. The mayor, with the consent of council, shall appoint four members each for a term of four years. Provided; however, the terms of the original members shall be such that one shall be appointed for one year, one for a term of two years, one for a term of three years and one for a term of four years. Thereafter, the aforementioned four members shall be appointed for a full term of four years. In addition thereto, the mayor, with the consent of council, shall appoint one member who shall be designated and who shall serve as chairman and whose term shall be at the pleasure of the mayor.
- (b) Each member of the board shall be entitled to compensation in consideration for his services as determined by council.

(Ord. No. 70-31, Art. XIX, § 4, 7-21-70; Ord. No. 71-34, 8-23-71)

Sec. 32-66. - Powers of board of adjustment.

- (a) The board of adjustment shall have the following powers:
- (1) To hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by the building inspector in the enforcement of this chapter.
 - (2)

To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where, due to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of the chapter shall be observed and substantial justice done.

- (3) To authorize such variance from the terms of this chapter as will not be contrary to the public interest upon receipt of papers transmitted by the building inspector pursuant to Article XX, Section 32-75 of this chapter, without the formality of an appeal; provided, however, that notice to all parties in interest shall be given in the same manner as upon hearing of an appeal.

(b) Reserved.

(Ord. No. 70-31, Art. XIX, § 5, 7-21-70; Ord. No. 77-35, Amend. No. 4, 7-11-77; Ord. No. 88-13, Amend. No. 6, 6-13-88; Ord. No. 16-05, Amend. No. 11, 1-25-16)

Sec. 32-67. - Authority of board in exercise of its powers.

In exercising its powers the board may, in conformity with this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the building inspector. Any order, requirement, decision or determination of the board which requires or permits a specific act to be undertaken shall, as a condition thereto, prescribe a reasonable time limit within which such act shall be completed.

(Ord. No. 70-31, Art. XIX, § 6, 7-21-70)

Sec. 32-68. - Rules of board of adjustment.¹

The board of adjustment shall make and adopt rules in accordance with the provisions of this chapter.

(Ord. No. 70-31, Art. XIX, § 7, 7-21-70)

Footnotes:

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Cross reference—See App. B-1.

Sec. 32-69. - Meetings of board of adjustment.

Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public and the board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(Ord. No. 70-31, Art. XIX, § 8, 7-21-70)

Sec. 32-70. - Hearings.

Time limit for deciding upon appeal. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and by mail to the registered owners of the next five properties adjoining or adjacent, in each direction, to the property upon which the appeal centers. The appeal shall be decided within a reasonable time, not to exceed 60 days from the date of the filing of such appeal. Upon the hearing, any party may appear in person or by agent or by attorney, provided that said agent or attorney produces authorization from his principal for acting in such a capacity.

(Ord. No. 70-31, Art. XIX, § 9, 7-21-70)

Sec. 32-71. - Petition to court for review of decision of board.

Any person or persons, jointly or severally aggrieved by any decision of the board, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to a court of record a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision. The court may allow a writ of certiorari directed to the board to review such decision of the board and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the board, and on due cause shown, grant a restraining order.

(Ord. No. 70-31, Art. XIX, § 10, 7-21-70)

Sec. 32-72. - Duties of board in case of writ of certiorari.

The board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(Ord. No. 70-31, Art. XIX, § 11, 7-21-70)

APPENDIX B-1 - CITY OF NEWARK, DELAWARE BOARD OF ADJUSTMENT INSTRUCTIONS TO APPELLANTS

A. INTRODUCTION

1. Applications for an interpretation, variance, special exception (sign code only) or any appeal to the zoning code may be taken to the board of adjustment by any person aggrieved by a decision of the building official in the administration of the zoning code. Notice of appeal and all other required forms shall be filed within 30 days after the decision of the building official.
2. The notice of appeal forms must be completed as stipulated in these instructions in order to process an application to the board of adjustment. In addition, all other requirements as noted in these instructions must also be completed.

