

**CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES**

March 18, 2026

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, March 18, 2026, at 9:05 A.M. in person in the City Council Chambers and using the phone/videoconferencing system Webex. Members present were Mr. Swalm, Mr. Coburn, Mr. Wagner and Mr. Senato. Ms. Brinkley was absent.

Staff members present were City Solicitor Mr. Daniel Griffith, Mrs. Melson-Williams, Mrs. Savage-Purnell, and Mrs. Walls.

APPROVAL OF AGENDA

Mr. Coburn moved for approval of the agenda. The motion was seconded by Mr. Swalm and unanimously carried 4-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF DECEMBER 17, 2025

Mr. Swalm moved for approval of the meeting minutes of December 17, 2025 with the necessary corrections. The motion was seconded by Mr. Wagner and unanimously carried 4-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF FEBRUARY 18, 2026

Mr. Coburn moved for approval of the meeting minutes of February 18, 2026. The motion was seconded by Mr. Swalm and unanimously carried 4-0.

Chairman Senato mentioned that the next Board of Adjustment Meeting is Wednesday, April 15, 2026, at 09:00A.M.

Chairman Senato asked if there were any other items.

COMMUNICATIONS & REPORTS

Mrs. Melson-Williams mentioned that there are no other items. The Planning Staff has no other items right now and there are no applications for the April meeting, but we will confirm as we get closer to that date and alert you of any necessary cancellation if needed.

OLD BUSINESS

Continued Discussion of Draft Rules of Procedure for Board of Adjustment.

Mrs. Melson-Williams mentioned that included in your package is the original Draft that we've been working through. You made significant progress in moving through that document in the December meeting minutes; however, we have not edited the document as of yet to make those additions, corrections, or deletions at this point. We left off at the last meeting with Rule 14, so that is where we should begin today. We can certainly circle back if you've seen something else

in looking at this. We can go back. We may have already made some comment about it, but today I think we're starting with Rule 14.

Rule 14 -Appeals and Applications to the Board of Adjustment

City Solicitor mentioned that Rule 14.1 is a procedural rule having to do with the form and fee to be paid for the applications and appeals which come before us. It seems to be fairly uncontroversial. The provision incorporates I believe the way it's done presently. The last sentence really just needs cleaning up. The person making the Appeal Application has the authority to do so. So, to the extent that some Appeal Applications are on behalf of an entity, it has to be somebody authorized to act on behalf of that entity. Otherwise, it's a pretty straightforward provision, but if anybody has any questions or comments, we can open it up.

Mr. Wagner: Which provision was it.

City Solicitor: 14.1.

14.2

City Solicitor: By its terms requires that all appeals and applications that come before us be accompanied by a recent survey. That is, as I understand, not the practice as it presently stands. I believe we addressed this at the last meeting that a survey is not required in all cases. And so, I think what I would propose is that we even remember to delete this section and not require a survey in every case.

City Solicitor asked Mrs. Melson-Williams as mentioned in my recollection that we do not require surveys for applications or appeals.

Mrs. Melson-Williams: It is not a requirement. Some of them would not benefit from an actual survey. In certain instances when they are asking for very specific waivers that could be related to information presented on the survey, we certainly recommend that. Because it may help them make their case one way or the other, but it is not a current requirement in our Code.

City Solicitor: So, I would propose deleting that provision unless anybody has any questions or comments about it.

14.3

City Solicitor: Which I believe is another straightforward and pretty non-controversial provision. It would just require those who come before us to file Applications or Appeals. And it doesn't require them but just encourages them to submit any supporting materials that they have for their presentation in advance of our meeting so we are not ambushed or sandbag at the meeting by new information that we haven't had as far in advance as possible. Again, this provision just encourages them it does not require them. It didn't seem controversial to me.

Chairman Senato: The two words "if possible" should they be removed and just leave it as stated? Wouldn't it be possible to kind of leave a little bit of an opening and make it more direct

without it.

City Solicitor: I think what you propose makes more sense, yes. So, unless there's any more questions or comments, we would just strike the last two words "if possible" of this provision.

Mr. Swalm: I just have a comment. I know there's that word "encourage." I guess it would be up to the Board's discretion or I mean but it is kind of subjective as to what is extremely important or not important to the application. I guess my concern would be that they get here and what they submitted is not really important and what they bring is more important than what they submitted.

Chairman Senato asked if he was referring to 14.3. Mr. Swalm replied yes.

City Solicitor: I think what happens sometimes is that the Application or Appeals are submitted so much in advance of the hearing that something happens in interviewing days or frankly hours where an applicant has not included supporting material with the Application or Appeal. But has gotten for instance, a letter from the neighbor or more pictures of the property and wants to bring them to the hearing. They weren't actually submitted with the original application. We don't historically forbid that. This provision would just encourage them to submit it with the application. You could or you might add a sentence to the effect of "the applicant/ appellant will have to recognize that to the extent that materials are brought to the hearing without being provided in advance that may impact the Board's ability to fully hear and consider the Application or Appeal at the time of the hearing.

Mr. Swalm: I think it does have a really large bearing on our decision-making process. What we see and what they bring. And what is put into the Exhibits. I think what the City Solicitor mentioned is a good suggestion.

