

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

**September 27, 2016 – 7:00 PM  
Council Chamber**

1. Call to Order
2. Approval of the Minutes of the August 23, 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 (Postponed from the August 23 meeting)
4. Approval of the August 23, 2016 Evaluation of the Board of Adjustment by the Boards and Commissions Review Committee
5. Board of Business License Review Presentation
6. Discussion and Potential Action Regarding the Committee Review of the Board of Business License Review
7. Public Comment
8. Introduction of New Business
  - A. Update on Downtown Newark Partnership
  - B. Other New Business
8. Next Meeting Date – October 25, 2016
9. Adjournment

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

**Agenda Posted – September 20, 2016**

Attest:

Sworn by:

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

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

(Seal)

**CITY OF NEWARK  
DELAWARE  
BOARDS AND COMMISSIONS REVIEW COMMITTEE  
MINUTES  
AUGUST 23, 2016**

Those present at 7:03 p.m.:

**Members:** Chair Rebecca Powers, At-Large  
John Morgan, District 1  
Jo Anne Barnes, District 2  
Christopher Laird, District 3  
Roberta Sullivan, District 4  
Maria Aristigueta, District 5  
M. Howland Redding, District 6

**Guests:** Catherine Ciferni, District 2  
Robert Stozek, Planning Commission, District 1  
Kevin Hudson, Board of Adjustment  
Jim McKelvey, Board of Adjustment  
Dave Levandoski, Board of Adjustment

**Staff:** Renee Bensley, City Secretary  
Bruce Herron, City Solicitor  
Michael Fortner, Development Manager

1. **MEETING CALLED TO ORDER BY CHAIR REBECCA POWERS AT 7:03 P.M.**
2. **APPROVAL OF THE MINUTES OF THE JUNE 28, 2016 BOARDS AND COMMISSIONS REVIEW COMMITTEE MEETING**  

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**MOTION BY DR. MORGAN, SECONDED BY MS. BARNES: TO APPROVE THE MINUTES AS AMENDED (minor typographical changes)**

**MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.**  
**AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN**
3. **APPROVAL OF THE MAY 31 AND JUNE 28, 2016 EVALUATION OF THE PLANNING COMMISSION BY THE BOARDS AND REVIEW COMMITTEE**  

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Several typos were noted and will be corrected. On page 4, item 1A, add "cross reference with City Ethics Code and State Code of Conduct." As discussion, it was agreed to add Page 5, add item E. to read, "22 Del. Code §703 – Council should consider adding through ordinance establishing the powers and duties of the Planning Commission in a new section aligned with Section 703 of Title 22 of the Delaware Code." Ms. Bensley suggested combining this with the rest of the City Code amendments.

**MOTION BY DR. MORGAN, SECONDED BY MR. LAIRD: TO ADD ITEM 1E TO COMBINE WITH CITY**

**CODE AMENDMENTS.**

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

**AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN**

Dr. Morgan stated most of City's boards and commissions provide an opportunity for comment by members of the public which are not on the agenda. He believes the Boards & Commissions Review Committee should recommend the Planning Commission provide a similar opportunity. Ms. Barnes asked Dr. Morgan if he requested this to be a separate recommendation or should be updated under City Code. He stated he believed this suggested change to be a procedural issue. Therefore, the following should read:

5. Recommendation Regarding Procedures should read:

- A. 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.
- B. Open public comment on agenda

**MOTION BY DR. MORGAN, SECONDED BY MS. SULLIVAN: TO ADD OPEN PUBLIC COMMENT TO AGENDA.**

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

**AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN**

- C. Add Introduction to New Business to the agenda

**MOTION BY DR. MORGAN, SECONDED BY MS. BARNES: TO ADD INTRODUCTION TO NEW BUSINESS TO AGENDA.**

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

**AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN**

6. Encourage racial diversity on the board and in meeting participation.

**MOTION BY MS. POWERS, SECONDED BY MS. ARISTIGUETA: TO ADD ENCOURAGE RACIAL DIVERSITY.**

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

**AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN**

Dr. Morgan noted that in his reading of State Code, it said that "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." He thought this meant that the Planning Commission should be writing the Comprehensive Plan, not staff.