B. NOTICE OF APPEAL

1. Read carefully all instructions on notice of appeal and fill in the required information. If more space is needed for answering any questions, attach a separate sheet and make specific reference to the question being answered. Notice should be properly notarized.
2. If the appeal is being submitted by an applicant other than the owner or agent of the property involved, written permission by the owner of the property involved should be submitted with the appeal.

C. FILING FEE

A fee of \$50.00 shall accompany each appeal for a variance in a residential district, and a fee of \$100.00 shall accompany each appeal for a variance in all other zoning districts. However, if the appeal is filed as a result of a valid order of the City of Newark requiring the appellant to reconstruct or repair a dwelling so as to comply with the minimum housing code; or the applicant is a charitable organization qualified for tax-exempt status by the Internal Revenue Service; or the board of adjustment determines that it does not have jurisdiction to decide the applicant's appeal, the board of adjustment may, in the exercise of its discretion, direct that the filing fee be refunded. Checks should be made payable to the City of Newark. Receipt of payment may be given in person or will accompany notification of hearing.

(Reference Newark Code, Section 32-63.)

D. PLOT PLANS AND ARCHITECTURAL DRAWINGS

In cases involving a new structure or any addition to an existing structure, applicant or appellant will be required to furnish ten plot plans or surveys as set forth in Chapter 7, Building, Code of the City of Newark, as amended. Said drawings to be drawn to scale showing all open spaces required by this chapter and the zoning code, all existing structures and physical improvements, and the location and dimensions of the proposed structure (if any) or addition to a structure (if any) for which the permit is sought. Plot plans must be prepared by a registered land surveyor of the State of Delaware. Also in cases involving any repairs, additions, or alterations, whether inside or outside of the building, or when a new structure is constructed, applicant or appellant is to furnish ten complete sets of drawings of the structure showing all essential parts and members. No change in any set of plans will be permitted without notification in writing to and approval by the building official.

E. EFFECT OF APPEAL UPON PROCEEDINGS

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the building inspector certified to the board after the notice of appeal is filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the building inspector for due cause shown.

(Reference Newark Code, Section 32-64)

F. HEARINGS, TIME LIMIT FOR DECIDING UPON APPEAL

The board of adjustment shall fix a reasonable time for the hearing of the appeal, given public notice thereof, as well as due notice to the parties in interest, and by mail to the registered owners of the next five properties adjoining or adjacent, in each direction to the property upon which the appeal centers. The appeal shall be decided within a reasonable time, not to exceed 60 days from the date of the filing of such appeal. Upon the hearing, any party may appear in person or by agent or by attorney, provided that said agent or attorney produces authorization from his principal for acting in such a capacity.

(Reference Newark Code, Section 32-70.)

G. SUMMARY REQUIREMENTS

1. Payment of the \$50.00 or \$100.00 fee for each application or appeal.
2. One copy of the notice of appeal, properly notarized.

- 3. Ten copies of the plot plan or survey.
- 4. Ten copies of drawings or plans.

If there are any inquiries in regard to the board of adjustment appeal or the filing of forms, please feel free to contact the city secretary's office, Newark Municipal Building, 220 Elkton Road, Newark, Delaware, 19711 at 366-7070.

(8-10-81)

CITY OF NEWARK, DELAWARE
BOARD OF ADJUSTMENT
NOTICE OF APPEAL

APPEAL NO.: ____ DATE: ____

APPLICANT: ____

DATE OF HEARING: ____

DATE HEARING ADVERTISED: ____

FEE PAID, RECEIPT NO.: ____

1. (I)(We) ____ of

(Mailing Address)

request that a determination be made by the board of adjustment on the following appeal, which was denied by the building inspector on _____, 19____ for the reason that it was a matter which in the opinion of the building inspector should properly come before the board.

2. _____ A variance, _____ an interpretation, _____ a special exception (sign code only), is requested to Chapter 32, Zoning, Article _____, Section _____, Code of the City of Newark, for the reason that:

3. _____ It is an appeal for an interpretation of the ordinance or map.