City Solicitor: There is a proposal to add a sentence after striking "if possible" to add a sentence at the end when we can rework something. It would be to the effect of "to the extent that the applicant or appellant will bring material to the hearing that has not been provided in advance that can have a material effect on the Board's ability to hear and consider the Application or Appeal at the hearing.

All Board members agreed.

Mrs. Melson-Williams: I think that's reasonable. If you receive Exhibits, certainly if you feel you need time to consider additional information you could certainly defer action on an application. Some of it may be clarified based on responses in the Report.

14.4

City Solicitor: This codifies the existing procedure that requires communication and correspondence to be through the Office of Planning and Inspections? We do not want to encourage applicants to contact members of the Board individually and this provision will prohibit that.

Mrs. Melson-Williams: We will correct the title of the office from "Office" to "Department."

In Section 14.4, it references the “Office of Planning and Inspections” were actually the “Department of Planning and Inspections.”

14.5

City Solicitor: That is intended to be compliant with the Freedom of Information Act 29 Del. Code and 100 thereafter. The Board needs to provide on its Agenda Public Notice of the business that we'll be doing and a reasonable description of what's going to be occurring. This provision requires that applications not be amended after we provide public notice. That avoids an applicant changing things after we publish our Agenda so that the public does not have notice of what's happening at this meeting. There is a provision here that allows the applicant to request a different size. This is an Area Variance that is applied for and to increase or reduce the size requested of Area Variance at the Public Hearing. But the variance requested cannot be changed while at the hearing. Again, that is just a FIOA provision that cannot be changed. We are required to give the public notice of what we are doing at our meetings. If we give the public notice of one thing and then it changes at the meeting and materially to a point where we haven't given adequate notice that's forbidden by law. So, this just allows the applicant to change the size of an area variance requested but there are no other material changes.

14.6

City Solicitor: This section applies to how presentations are made. I actually had sent an e-mail to the members of the Board. I have to slip out for about 15 minutes at this point. That discussion can continue and be led by Staff or we can take a break for 15 minutes. I have a hearing before the Court of Chancery telephonically that I need to take into another room. So, I'll have to slip out at this moment for about 15 minutes.

Chairman Senato: I believe the Board can continue on or we can take a break.

Mrs. Melson-Williams: I think we can continue if there's any questions for the Solicitor, we can certainly circle back when he returns to our presence here in the interest of time for everyone.

Mrs. Melson-Williams: This deals with the presentation to the Board in the meeting and it asked the applicant to identify themselves for the record by name and their place of residence. I think that's supposed to be “of” residence instead of “or”. On the question of cross-examination of witnesses and applicants, I think that may be a question that we need to have some clarification from Mr. Griffith. And I think the common practice is that the questions are directed to and perhaps should say the “board chair” and then the “chair directs” that question to the appropriate person. If there's any concern, there?

Chairman Senato: I have a note here just for the record when the City Solicitor returns. I'll have a word to explain that no cross examination of witnesses or policies will be permitted. He has a question on that.

Mrs. Melson-Williams: the next sentence there that's about questions and who they should be directed to. I think your common practices while you all hear the question, the chair directs

whether that is a question to be answered by Staff, the Solicitor, or whoever may be the best to answer that question? And then that last sentence there about an attorney questioning witnesses, I probably need some clarification there. If that's an attorney that's representing an application before the Board. I'm not real clear about what the intent of that sentence is.

Chairman Senato: I'm not either. We can hold it until he returns.

14.7

Mrs. Melson-Williams: This gives you the ability to continue a hearing or to vote to leave the record open in case you need additional information. So, this would be for example, if you begin the hearing and you found in consideration of an application that you needed additional information. You could certainly vote to leave the record open to obtain that information and have it resubmitted to you and also to keep the public hearing open until your next meeting when you would take up that item again.

Mr. Wagner: Is that determined by a majority vote?

Mrs. Melson-Williams: Yes, that would be a vote, a motion to that effect. You would need a motion in best practices to vote to leave that record open or to allow the public hearing to continue to another meeting. Normally the public hearing is closed but you would have the ability by motion which would be action of the Board to reopen to continue that hearing.

Chairman Senato: When you say reopen, I presume that the meeting has already been closed? Perhaps I am missing something here.

Mrs. Melson-Williams: It's potential that you might close the public hearing but then your additional line of questioning may lead to you requesting more information from the applicant to be submitted. And in this case, you could vote to allow that public hearing to be reopened in case there are others that need to then respond to the additional information that was provided. It would be a decision of the Board to make a motion to take that action.

Chairman Senato: If the applicant has presented everything that they wanted to; I'm still not quite clear on this. You're saying that with the applicant everything is completed at the meeting for the applicant's request; am I correct?

Mrs. Melson-Williams: This would be a situation where you have heard the applicant give their presentation and you have conducted a public hearing to hear from the public. Then in your discussion with the applicant perhaps you've requested additional information. This would also give you the opportunity to make a motion to basically reopen or continue the hearing to another meeting to be able to take in that exhibit and have additional testimony regarding that exhibit.