Bob Stozek, Planning Commissioner (District 1) stated at a recent Planning Commission meeting the commissioners worked with the Planning Department to develop a list of items to address. However, he stated there is limited time to work on these items and the majority of time is spent on projects being

brought before the Board. In addition, he stated it was his opinion the Planning Commissioners do not have the knowledge, experience and the history of the City that exists in the Planning Department.

Ms. Bensley noted many of the Planning Commissioners are new since 2012 when the current Comprehensive Plan update was started. Additionally, she stated that there had been extensive Planning Commission involvement in the process and staff had served as support to the Commission in that process.

Nancy Willing, District 3, stated the Comprehensive Plan was never fully re-written just updated. The body of the document exists with updates. She noted that there had been wide-ranging public involvement in the process through workshops.

Catherine Ciferni, District 2 stated it was her opinion that many items in the Comprehensive Plan for expansion of services (i.e. parks, etc.) required staff time to research (grants, etc.) to enable the necessary modifications/additions.

**MOTION BY MS. BARNES, SECONDED BY MS. SULLIVAN: TO APPROVE THE EVALUATION OF THE PLANNING COMMISSION RECOMMENDATION AS AMENDED.**

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

**AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN**

**3. A. DISCUSSION AND POTENTIAL ACTION REGARDING RECUSAL PARAMETERS FOR MEMBERS OF THE PLANNING COMMISSION**

It is Dr. Morgan's opinion the City's Ethics Code needs to be updated as he believes it is not consistent with the standards of the State Code of Conduct on the matter of recusals. He believes the State Code of Conduct concludes that a member of a City body should not be voting on issues which affect that persons own employer or the employer of a close relative as defined in that document. He believes the City's Code of Ethics should include a clear statement to that effect.

Ms. Powers wanted to clarify that any change in recusal would not affect membership on a particular board or commission but should be mindful of any circumstance it may create that may affect the ability of a board or commission to have a quorum.

Ms. Barnes asked why this issue was being raised now as she believes it to be a critical issue that would apply to all the boards and why would it need to be included in this particular recommendation. Ms. Powers replied it was added to the agenda after the public scrutiny regarding the recent proposed City Council nomination.

Mr. Herron stated he did not believe any reference was made to how much a person would have to make from an employer tied to recusal matter in the City Code as a \$5,000 amount was referenced. Therefore, the question becomes would it apply to the City and the State Code is quite complex in its definition of the matter and it is not a model of clarity.

Ms. Powers asked Mr. Herron to provide further clarity on the reference to the amount of \$5,000 being the amount that is being mentioned when it comes to recusal and does it apply to our City Code and the City boards and commissions.

Dr. Morgan stated the issue initially arose in November of 2015 during the Board of Ethics review. There was a recommendation the Board of Ethics should meet soon to update the City's Code of Ethics. Ms. Bensley stated she had been tasked to research and update this matter and is close to completion.

**MOTION BY MR. REDDING, SECONDED BY MR. LAIRD: TO TABLE 3A UNTIL THE FINAL MEETING.**

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

**AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN**

**MOTION BY MS. POWERS, SECONDED BY ARISTIGUETA: TO AMEND THE AGENDA TO MOVE PUBLIC COMMENT UP TO ITEM 4 ON THE AGENDA.**

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

**AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN**

**4. PUBLIC COMMENT**

Ms. Ciferni wanted to comment that the committee that the Boards & Review Commission is referring to has largely been formed due to issues she had raised to the City several years ago. She further stated the Ethics Committee has not met in a very long time unless they receive a complaint. She believes the Ethics Board did not know what a complaint would look like.

Jim McKelvey, Board of Adjustment stated it was his opinion the topic of Ethics is very important. He would like to have an understandable document that details the rules for recusal or matters of bias.

Bob Stozek, Planning Commissioner, District 1, reported the last five plans that came before Council had required changes to the Comprehensive Plan to be approved. If amendments are made to the plan frequently then there really is no plan and arbitrary decisions are being made and that is his concern. He believes waivers are being given, not amendments.

Ms. Bensley stated the way the ordinances are written states it is a comprehensive plan amendment as it is actually changing the requested property from one category to another on the map in the plans. So it does amend the plan by not keeping it at the same category, not waiving the requirement.

Kevin Hudson, Board of Adjustment, District 1, stated he believed it to mean that one plot in a particular area is amended not amendment to a total area.