4. _____ It is a request for a special exception to the sign code on which the board of adjustment is required to act.

5. _____ It is a request for a variance relating to the _____ area _____ frontage _____ front, side, or rear yard, _____ height, or _____ use or

(State if request is for purpose other than those enumerated)

6. The description of the property involved in this appeal is as follows:

Property number and street location _____

Lot size (frontage & longest side) _____

Present use _____

Zoning district _____

Proposed use _____

7. (I)(We) believe that the board should approve this request because:

(a) If a variance is requested, include the grounds for the variance or reasons both with respect to law and fact for granting the variance and state the specific hardship involved.

Economic hardship alone is not a valid reason for granting a variance.

(b) If an interpretation of the zoning code is requested, state your grounds for the interpretation.

- 8. Has any previous application or appeal been filed in connection with these premises?
 _____ Yes _____ No. If unknown, information may be obtained from the city secretary's office, 220 Elkton Road, Newark, DE 19711, Phone: 366-7070.
- 9. What is the applicant's interest in the premises affected: (Owner, agent, lessee, etc.)

- 10. This notice of appeal, properly completed and notarized, is to be filed with the secretary of the board of adjustment. The size of improvements now erected or proposed to be erected, or other changes desired, together with any other information required by the board of adjustment, must be attached to this application. If more space is required, attach a separate sheet to this application and make specific reference to the question being answered.
- 11. Application fees are not refunded except as follows:
 - a. The applicant must apply to the meeting of the board of adjustment when his application is heard; and
 - b. The appeal was filed as a result of a valid order of the City of Newark requiring the applicant to reconstruct or repair a dwelling so as to comply with the minimum housing code; or
 - c. The applicant is a charitable organization qualified for tax-exempt status by the Internal Revenue Service; or
 - d. The board of adjustment determines that it does not have jurisdiction to decide the applicant's appeal.
- 12. I hereby depose and say that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief.

 Appellant

Sworn to and subscribed before me this _____ day of _____ 19_____

 Notary Public

My commission expires _____
 (8-10-81)

**RULES OF PROCEDURE
OF THE BOARD OF ADJUSTMENT
OF THE CITY OF NEWARK STATE OF DELAWARE**

ARTICLE I. - NAME OF ORGANIZATION

Section 1. The name of this organization shall be the board of adjustment of the City of Newark, Delaware, hereinafter referred to as the board.

ARTICLE II. - AUTHORIZATION

Section 1. The board of adjustment of the City of Newark is authorized under Title 22, Delaware Code and City of Newark Code, Chapter 32 Article XIX.

ARTICLE III. - DUTIES

Section 1. The chairman, or in his absence the vice chairman, or in the absence of both, the acting chairman, shall preside at all meetings or hearings of the board, decide all points of order or procedure, and perform all duties required by law, the zoning code or these rules.

Section 2. The city secretary shall conduct, at the direction of the board, all official correspondence of the board, send out all notices required by law and by these rules of procedure, keep records of each examination or other official action of the board, perform all duties required by law, the zoning code and the rules of procedure.

ARTICLE IV. - OFFICERS

Section 1. The officers of the board of adjustment shall consist of a chairman and a vice-chairman.

Section 2. The chairman of the board is appointed in accordance with ordinance no. 71-34, City of Newark Code of Ordinances. The members of the board of adjustment shall elect a vice chairman who shall preside at meetings when the chairman is not present. If the chairman and vice-chairman are not present, the members present shall designate a member to serve as acting chairman.

ARTICLE V. - MEETINGS

Section 1. All meetings and hearings of the board, except executive sessions, shall be open to

the public.

Section 2. A quorum shall consist of three members appointed to the board to transact business at all meetings and hearings. A vote of a majority of the members present at any meeting or hearing of the board shall be necessary to carry a motion or to reverse or modify any order, decision, or determination of the director of the building department. (4-21-77)

Section 3. Regular hearings of the board shall be held on the third Thursday of each month at 7:30 p.m. Supplemental and special hearings will be scheduled as required at the discretion of the board. Applications received by the last working day of each month shall be heard the following month by the board of adjustment insofar as the scheduling of applications permits.