Chairman Senato: So, I understand what you're saying. My thought on this and I could be wrong and I need your expertise on this. The applicant is all completed and is done. We have heard the pros and cons from those voting yes or nay as far as the citizens are concerned and then the meeting is closed. Then for some reason during the course of that section the applicant wants to add something else. Once everything is presented that should at a conclusion and then we go into

the (consideration) procedures after that. I know sometimes if there's something that comes up in front of the Board, and the applicant or even the Chair or somebody on the Board said that we need clarification or some more information on what you're saying hypothetically a picture. At that time, you know it would be approved and we can postpone the meeting to another day. I'm not convinced that this, unless I'm reading and hearing it wrong, that this paragraph should be there at all. I think the course of the meeting in my opinion covers anything that he wants to bring and gives him an opportunity to submit information that he forgot or maybe wants to bring in later. Correct me if I'm wrong.

Mr. Wagner: It seems to me that the Board presents questions and that he has to have an opportunity to provide the materials too. In other words, you mentioned the survey. If the Board says we need a survey, then what happens at that point? I think this is loaded with stuff like that where an applicant can be asked by the Board for questions and he does not have the material to answer. Unless the idea about the survey was required. Can they remain unprepared and then have a survey? If we (the Board) say or the Staff says we need a survey of this property, what happens then? Do they have the opportunity to come back and say here I present the survey that the Board asked for?

Mr. Coburn: In regard to what Mr. Wagner is asking, if we need a survey, that's what this section is for. Basically, when we are not going to close the hearing but we are going to table it until we have such time where we can get the information. At a later date, then we will reopen it in the hearing and that way we will have the information that we requested that we need. So, I do think this section is relevant and that we should keep it.

Chairman Senato: I'm not disagreeing with you. I just think that there should be more of a definitive warning or an easier explanation of that. I will leave it up to the Board; that's fine; and whatever decision that Dawn makes.

Mrs. Melson-Williams: Dawn is not the Board member. We can certainly look at that. We can look at the wording for that. The Solicitor may have some clarifying thoughts for that.

14.8

Mrs. Melson-Williams: This basically says that after you take action your decision there is a written decision that is sent to the applicant or the parties involved. This also references the verbal vote and information that you take at the meeting. It states that the voice vote is preliminary and the decision of the Board is official when it's in writing.

Chairman Senato: I'm okay with that. He asked if there were any comments.

City Solicitor returned to the meeting.

Mrs. Melson-Williams: We need to circle back to 14.6. There's a question about the sentence that says no cross examination of witnesses or applicants will be permitted. We are not real clear what that means.

City Solicitor: What it is intended to mean is that when an applicant is making a presentation, if there is a member of the public or anybody who opposes the application that member of the public may address questions to us and request that we ask questions of the applicant. That member of the public is not permitted to start asking questions of the applicant directly in cross-examining the applicant.

Chairman Senato: Would that be at the point when Mrs. Melson-Williams opens the meeting for public comment?

City Solicitor: Right, there's a point during the presentation where there's a request whether anybody supports the application or whether anybody opposes the application. What this is intended to avoid is if somebody opposes the application coming up and starts cross-examining the applicant. We just want to be like in a courtroom and the judge doesn't want the attorneys going back and forth with each other. If an opponent to an application has a question about the application that question should be directed to us, and we can ask the applicant that question. We don't want opponents to attack the applicant.

Chairman Senato: Would it be presumptive to say that they should be more definitive to make it look clearer and safe to a general public or this is good enough?

City Solicitor: There are intelligent people in this room, all of you, and to the extent that this seems ambiguous to intelligent people it could be clarified to make it clearer as to what I just described.

Chairman Senato: Thank you, you answered my question.

Mrs. Melson-Williams: And continuing now we noted that the questions should be asked to the Chair and then the Chair directs the question rather than just the summary of the term "the Board." And then the last question in that paragraph is about limitations on attorneys. Again, I think the question is which attorney are you talking about. The applicant that's before us for someone who is being represented by an attorney or from the general public.

City Solicitor: That's a good point. That's intended to mean the attorney for the applicant is permitted to ask questions of the applicant. So, I can make that clear.

Mr. Swalm: Should we just then write maybe an applicant's attorney from directly questioning witnesses?

City Solicitor: Maybe instead of in support of the position attorney is advocating, maybe say in supporting the petition of the appeal or the application.

Mr. Swalm: yeah.

Mrs. Melson-Williams: And then with 14.7 this was about the ability of the Board to continue a hearing or vote to leave the record open. I think the consensus is we need to look at the wording a little bit. There's some confusion among Board members about how this would work. And my guidance was that in order to continue a hearing or have a vote to leave the record open, likely

something like that would come up after we closed a public hearing. That it would take a motion of the Board to do so to take these actions.

City Solicitor: That's absolutely right. I think the language can be clarified by including language in the beginning by saying "upon motion following closing of the public meeting."

Mrs. Melson-Williams: Because I can see that happening that they take the public testimony, they gavel the public hearing closed but then during the continued deliberation of the Board there may be additional questions that are raised that the Board wants the applicant to provide additional information. We want to make sure there's a way to get that information back in the record and still allow public interaction perhaps with that additional information.

City Solicitor: Thank you, Mrs. Melson-Williams.

City Solicitor: So, 14.7 would therefore start with the following language: upon motion following the closing of the public hearing, the Board may continue the hearing or vote. Are there any additional comments or questions on that provision?