Ms. Bensley suggested reaching out to Bruce Herron, City Solicitor for clarification. Mr. Herron suggested follow up on the topic come from the Planning Department.

**MOTION BY MS. BARNES SECONDED BY MS. ARISTIGUETA: TO POSTPONE SENDING THE PLANNING COMMISSION RECOMMENDATION TO COUNCIL UNTIL ISSUES UNDER DISCUSSION CAN BE ADEQUATELY ADDRESSED AT THE NEXT MEETING.**

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

**AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN**

## 5. BOARD OF ADJUSTMENT PRESENTATION

Ms. Bensley presented the Board of Adjustment materials and asked if the commission had any questions. In response to a question from Ms. Sullivan, Ms. Bensley reported the City is a home rule Charter municipality. The City of Newark has a five member appointed board. Therefore, a City Engineer and City Solicitor and Mayor do not make up the Board of Adjustment.

Mr. McKelvey stated the Board believed that additional training and clarification was needed. He welcomes further training. He believes the Board decides important issues.

### Governing Authority

There was nothing additional to add.

### Qualifications

Dr. Morgan stated it was his opinion it was not the best language in the State Code and the City should consider asking the State Legislature to revise the language slightly to include references to urban and/or suburban and/or rural development. Ms. Sullivan stated it was her opinion this suggestion was too deep. Ms. Powers stated she would need more information before making a determination.

On a side note, Ms. Bensley stated if an applicant needs a variance, there are two options. They can ask for a variance from the Board of Adjustment to make it code compliant or they can ask the Planning Commission and then Council for site plan approval.

### Orientation/Training

Kevin Hudson reported Bruce Herron, City Solicitor provides an orientation. Periodically there have also been additional trainings. For example, Max Walton, Esquire (a land use attorney) also provided training. He believes the other board members refresher courses would be helpful.

Ms. Barnes concurred with Mr. Hudson and stated she had read in the reviews that the other members would welcome periodic training.

### Areas for Improvement

Areas for Improvement would include Robert Rules Training (as requested by Mr. McKelvey) and a periodic refresher.

Ms. Sullivan asked if Mr. McKelvey had received a job description. Mr. McKelvey stated he received some written materials (case studies) outlining various types of cases the Board of Adjustment would cover.

Dr. Morgan suggested to avoid the appearance of prejudice going forward whoever is providing training for the Board of Adjustment should not be arguing cases before the same members of the Board of Adjustment. He suggested additional land use attorneys be considered. Bruce Herron, City Solicitor believed that Dr. Morgan's suggestion would be unduly restrictive. Kevin Hudson, Board of Adjustment member concurred with Mr. Herron. He believed it would be difficult to find a land use attorney willing to do training that has not been involved in matters with the City and would be willing to forgo taking on clients who may be in

front of the Board of Adjustment in the future. In addition, Mr. Hudson noted there is continuing education in the professional field where lawyers instruct and judges are present.

Ms. Bensley stated the Board of Adjustment members are given the opportunity to attend IPA training that is offered by UD.

Dave Levandoski, Board member concurred with the matter referencing training opportunities and stated the board should be brought together a minimum of once per year for internal training with the City's legal representation.

#### Rules of Procedure

After discussion on the public comment requirements, Mr. Herron stated it is not clear under state law whether public comment is required at a Board of Adjustment hearing. Ms. Powers asked Mr. Herron to clarify the State Code on the matter of public comment.

#### Activity Level

The activity level is quite high. Most meetings have been attended four or five members.

#### Reporting

There were several modifications requested to the website regarding agendas/minutes that would be corrected by next meeting. Dr. Morgan noted he believed he found the transcript of the meeting on March 19, 2014 contained inaccuracies (some substantive). He believes most were not corrected. He found the transcript of August 19, 2015 to be more accurate. Ms. Bensley reported larger Board of Adjustment cases have a hired court reporter to do a certified court transcript. The transcripts are not permitted to be corrected by City staff as they are not certified court reporters. This matter was previously explained to Dr. Morgan. The same company was used for both meetings. The transcripts were submitted to the court and they did not express concern over accuracy.

#### Views of the members of the body being evaluated

Add training needed in this section as well.