Section 4. Notice of matters to be heard by the board shall be published in a newspaper of general circulation at least ten days before the date of the hearing and shall specify the place and times at which the application may be examined. The notice shall set forth the time and place of the public hearing and shall describe in a general way the nature of the application.

Section 5. Each applicant and counsel or representative of record shall be notified by ordinary first class mail of the date, place, and time of the public hearing at which their application will be heard.

Section 6. All witnesses that wish to testify before the board shall testify under oath if the board deems it necessary. The chairman, or member presiding at the hearing or meeting, shall administer all oaths and shall have the authority to compel the attendance of witnesses at public hearings.

Section 7. The order of business at all public hearings of the board shall be as follows:

- (a) Reading of the public notice for the application by the chairman or his designate;
- (b) Presentation of report by the appropriate city departmental officers if such is required;
- (c) Presentation by representative or witnesses in favor of the application;
- (d) Presentation by representative or witnesses in opposition to the application;
- (e) Rebuttals.

Section 8. The applicant or appellant must appear in his own behalf or by counsel or other agent at the public hearing. Failure of the applicant or applicant's representative to appear at the public hearing will result in the ultimate denial of the application unless the applicant or

representative notifies the office of the city secretary, by letter, within five days after the public hearing, of the compelling reasons why the applicant or applicant's representative was not present at the public hearing. If a new public hearing is granted after failure of applicant or applicant's representative to appear at the scheduled public hearing, the applicant shall pay an additional filing fee before the scheduling of a new public hearing.

Section 9. A record of the entire proceedings at all public hearings shall be kept on a tape and summary minutes prepared for public use. Applicant or other persons interested shall have access to the stenographic report of the board hearings in addition to other material appearing in board files during normal business hours in the office of the city secretary. Additional copies of the stenographic report may be procured at the expense of the persons procuring the additional copies.

Section 10. An application may be withdrawn at any time prior to a decision being made by the board of adjustment. The filing fee will be forfeited for any application withdrawn subsequent to the scheduling of the public hearing.

Section 11. At any time after a public hearing, the board of adjustment may require a further hearing for the purpose of supplementing the record. In such case, the board of adjustment shall schedule the public hearing, publish notice thereof, and give notice to all persons that testified at the previous hearing, in accordance with Section 5 of Article V of these rules of procedure.

ARTICLE VI. - APPEALS

Section 1. Appeal from an action of the building department must be filed in writing in the office of the city secretary within 30 days from the date of the action of the building department. The board may, for good cause shown, enlarge the time for appeal from any act or omission to act of the building department.

Section 2. Filing of an appeal with the board of adjustment shall stay the order, requirement, decision, or determination appealed from and all matters related thereto. Upon application by any person aggrieved by the stay or any officer, department, board or bureau, the board of adjustment shall hold a hearing and may revoke the stay upon showing of extreme hardship resulting from the stay.

Section 3. Rehearing of any application shall not be permitted unless a petition is filed with the board of adjustment and with the city secretary within 30 days after the filing of the board's decision in the office of the city secretary. The petition for rehearing shall contain the reasons for

which the request for rehearing is being made. In the event the board shall find that a petition for rehearing does not, in the board's opinion, show that substantial change in facts, evidence, or conditions have occurred in regard to the prior application, the petition for rehearing shall be denied. The cost of rehearing any application shall be the same as required for hearing the original application.

ARTICLE VII. - DATA REQUIREMENTS

Section 1. Each application for a hearing before the board of adjustment shall be made on an official application form as provided by the city secretary. The application form must contain sufficient data to permit the advertising and scheduling of the public hearing.