14.8

City Solicitor: Provides that after the decision is made, this is more directed towards this City Solicitor than the members of the Board. After the decision is made on the application, for instance, you grant or deny an Area Variance it is incumbent upon me to draft a Notice of Decision reflecting what the Board did. I am behind on my written Notices of Decision. But that's what this provision provides. Once you have made your decision and the hearing is concluded and the meeting is concluded, this provision provides for me to draft a Notice of the Decision that will then be provided to the applicant.

Mr. Swalm: Just a quick question. Is this just basically saying that the decision isn't final until they receive that in writing or until it's given in writing?

City Solicitor: Yeah, that's a very good point. I'm just going to take out that sentence because I think your decision is final once it's made. It doesn't need to wait for a written decision. That's certainly how it works in court. A judge will order it, and it won't be reduced to writing until sometime thereafter. But it's effective as of the time it's made. So, I think maybe what we ought to do is leave the first sentence and take out the rest.

Mr. Swalm: Yeah, I'm going with your suggestion on this one because I'm assuming as a property owner they are probably going to start on whatever project you might have the next day or whatever.

City Solicitor: Right, if you are waiting on the actual decision from me for it to be effective it might be a while. What we are proposing now is for Section 14.8, it will read: Following a decision by the Board on an appeal or application, a copy of the written decision shall be sent to the appellant or applicant or the agent or attorney for the appellant or applicant.

Mr. Wagner: When you write your opinion, are you agreeing or disagreeing with the Board?

City Solicitor: All I'm doing is memorializing what the Board did.

14.9

City Solicitor: That provision really states that it's not an all or nothing proposition when an applicant comes before you. You don't just have to either grant it as it's presented or deny it as it's presented. You are permitted to impose conditions with respect to granting any applications. If there's something that bothers you about the application but not enough to deny it, you are permitted to impose conditions. It is a fairly regular occurrence before the Board of Adjustment that you grant the area variance subject to certain conditions. And then whatever conditions you impose would be incorporated into the decision that I write.

Mrs. Melson-Williams: Staff will make clear reference to what the City of Dover Code of Ordinances is (the formal title of that).

Mrs. Melson-Williams: Staff had one other thought on this that may be applicable to put in this section. In our Code right now, there is no provision for an extension of a variance.

We've had maybe a couple of instances over the years where they have not commenced activity in a timely manner, and the timeframe of a year has expired. I think it gives you a year, and that has expired, and there are no provisions to seek an extension of that of the Board's action. I don't know what common practice is in other places but if there is the ability for an extension you may want to consider something. It may need to be an amendment to our Code provisions.

City Solicitor: We might want to put in a provision here or maybe as 14.10 that references that consent to the extent permitted by the Code. The Board will also consider and determine requests for an extension of time for a variance that has been granted to be viable.

Mrs. Melson-Williams: I think it is going to take a Code amendment to do that.

City Solicitor: Right. We can either wait for a code amendment and then amend the rules to include that or include here qualifying language that to an extent permitted by the Code, we would consider extensions.

Mr. Swalm: Does the Code amendment have to go through City Council?

Mrs. Melson-Williams and City Solicitor: Yes.

Mrs. Melson-Williams: Technically, since it's a provision within the *Zoning Ordinance*, it would actually go through Planning Commission as well in route to final action by Council.

Mr. Coburn: I would recommend that we do not include it in our Rules and Procedures until such time that it's codified by Council.

Mr. Swalm: Would that be on us to bring to them or is that something that they would already be working on themselves?

City Solicitor: I don't know of any initiative right now that includes amending the Code to provide for extensions of variances.

Mr. Swalm: It sounds like it needs a little bit of a larger project.

City Solicitor: I think it would be a little ahead of our skis if we are adopting Rules and Procedure in anticipation of the future Code amendment.

Mr. Swalm: What is the rest of the Board thoughts on this?

Chairman Senato: I agree with the attorney and Mr. Coburn. We don't want to put something in with the anticipation and the probability of a particular code before it was actually elected (adopted) by City Council.

Mr. Swalm: I think it would be a big undertaking unless we did it ourselves. I would say just leave it because it would be a big undertaking.

Rule 15 – Order of Proceeding:

15.1

City Solicitor: This is the codification of the way we already do things. This is a preparatory statement and this is the way we will proceed. The subject to modification by the Chairman for reasonable grounds. So, what can happen is any member of the Board can make a motion that we deviate from this order that follows. You can say I'm going to move that we give the opposition to the application first. Unless some type of motion is made by the Board to change or modify this order; this will be the order in which you hear applications and appeals.

15.2

City Solicitor: We say the Board shall identify the application. I think right now Mrs. Melson-Williams identifies the application number. Should we put that the Department of Planning and Inspections shall identify the application number?

Chairman Senato: I think that would be appropriate.

Mr. Coburn: I also agree that would be more appropriate.

Mrs. Melson-Williams: So, I think the Chair announces the number, name and then Staff repeats it and begins the presentation summary of the rest of this.

City Solicitor: The Chair shall identify the application number. The Department of Planning and Inspections Staff will describe the general nature of the proceedings and so on.

Mrs. Melson-Williams: It's like an announcement of what's listed on the Agenda so you know

which application you're dealing with and then we move into our summary referring to the documents and the various Exhibit(s). In the correspondence related to the application, my only question there would be is that more formally identified during the public hearing portion? I'm not sure what it means by any correspondence. We also typically state when the public notice was given.