#### Views of the public who interact with the body

After discussion, it was decided to delete a large portion of the draft evaluation that focused on the specificity of certain cases that came before the Board of Adjustment.

It would read as follows: Given often controversial nature and complexity of issues, going forward, City Code should be reviewed so that it is written with sufficient clarity that such complex technical and legal issues do not need to be adjudicated by the Board of Adjustment.

Ms. Bensley stated while she understands the opinion to review City Code to provide clarity she believes it is impractical to say these legal issues do not be adjudicated by the Board of Adjustment because any attorney is going to present an argument as to why their client interprets something one way not matter how clear the statute may be.

Bruce Herron, City Solicitor concurred. He further stated one of the main purposes of the Board of Adjustment if a person has a different interpretation of the Code as compared to a City official, they have the right to go before the Board of Adjustment.

Ms. Bensley will provide a draft report for the next meeting.

No further changes were made in that section

#### Activity Level

1. Meets monthly (as needed).
2. In the past five years, the board has met 40 times.
3. Discrepancies in the minutes on the website will be completed by the next meeting of the Boards & Review Commission.
4. There are five members on this committee.
5. There are no vacancies on this committee.

#### Board Membership

6. The committee member's term is four years for the four members with the exception of the chair which is at the pleasure of the Mayor.
7. There is a City residency requirement.
8. Not applicable as there is a City residency requirement.
9. How long is the Chair's term? At the Mayor's pleasure, per State Code.  
How is the Chair selected? Appointed by the Mayor, per State Code.

#### Compensation

There is no compensation. Kevin Hudson, Board of Adjustment member, stated he does not believe compensation is appropriate. He believes the current group to be a dedicated and great group of individuals.

#### Final overall recommendation of the Boards & Commissions Review Committee:

After discussion, the following was finalized:

1. The City should consider asking the legislature to modify §322(b) to read "urban and/or suburban and/or rural development.
2. The City should provide more opportunities for regular training of the members of the Board of Adjustment annually.
3. Expectations for recusals of members of the Board, aligned with the standards in the State of Delaware's Code of Conduct (Title 29, Chapter 58, Subchapter 1), should be clearly established in readily understandable language. In particular, Council should ensure that members of the Board are employees, or have "close relatives" who are employees, of the same employer.
4. City Code should be clarified to reduce the opportunities for appeals of zoning decisions to be filled with the Board.
5. Complementary statement.

Ms. Barnes asked Ms. Bensley to add under the final overall recommendations a complimentary summary comment of the quality of the current Board of Adjustment.

**6. PUBLIC COMMENT**

There was no public comment.

**7. INTRODUCTION OF NEW BUSINESS**

**A. Update on Council Action Regarding Previous Committee Evaluations**

Ms. Bensley reported that for the Consolidation Recommendation for the Board of Building Appeals, Sidewalk Appeals and Property Maintenance Appeals Board that Council accepted the recommendation of this board and consolidated the three boards. They are currently recruiting new members and one member was appointed on August 22, 2016. They are using the website to recruit and have found this to be successful.

There was discussion regarding the reason Councilman Chapman voted against the new appointment. Ms. Bensley reported the final vote included an amendment which had been provided by Dr. Morgan, therefore, Councilman Chapman did not necessarily vote down the applicant; but rather the whole motion. In addition, Ms. Bensley reported Council voted unanimously to approve the recommendations of the Community Development & Revenue Sharing Advisory Committee. The Conservation Advisory Commission will be on the September 27, 2016 agenda. The DNP Strategic Development Subcommittee finalized the report at the August 17, 2016. This will be presented to the DNP Board on September 8, 2016 at 4:00 p.m. at Marriott Courtyard. The plan is for this committee to be on the October Boards & Commissions Review Committee agenda.

**B. Discussion Regarding November Meeting Date**

Ms. Bensley noted that the current date for the November meeting was the week of Thanksgiving and asked if the Committee would like to move their meeting. The consensus of the Committee was to move their meeting to November 29, 2016.

**C. Other New Business**

**8. Next Meeting Date – September 27, 2016**

**9. The meeting adjourned at 9:50 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.		
	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 projects.	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 and cross referenced with the City Ethics Code and State Code of Conduct.
- 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 purposes 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."