Section 2. Ten copies of a plot plan must be submitted showing the shape of the property and its location from an established landmark (street or railroad intersection). The plot plan must also contain the dimensions and bearings together with the structures and uses existing on the subject property, and the structures and uses within 200 feet of all the property lines. The plot plan must also show the size of any construction proposed or other change desired, or other matter which may be the subject of the public hearing.

Section 3. An appropriate zoning map marked to show the location of the property.

Section 4. Filing fee in accordance with Section 32-63 shall be \$50.00 for a variance in a residential district, and \$100.00 for a variance in all other zoning districts. (8-10-81)

Section 5. Other data submitted by the applicant in support of the application must be listed on the application form.

ARTICLE VIII. - FORMAL ACTION AND DECISIONS

Section 1. All actions and decisions of the board shall be considered in effect when signed by the chairman, vice chairman, or acting chairman of the board and filed in the office of the city secretary. All actions and decisions will also be forwarded to the city secretary and other appropriate city departments and the applicant or applicant's representative shall be notified. All actions and decisions on any application or appeal to the board shall be in the form of a written document. Such written document shall, where applicable, include findings of fact in support of a decision reached by the board. Whenever the board imposes any condition with respect to the granting of an application or appeal, such condition shall be stated in the order of the board, and in the building permit and/or in the certificate of occupancy subsequently issued by the building

department. Such building permit and/or certificate of occupancy shall remain valid only as long as the condition or conditions upon which it was approved or the conditions imposed by the board of adjustment are adhered to. A building permit issued pursuant to an action of the board shall be subject to any right of appeal.

ARTICLE IX. - COURT REVIEW OF BOARD DECISIONS

Section 1. Appeals from a decision of the board shall be taken in accordance with the Delaware and City of Newark Codes.

ARTICLE X. - AMENDMENTS

Section 1. These rules of procedure may be amended by action of the board of adjustment.

From - JEFF BERUSTRON

To -



BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT

Name of Board/Commission/Committee: BOARD OF ADJUSTMENT

Representatives Present For Review: _____

CATEGORY	ASPECTS	COMMENTS
Governing Authority	City Code and/or resolutions governing the body	ZONING CODE ARTICLE XII . SEC 32-62 - 72
Qualifications	Are the required qualifications appropriate for the body?	19-32-65 similar to other jurisdictions

CATEGORY	ASPECTS	COMMENTS
Orientation/ Training	Existing orientation and/or training for the body	offered annually
	Level of participation by members of the body in the above training	universal
Rules of Procedure	Selection of chair and other officers	on file + followed
	Meeting procedures	"
Activity Level	Amount of active participation by members	universal

CATEGORY	ASPECTS	COMMENTS
Reporting	Existing reporting requirements	quasi judicial - decision letters prepared by board's attorney
	Compliance with existing reporting requirements	universal
	Appeal process for decisions of the body	by state statute # 19-32-71
Stakeholder Viewpoints	Views of members of the body being evaluated	
	Views of department heads who work with the body	
	Views of the public who interact with the body	

CATEGORY	ASPECTS	COMMENTS
Necessity	Scope of duties	required by state law + city code to exist
	Similarity to other bodies	similar to those in each jurisdiction that enforces zoning



BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT

Name of Board/Commission/Committee:

Board of Adjustment

Representatives Present For Review: -

CATEGORY	ASPECTS	COMMENTS
Governing Authority	City Code and/or resolutions governing the body	N/A
Qualifications	Are the required qualifications appropriate for the body?	<i>Yes they are adequate</i>
CATEGORY	ASPECTS	COMMENTS
Orientation/ Training	Existing orientation and/or training for the body	<i>More training on city code and Robert's Rules of order would be very helpful. Also covering city procedures & process would help</i>