City Solicitor: I wonder if we ought to put here is the following: The Chair shall identify the application number and then the Department of Planning and Inspection will describe the general nature of the proceeding; i.e. appeal/variance. We should take out "special use exception." Then briefly present the description of the subject property, the documentation reviewed by the Department, and the recommendations made by the Department.

Mrs. Melson-Williams: We do normally list that.

City Solicitor: So, let me repeat that and see if it's to the satisfaction of the Board. The revised section 15.2 would read as follows: The Chair shall identify the application number. Then the Department of Planning and Inspections will describe the general nature of the proceeding appeal or the variance application; the name of the filing party, the description of the subject property; when the Notice was given; the documents reviewed by the Department; and the recommendation of the Department.

Chairman Senato: This paragraph seemed to be repetitive of what Mrs. Melson-Williams does at every Board of Adjustment meeting. She does all of the briefing, agent(s) name and what the application is.

Chairman Senato: Do we need something like this; where this is already in procedure?

City Solicitor: It's a lot of words. Maybe we can just say the Chair will identify the application number and then the Department of Planning and Inspection will brief the Board on the general nature of the proceedings.

Mr. Swalm: Do we want to keep the paragraph the same in the event Mrs. Melson-Williams is not present?

Chairman Senato: There will still be Staff here at the meeting. Over the years when she is on vacation or whenever she's not here, then it's always a staff member here to do that whole presentation that she already does. That's already preplanned and has been for years when you received the agenda.

So, I'm going through this and I'm seeing some repetitiveness. I don't necessarily want to have something you had directed to Mrs. Melson-Williams which she is already doing. It can be confusing and then someone could have a question and then now we're into a debate. I think simplicity is what I'm looking for. I don't want to put a burden on Mrs. Melson-Williams with double sentences, words, rules and regulations. I probably going through this would prefer her presentation stay as it is without having to be here because it's still under Robert's Rules and this is something that's standard procedure.

Mr. Swalm: So, this is not what she presents?

Mrs. Melson-Williams: Those items are basically what we do. I think what this order proceeding is meant to do is to put that in writing so that we document what your common practice is of how your meeting flows. It can certainly be simplified to be that the Department will brief on the application matter and enter any Exhibits into the record. I think as we step through the rest of these it's really "here are the steps what happens when we take up an application." They may be a little wordy; and we can reduce some of the wordiness. But it's really if someone wanted to say well how does your meeting function? They could look at this and go okay I understand that the Chair's got to say this is the application we're dealing with and then Staff is going to talk and then the applicant gets a chance to talk. It flows through here and the rest of it as we get through it. It's just documenting what the process is and a little bit of who's speaking when. If you want to think of it that way.

City Solicitor: It's something to keep the language broad. It gives the Department some flexibility. It not only restricts what they are going to present. I think the idea of just saying that the Department will brief the Board on the matter and enter the Exhibits into the record. I think that gives the Department some broad discretion as to how to make presentation rather than include specific language that says here's what your presentation will include.

Note: (There was a recess for 10 minutes to move vehicles for the food truck that parks in front of City Hall).

15.2 Continued

City Solicitor: What's the first thing that happens as part of the application? The Chair shall identify the application number; then the Planning and Inspections shall brief the Board on the matter and enter Exhibits into the record.

Mr. Coburn and Chairman Senato: That sounds good.

15.3

City Solicitor: Now that the matter has been introduced and the members of the Board have seen the Department's recommendation, now it's time for the applicant or appellant to make their case. So, this provision affords the applicant or appellant to do two things: make argument about why we should grant the application or appeal and also present evidence in favor of that application or appeal. That evidence comes in two forms: testimony with people speaking at that microphone but also documentary or photographic evidence. This says that the applicant may represent himself or herself but may also have legal counsel support to make the presentation. The applicant or appellant can present witnesses in favor of the application; can introduce exhibits in favor; and other documents into the record. So, again this is just the way we already do it. It's the general provision that allows the person who has made the application and made the appeal to make their case both in verbal form and with documents.

15.4

City Solicitor: This is again what we already do, which is once the applicant has made his or her case through testimony and supporting evidence, the Board has the opportunity to ask questions of the applicant or appellants, witnesses, and Council.

Now, this says that the Board members along with Planning and Inspections Staff and I should have the opportunity to ask questions. I don't know if that a good idea to include me in there. I don't participate right. I can understand why your Department can I ask questions because there might be some clarifications. I think we might want to take the word "attorney" out of this one. So, the amendment would be for 15.4: Upon the conclusion of each witness's initial testimony, members of the Board and the Planning and Inspections Department shall have an opportunity to ask questions of the applicant or appellant and its witnesses and council.

All Board members agreed.

15.5

City Solicitor: There needs to be at least one small amendment to this. It starts off with in the case of a variance or special use exemption application. We have been removing the term "special use exception" application. So, we would start off with in the case of a variance application at the conclusion of the applicants, witnesses and evidence. This is just us calling for anybody who wants to speak in support of the application. That person would come to the podium; I would swear him or her in; and then that person would be permitted to speak in favor of the application.

Mrs. Melson-Williams: Can we clarify that this is the public hearing portion of this process? Because they it doesn't mention that and I think that's what's happening with us. Because the next one is anyone against.