E. State Code Title 22, Chapter 7, §703: Council should consider adding through the ordinance establishing the powers and duties of the Planning Commission a new section aligned with Section 703 of Title 22 of the Delaware Code.

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

A. 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.

B. We recommend the Planning Commission add sections to their agenda for Open Public Comment and Introduction of New Business.

6. RECOMMENDATION CONCERNING DIVERSITY ON THE COMMISSION

We encourage that Council consider diversity, particularly racial diversity, on the Commission when nominating and appointing members.

**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:**



**BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT**

Name of Board/Commission/Committee: Board of Adjustment

Representatives Present For Review: Kevin Hudson, David Levandoski, Jim McKelvey (members), Michael Fortner (Planning & Development Department), Bruce Herron (City Solicitor)

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Governing Authority	State and City Code and/or resolutions governing the body	Both State Law (Title 22, Chapter 3, Sub-chapter II, §321-332) and City Code (Chapter 32, Article XIX, Sec. 32-62 to 72 and Appendix B-1) are clear.	None.	
Qualifications	Are the required qualifications appropriate for the body?	Yes and no. §322(b) of State Code says that members of the Board of Adjustment “shall have knowledge of and experience in the problems of urban and rural development”. The same requirement appears in Section 32-65(a) of the City Code.	“Rural development” seems largely irrelevant for the City of Newark, which has both urban and suburban areas, but hardly any rural areas, other than parkland which is unlikely ever to be developed.	<p>Perhaps the City should ask the legislature to amend §322(b) of the State Code to say “the problems of urban and/or suburban and/or rural development”, which would allow the government of each municipality to appoint people with appropriate qualifications for their own local circumstances.</p> <p>Also, it is not clear that all the current and recent members of the Board of Adjustment had “experience in the problems of urban ... development” at the time of their initial appointment to the Board.</p> <p>Most former members of the City’s Planning Commission would be very well qualified for appointment to the City’s Board of Adjustment.</p>

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Orientation/ Training	Existing orientation and/or training for the body	One on one training for new members with the City Solicitor.	Maureen Feeney Roser and 3 members of the Board believe the City should provide additional regular training sessions, including parliamentary procedure.	
	Level of participation by members of the body in the above training	All current members seem to have received training when they were first appointed.	It's unclear to what extent the current members have participated in annual retraining sessions.	David Levandoski has made a good recommendation that the City should "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 hearing".
Rules of Procedure	Selection of chair and other officers	In accordance with §322(b) of the State Code and Section 32-65(a) of the City Code, the mayor appoints the chair, with the consent of Council.		
	Meeting procedures	Generally adequate.	It's not clear to what extent public comment is permitted for appeals of zoning decisions. None was permitted at the Board's meeting on March 19, 2014, but there was an opportunity for public comment at the Board's meeting on August 19, 2015.	Perhaps the past practice of electing a vice-chair, in the absence of the duly appointed chair, should be formalized in City Code.  There should also be clarity over whether or not public comment is allowed for appeals of zoning decisions.
Activity Level	Amount of active participation by members	Quite high. No meetings have been canceled for lack of a quorum and four to five members typically are present.		

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Reporting	Existing reporting requirements	§323 of State Code and Section 32-69 of City require that minutes of meetings be made and posted.		
	Compliance with existing reporting requirements	On the whole, most of the minutes of meetings of the Board of Adjustment on relatively uncontroversial issues appear to be current and accurate.		The transcript of the Board of Adjustment's meeting on March 19, 2014 contained a huge number of inaccuracies, some of them substantive, most of which never were corrected. Although this case is now moot, a much better transcription service should be used for future meetings to produce transcripts of similarly high quality as the transcripts of meetings of the Planning Commission.
	Appeal process for decisions of the body	§328 of State Code provides for an appeal to Superior Court.		
Stakeholder Viewpoints	Views of members of the body being evaluated	All current Board members have expressed positive views about their colleagues.	Several Board members have expressed the need for more training.	
	Views of department heads who work with the body	Maureen Feeney Roser's view of the members of the Board of Adjustment is very positive.		
	Views of the public who interact with the body	Members of the Board have devoted considerable amounts of their own time to grappling with complex issues involved in appeals of zoning decisions.		Given the often controversial nature and complexity of issues, going forward, City Code should be reviewed so that it is written with sufficient clarity that such complex technical and legal issues are more easily adjudicated by the Board of Adjustment.