	Level of participation by members of the body in the above training	<i>Good</i>
Rules of Procedure	Selection of chair and other officers	<i>Good</i>
	Meeting procedures	<i>An orientation of Robert's Rules of Order would be helpful</i>
Activity Level	Amount of active participation by members	<i>Good</i>
CATEGORY	ASPECTS	COMMENTS
Reporting	Existing reporting requirements	<i>OK</i>
	Compliance with existing reporting requirements	<i>OK</i>
	Appeal process for decisions of the body	<i>OK</i>
Stakeholder Viewpoints	Views of members of the body being evaluated	<i>We perform a unique role.</i>

	Views of department heads who work with the body	<i>N/A</i>
	Views of the public who interact with the body	<i>N/A</i>
CATEGORY	ASPECTS	COMMENTS
Necessity	Scope of duties	<i>Quasi-judicial body is unique.</i>
	Similarity to other bodies	<i>None</i>

August 1, 2016

City of Newark
City Secretary's Office
Ms. Renee Bensley
220 South Main Street
Newark, DE 19711

RE: Board of Adjustment Review Comment Submittal

Dear Ms. Bensley and Boards and Commissions Review Committee:

I am respectfully submitting the following comments regarding the upcoming review of the Board of Adjustment by the Boards and Commissions Review Committee. First, I would like to thank the City of Newark for giving me the opportunity to serve on the Board of Adjustment (hereinafter Board). I have found the experience of serving on the Board to be personally rewarding as well as providing me with an exceptional opportunity to serve my community. My wife and I enjoy living in the City and we love taking part in the many community events that the city provides.

It is my opinion that the Board is functioning extremely well as a group, and each member is always respectful of each other's opinions and decisions. The Board does a very good job of following its meeting agenda while using Robert's Rules of Order. Each meeting is also accompanied by legal representation which assures that specific rules of procedure are being adhered to.

My primary recommendation for the Board relates to professional education. Furthering one's knowledge is extremely important. Although there are training opportunities provided to the board each year I do believe that the following training opportunities should be considered:

- Provide initial "training / orientation" to all prospective members that are interested in and prior to joining the board. The training would touch on a number of topics which can include but not be limited to: the purpose / role of the Board of Adjustment, meeting rules, rules of conduct, types of variances, ethics, past rulings of pertinent cases, etc. This training can be achieved using a variety and combination of formats, such as, video, web-cast, conference session and reference materials. If desired, the training can be followed by a meeting with the City's legal representation to answer any questions; and
- Provide an opportunity to bring the Board together as a group a minimum of once per year for internal training with the City's legal representation on topics to be determined by the Board during a public meeting.

Thank you for the opportunity to provide these comments prior to the review of the Board of Adjustment. If you need any additional information, feel free to contact me.

Respectfully submitted,



David Levandoski

Member, Board of Adjustment



BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT

Name of Board/Commission/Committee: ___ Board of Adjustment _____

Representatives Present For Review: ___ William R Moore, Jr _____

CATEGORY	ASPECTS	COMMENTS
Governing Authority	City Code and/or resolutions governing the body	Authority is found in the Newark City Code, Chapter 32, Section 32-62 to 32-72; Delaware State Code, Title 22, section 321 to 331.

Qualifications	Are the required qualifications appropriate for the body?	Qualifications as stated in Section 32-65(a) of the City Code are appropriate and in my opinion are met by the current members of the Board of Adjustments.
CATEGORY	ASPECTS	COMMENTS
Orientation/ Training	Existing orientation and/or training for the body	I joined the Board of Adjustments in June 2015 and received orientation and training by the City Solicitor which included a large package of reading material. I thought the training was appropriate for new members but I also believe and have suggested that additional training for quasi-judicial bodies such as the Board of Adjustments should be provided. As part of that additional training there should be regular updates and reports from the City Solicitor's office regarding Court decisions and City and State legislative matters that impact the Board of Adjustments' practices
	Level of participation by members of the body in the above training	Training should be a group session for all active members of the Board of Adjustments.
	Selection of chair and other officers	