City Solicitor: I think it would probably make sense in the first sentence to say: in the case of a variance application, during the public hearing portion of the meeting at the conclusion of the applicants, witnesses, and evidence... Does that make sense?

Mr. Coburn: That makes sense.

City Solicitor: Are there any other proposed edits to 15.5?

Chairman Senato: We are okay with that.

15.6

City Solicitor: Again, we'll make that edit when we remove "special use exception" so it will start off with "in the case of the variance application, at the conclusion of the statements in favor of an application then any person deciding to make a statement in opposition." So again, that's the same process as somebody speaking in favor of it. I think as Mrs. Melson-Williams mentioned we should probably include that same edit here.

Mrs. Melson-Williams: I would say so because both of these are really what I would say is the public hearing on the application.

City Solicitor: So, here's how it would read with that edit "in the case of the variance application during the public hearing portion of the meeting at the conclusion of the statements in favor of the application, any person desiring to make a statement in opposition to the application shall be given an opportunity to do so. Each person desiring to make such a statement should identify himself or herself by name and address prior to making a statement."

Any other proposed edits?

Mr. Coburn: I agree with that.

All Board members agreed.

15.7

City Solicitor: This is the opportunity after anybody speaks in opposition to an application for the applicant to respond to that opposition in the form of the rebuttal. According to this provision the presiding officer or the Chair may allow the opponent to the application a brief surrebuttal. Meaning the order would be: applicant makes the presentation; anybody speaks in favor of the application; anybody speaks in opposition; then the applicant gets an opportunity to respond to that opposition; and then the opposition gets the final word.

City Solicitor: We may want to think about whether we want the opposition to get the final word.

Chairman Senato: I have some thoughts on that one. Correct me if I am wrong. The applicant has made his presentation, and this is at the end; correct. We are giving them a brief opportunity to submit additional testimony and evidence. All of which should have been brought during his initial presentation.

City Solicitor: This is the applicant responding to the opposition. The applicant has presented his whole case and made his whole case and members of the public have been given the opportunity to speak in favor of it. Then there's been opposition presented. This is the applicant responding to that opposition.

Chairman Senato: That answers the question, thank you.

City Solicitor: The question I have for the Board; is whether or not after the applicant's response to that opposition if you want to then give the opposition the final word. Or do you want to leave it at the applicant being permitted to respond to the opposition?

Chairman Senato: I think we should we should leave it at that.

Mr. Coburn: Yes, I think we should just leave it. The applicant has one rebuttal. I don't think we

should have a sur-rebuttal because then we can have a rebuttal on the sur-rebuttal and then we could be here all day going back and forth. I think the applicant should be afforded the opportunity to present any additional words that he wants after the opposition; but not to continue on.

City Solicitor: Typically, that is the way it works in the courtroom; where the judge does allow some rebuttal. It does tend to go back and forth.

City Solicitor: So, as I understand the Board's preference is to take out that last sentence starting off with the presiding officer may allow for brief rebuttal.

Mr. Coburn: Yes.

15.8

City Solicitor: It is a straightforward provision about the presentation of Exhibits. We do need to make the change from Office of Planning and Inspections to Department of Planning and Inspections.

City Solicitor: Are there any other proposed edits to 15.8?

15.9

City Solicitor: For most administrative bodies, we do not require strict adherence to the rules of evidence that would be required in the court of law. Almost everything we review such as Reports from engineers; Reports from any third parties; that's all technically hearsay in the court. But administrative bodies routinely review them saying they do not require strict adherence to the rules of evidence and that courts apply. So, this provision just provides that we are allowed to consider hearsay.

Chairman Senato: The hearsay evidence shall be permitted; that word should be "at". Is that correct?

City Solicitor: You are right.

Chairman Senato: Any comments?

15.10

City Solicitor: This is also part of the Freedom of Information Act public notice portion. The Board shall have the authority and set reasonable time limits on all parties and speakers appearing before it.

Mr. Swalm: Do you think maybe we should just put the authority in the Chairs' position instead of just the Board? You would just have board members setting time limits on speakers coming before the Board.

City Solicitor: I think that makes sense. The way it reads now, it requires an unanimous vote of the Board to set reasonable time limits. Maybe we can change it to the presiding officer.

Mr. Coburn: I agree with that.

15:11

City Solicitor: In the same way, the presiding officer shall have authority to terminate or limit any testimony which is irrelevant or unduly repetitive or provocative. That is part of the presiding officer's at large responsibility to maintain decorum.

15:12.

City Solicitor: Once your testimony and evidence has been presented, we close the public hearing. We don't allow new testimony or evidence unless there's a majority of the Board that votes to leave the public record open.

You may remember we had somebody after the application's public meeting was closed during the public comment portion start to comment on an application that you had already considered.

This provision would make it clear that once the public meeting is closed, you don't hear any new evidence. You don't hear during the public comment portion. You're not going to reconsider an application during the public comment portion.

Chairman Senato: On the last paragraph, unless the Board votes to leave the public record open.

City Solicitor: That makes sense to me.

Mr. Swalm: That makes sense to me as well.

Mr. Coburn: Yes, that makes sense.

City Solicitor: Okay, I will take that portion out.