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Necessity	Scope of duties	Prescribed by State Law (Title 22) and City Code.		Nothing can be changed by the City Council unless a change has first been approved by the legislature.
	Similarity to other bodies			Not similar to other City bodies.

**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 has met 40 times. Its last two meetings were on April 21, 2016 and July 21, 2016.
3. Do the minutes of this board or commission maintained by the City appear to be complete and up-to-date?  Yes  No
4. How many members are on this committee? 5
5. How many vacancies are currently on this committee (number and percentage)? None.

**Board Membership**

6. How long is a committee member's term on this committee?  1 year  2 years  3 years  Other (Explain) 4 years, except for the chair.
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? Other (Explain) At the Mayor's pleasure, per State Code.

How is the Chair selected for this committee? Appointed by the Mayor, per State Code.

**Compensation**

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

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

In the opinion of the Boards and Commissions Review Committee, the Board of Adjustment is a strong committee, with effective leadership and active, hard-working members. The recommendations below are intended to resolve issues which surfaced during our review, based on input from the committee's membership, other stakeholders and our own experience and observation of the Board of Adjustment.

1. The City should consider asking the legislature to modify §322(b) to read “urban and/or suburban and/or rural development”.
2. The City should provide more opportunities for regular training of the members of the Board of Adjustment at least annually.
3. Expectations for recusals of members of the Board, aligned with the standards in the State of Delaware’s Code of Conduct (Title 29, Chapter 58, Subchapter I), should be clearly established in readily understandable language. In particular, Council should ensure that at most 2 of the 5 members of the Board are employees, or have “close relatives” who are employees, of the same employer.
4. City Code should be clarified to reduce the opportunities for appeals of zoning decisions to be filed with the Board.

**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**

**September 16, 2016**

TO: Boards & Commission Review Committee Members

FROM: Renee Bensley, City Secretary *RBS*

VIA: Carol Houck, City Manager  
David Del Grande, Finance Director

CC: Mayor and Council

SUBJECT: Board of Business License Review Background Information and Staff Recommendation

Governing Authority

The Board of Business License Review is governed by Section 13-49 of the Newark City Code (attached).

Qualifications

City Code provides that members of the Board of Business License Review shall "consist of five residents of the city who shall be appointed by the mayor, for three-year terms" (Section 13-49).

Orientation/Training

Currently no training for board members is provided.

Rules of Procedure

The Board of Business License Review is charged with adopting its own rules of procedure (Section 13-49). To the knowledge of staff, that has never been formally done. The chair for the Board of Business License Review is to be selected by the membership (Section 13-49). However, since the Board has not met, this has not occurred.

Activity Level

There is no record of the Board of Business License Review ever receiving an official appeal and, therefore, no record that the Board has met since it was established in 1983. There are currently four members on the Board with one vacancy. Members are appointed for three year terms. Members are required to be residents of the City. There is no compensation for this committee.

Reporting

Currently, the Board is required to keep minutes under the State of Delaware Freedom of Information Act and Section 13-49 of the City Code. There are no minutes for the Board as it appears they have never met. As there are no minutes for this Board, they are not posted on the City's website.

Stakeholder Viewpoints

All Board members were contacted by mail to solicit comments for the review. Two Board members (Joe Brady and Kevin Henker) responded that they did not have any comments as the Board has never met in their time as members. Finance Director David Del Grande responded as well saying the same.

Necessity

While it is necessary to have an appeals mechanism for grievances related to business licenses, maintenance of a standing board to hear appeals is not required.

Recommendations

Staff recommends that the Boards and Commissions Review Committee submit a recommendation to Council to sunset the Board of Business License Review and amend Section 13-49 of the City Code to provide that any appeals

filed regarding business licenses be heard by City Council.

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

/rkb

## Sec. 13-49. - Board of license review.

The board of license review shall hear all appeals provided for in this article. The board shall consist of five residents of the city who shall be appointed by the mayor, for three-year terms. The board shall select its own chairperson and may adopt its own rules of procedure. All hearings shall be public. A record of the meetings shall be kept. The finance director shall advise or seek the advice of the board as necessary. The board shall meet from time to time as required to hear appeals.

(Ord. No. 83-26, Amend. No. 1, 11-14-83)