Rules of Procedure	Meeting procedures	Defined and followed.
Activity Level	Amount of active participation by members	In my opinion, all current members actively participate in the discussion on agenda items that come before the Board of Adjustments.
CATEGORY	ASPECTS	COMMENTS
Reporting	Existing reporting requirements	Clearly defined.
	Compliance with existing reporting requirements	Meetings and Board of Adjustments' rulings are well documented by the detailed minutes submitted by the City Secretary's office, specifically Ms. Tara Schiano.
	Appeal process for decisions of the body	The appeal process to the Board of Adjustment as outlined in Chapter 32, Section 32-62 to 32-70 is clearly defined, followed and I do not have any recommendations for changes but I am always open to ideas and discussions for improvements. The appeal process for petitions to court for review of Board decisions as outlined in Section 32-71 of the Newark City code is appropriate and reasonable as well.
	Views of members of the body being evaluated	During my short time on the Board of Adjustments, I have found that the members ask thoughtful and appropriate questions, that they are consistently considering what is appropriate for the public interest in their decisions, that they understand the quasi-judicial nature of the Board of Adjustments and are knowledgeable, professional and actively engaged.

Stakeholder Viewpoints	Views of department heads who work with the body	I feel that the work and effort of the City Secretary Tara Schiano with the overall organization, agendas and minutes to be outstanding and very helpful. City Solicitor Bruce Herron and Michael Fortner of the Planning Department are both very knowledgeable and helpful and their work product is strong.
	Views of the public who interact with the body	
CATEGORY	ASPECTS	COMMENTS
Necessity	Scope of duties	Clearly defined and appropriate.
	Similarity to other bodies	To my knowledge there is little or no significant overlap of authority with other City boards, committees or offices. Based on my observations, the Board of Adjustments has clearly defined functions and roles in dealing and deciding appeals by individuals where they feel there is an error in interpretation or determination made by the Building Inspector and Planning Department in enforcement of Chapter 32, Zoning, Newark City Code. The Board of Adjustment may authorize upon appeal such variances that may be in the public interest. I don't believe that any other boards, committees or bodies have this same authority or responsibility.



BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT

Name of Board/Commission/Committee: Board of Adjustment

Representatives Present For Review: _____

CATEGORY	ASPECTS	COMMENTS
Governing Authority	City Code and/or resolutions governing the body	Unknown to me.
Qualifications	Are the required qualifications appropriate for the body?	I am unaware of any qualification/requirements for this board (of Adjustment). My own qualifications were (1) a sincere interest in the good of the community and (2) A strong sense of fairness.

CATEGORY	ASPECTS	COMMENTS
Orientation/ Training	Existing orientation and/or training for the body	I sat through & presented in by the former Planning Director. Very helpful. Additional seminar & Max Walton from U.P.D.
	Level of participation by members of the body in the above training	Unknown to me,
Rules of Procedure	Selection of chair and other officers	By vote of the members in attendance
	Meeting procedures	Routines were followed. Each party and the public got a hearing. Questions by Board were asked & answered. PLANNING STAFF & CITY COUNSEL ARE HELPFUL.
Activity Level	Amount of active participation by members	Good. Clarifying questions were asked. Reasonable decisions were arrived at by discussion AND finally by a VOTE

CATEGORY	ASPECTS	COMMENTS
Reporting	Existing reporting requirements	Unknown to me
	Compliance with existing reporting requirements	"
	Appeal process for decisions of the body	Appeals are handled by Superior Court.
Stakeholder Viewpoints	Views of members of the body being evaluated	Excellent \longleftrightarrow Poor ; range of presentations Quality of
	Views of department heads who work with the body	Dept. Heads give perspective & clarify code rules & regulations as they pertain to the issue at hand.
	Views of the public who interact with the body	There seems to be very little public participation here... as compared to City Council and Planning Commission

CATEGORY	ASPECTS	COMMENTS
Necessity	Scope of duties	<p>Clearly there is a need. The good of the community and the benefits to the property owner are balanced here.</p>
	Similarity to other bodies	<p>The quasi-judicial nature of this body sets it apart. Other bodies do not do this work.</p>