Rule 16 – Delaware Freedom of Information Act

16.1

City Solicitor: For the Freedom of Information Act, I'm not even sure if we need this provision. We are already required by law to comply with FOIA. So, we can leave it in for window dressing if you'd like but we don't necessarily need that provision.

Chairman Senato: What is the pleasure of the Board?

Mr. Swalm: I would say we just leave it, like you said for window dressing.

Mr. Coburn: I agree to just leave it in there that way there's no question that we are following the Freedom of Information Act.

Rule 17 – Delaware State Employees', Officers' and Officials' Code of Conduct

17.1

City Solicitor: This makes it clear that as public officials are subject to Code of Conduct of all public officials. That's a requirement you have with or without this provision. It will be the same as Rule 16. It's an obligation you already have. It probably doesn't hurt to include it so that members of the public can make sure that you are aware of it.

So, my recommendation would be to leave it in. It does not add or subtract anything other than if a party reviewing this would have any question of your awareness of your ethical obligations. This makes clear that you're aware of your ethical obligations.

Mrs. Melson-Williams: Planning Staff would also note that we probably have the same general section but may need to retitle it. There is a City Code of Ethics as well that's found in the *Dover Code of Ordinances* that we probably also need to reference because it would be applicable as well.

Mr. Coburn: We can make that 17.2.

City Solicitor: Or we can just add at the end that members of the Board should be subject to Delaware State Employees', Officers, Officials Code Conduct and the provision of the Dover Municipal Code.

Mr. Coburn: That's fine.

Rule 18 – Request for a Rehearing

18.2

City Solicitor: This is an application for a rehearing. I think we might have to revisit this. He asked Mrs. Melson-Williams if there was a provision already that gives an applicant more time than this to challenge the decision by the Board.

Mrs. Melson-Williams: There is nothing. I don't believe there's anything in the Code that allows for this consideration of rehearing at all. As far as I know, any challenge to the action taken by the Board would be in the court's hands.

City Solicitor: Once you deny or grant an application or appeal as Mrs. Melson-Williams just mentioned any challenge to your decision would be by way of a Petition for a Writ to the Superior Court.

This would allow the applicant to come back to you within 10 days asking for you to reconsider your decision before the clock starts running on those 30 days. I think my suggestion would be to take this out and just leave whatever decision you make as final and any challenge to that decision be made to the Superior Court.

Mr. Senato: Asked the City Solicitor, are you suggesting taking Rule 18 Request for Rehearing completely out and delete that section?

City Solicitor: That would be my Recommendation.

Mr. Senato: Are there any questions from the Board?

Mr. Coburn: I agree. I think it's written in our Code that our decision is final. The only choice would be is to take it to the Superior Court.

Mr. Wagner: I think it's the wording. The last applicant asked for a challenge to it. This is not a challenge to it. I thought we agreed today that there may be supplemental materials that the Board can determine an applicant can bring before the Board. This bothers me a great deal. What the applicant may be asked for is the wrong thing. I'm wondering if it is our responsibility to notify an applicant that a rehearing is possible and why.

City Solicitor: If this provision is adopted, we can have that discussion. I think what's being discussed right now is should we just take this out entirely so that once your decision is made the applicant's recourse is to a Superior Court not back here again.

Mr. Wagner: It's not a challenge to the Board to ask for a rehearing. I thought we talked about this morning the possibility that additional materials can be requested by the Board and we have to give the applicants the opportunity to present those additional materials. I am going to draw the line on this one. I don't think we'll be inferred on the applicant unless we fully explain. If he doesn't agree with it, fine, it's a final decision. But he has the opportunity of submitting materials are being requested by the Board for rehearing. Perhaps you can change the word. That bothered me the other day because I think he asked for the wrong thing. He asked for a challenge. And that's what we're not talking about. We are not talking about a challenge because we are not challenging the Board's Decision. What we're saying is there are additional materials as the Board may request or Staff may request so that you can rehear; it's not a challenge to the Board Decision.

City Solicitor: There might be some confusion about the term "rehearing." Maybe I could describe what a "rehearing" is because it's the same term that's used in court. If I lose in court, I am permitted to ask for a "rehearing." And what that is, when a judge made a final determination and said Mr. Griffith you lose, you're done, and I go back to my office. I think you know the judge misapplied the law, he didn't understand the law and before I go to appeal him to the Delaware Supreme Court, I am going to give the judge a chance to change his mind. Then I file a Motion for Reconsideration, and I say "Your Honor" I know how you ruled. It was against me, but I think you should reconsider that now because I think you forgot to consider something. That's a rehearing. I think what you're referring to was the original presentation. We're still

allowing that when the applicant comes in to say oh, I have some additional things that I didn't include in the application originally. I have some new things I want you to hear. We are permitted to hear all that. What this refers to is when you've already made your decision. So, for instance that person who left and asked how do I challenge this and you said you go to the Superior Court. If we adopted this, we could have said well you can come back before us if you file an application within 10 days or you can just go to the Superior Court. What the Board is suggesting is keep it the way it is now where once you make your Decision, you're done. They have been able to present everything. They can change their minds at the hearing and present new evidence but once you have made your decision and it's over. Their only recourse is to the Superior Court and not coming back to us and saying please change your mind.

Mr. Coburn: I just want to make a clarification on something. If they have additional information that they want to provide to us, we can table it and request that information at a future hearing. That is not rehearing. That's just tabling it so they can present additional information at a later date.

Mr. Wagner: That's fine, that answered my question. My other question is should we make this information known to an applicant?

Chairman Senato asked if there were any additional comments.

Mrs. Melson-Williams: With an applicant before they file an application, we conduct a what's called a pre-application meeting with them. We go over what the application is that they must submit and the types of materials answering those 4 questions. We do talk about how the meeting before the Board of Adjustment happens that they'll be given the opportunity to speak and if there's a public hearing. Certainly right now your Code Procedure doesn't allow for this rehearing step; so, it would be in Code Amendment as well if you were looking to keep it in there. We do tell the Applicants your chances before the Board are 50/50 and we cannot guarantee one way or the other what the Board will do. I don't know if they walk in here thinking if I get denied, what's the next step? It really depends on who the applicant is. It clearly says in our Code that they cannot come back asking for the same thing until a year has passed.

Mr. Wagner: This would only refer to new evidence, would it not? In other words, when you were talking about an applicant and the Board wanted certain items that he did not have, does he have the opportunity to present those items that the Board is requesting?

Chairman Senato: Are you citing a specific case or in generalities?

Mr. Wagner: What I am saying is that the Board's Decision is Final, I don't have a problem with that. However, if the Board or the Staff is asking for additional information that was not originally asked for, does the Applicant have an opportunity to say I would like to present this information?

Mrs. Melson-Williams: Yes, because if the Board is asking for additional information, they would take action to give the Applicant the ability to provide that. They haven't made their Final Decision. If they think they need additional information in order to inform that decision that's

what we were talking about earlier that they could continue or table. There's a couple of different words to allow that or to hold. Basically, we're still working on this Application, and we are going to give the Applicant the time to submit that information to us. We'll take that up again and then make our final decision.

Mr. Wagner: Amen.

Chairman Senato: Once everything has been heard from Mrs. Melson-Williams including the Presentation; once we make that Decision (motion) yea or nay or to deny, then that's it. Over the years in the course of an Applicant coming forward there's been times when we've postponed or tabled to the next month because I think we got a picture (just being hypothetical). We give them that opportunity at that point. I think that procedure has worked very well over the years.

Mrs. Melson-Williams and Staff are very diligent, very complete, and very methodical in their talking to any applicant that comes up in front of the Board. They give them every opportunity conceivable and then some to prepare their case in front of the Board. All we do is take the information that's given to us. Once that decision is made then here's an appeal to Superior Court.

Chairman Senato: Asked if there were any other comments?

City Solicitor: Is there a consensus to remove Rule 18?

The Board: Yes

Rule 19 – Adoption and Effective Date

19.1

City Solicitor: The rules become effective when there is a majority vote and when the Board decides the effective date.

Mr. Coburn: I would like to add that it should be written in the Rules and Procedures “that the City Solicitor or a member of his Staff or Office will be present at all hearings.”

All Board Members agreed.

Mrs. Melson-Williams: Was thinking to add it to Rule 3?

All Board Members agreed.

(Note: City Solicitor mentioned with the Chair's permission he was going to excuse himself from the meeting due to having to make an immediate phone call. It was granted by the Chair.)

Mrs. Melson-Williams: Are there any other questions? We have pushed our way through it and

at this point Staff and the Solicitor will kind of go back through and make the changes that we've discussed over these a couple of meetings and come up with a Draft 2 of the document to bring back to you. We will see if time allows to make that happen for April, if not it would be your next meeting after that.

Chairman Senato: On 2.4, it states that every attempt will be made to complete all business scheduled, etc. The reasonably anticipated presentation may be suspended by approval of a majority of the Board of Adjustment members present. Would that be through the request of the Chair?

Mrs. Melson-Williams: In our discussions previously, we were going to try to clarify that it could be either a presentation or meeting. So if for some reason you needed to stop in the middle of one of the applications being presented to you or if the meeting itself needed to be suspended, this would have to occur by motion. That motion could be made by any member of the Board of Adjustment to suspend and then to identify when you would resume.

Chairman Senato: Asked if the Board Member had any other suggestions or comments regarding any other paragraphs.

Mr. Wagner: For clarification, when we were discussing the rehearing his vote to remove was "no".

Mrs. Melson-Williams: The discussion on Rehearing that's Rule 18; the consensus was to remove that entire section regarding Rehearing.

Mr. Wagner: I don't agree with the consensus. For the Record, I'm saying I don't want it removed.

Mrs. Melson-Williams: Okay

Chairman Senato: How does the other Board Members feel on that?

Mr. Coburn: The vote has already been taken. I voted to remove it.

Mr. Swalm: I want it removed. I voted to remove it.

Chairman Senato: That was already taken care of.

Mr. Wagner: I just wanted it on the Record, not to remove it.

Public Comments Opportunity

Mrs. Melson-Williams stated that the agenda does include an opportunity for public comments as an open meeting. There were no additional members of the public that have joined us online or any members of the public here wishing to speak. That would have allowed a member of the

public to make any general statements to the Board of Adjustment not specific to any particular application.

Mr. Coburn made a motion to adjourn the meeting. It was seconded by Mr. Swalm and unanimously carried 4-0.

The meeting was adjourned at 10:52 A.M.

Sincerely,
Maretta Savage-Purnell
Secretary