

CITY CODE of ORDINANCES
CHAPTER 80, INTOWN DESIGN REVIEW
(Includes Amendments Adopted 3-6-18)

**(Includes proposed draft language to support multi-family and “flex housing”
design review in Residential 1, 2, Residential 3, Downtown Commercial and
Waterfront Mixed Use 1 and 2 zoning districts)**

Chapter 80 IN-TOWN DESIGN REVIEW

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Article I. In General

- Sec. 80-1. Statement of purpose.

The City hereby establishes a design review process for all residential and nonresidential construction activities located within the city's commercial core, its downtown and the associated waterfront, and for all other proposed nonresidential, **multifamily and flex housing** construction activities located within most of the Route One bypass. The goals are:

- (1) To foster a healthy downtown commercial area;
- (2) To retain and enhance the existing character of the downtown and inside the bypass areas;
- (3) To strengthen the connection between the downtown and the waterfront;
- (4) To apply design review standards in a reasonable and flexible manner to prevent the unnecessary loss of the community's character, while not stifling change;
- (5) To require or strongly encourage proposed new development, including the construction of new structures and the renovation or restoration of existing **residential**, nonresidential and mixed use structures, to be compatible with existing development, and to positively contribute to the character of the community; ~~and~~
- (6) To prohibit or strongly discourage the demolition or removal of existing "noteworthy" structures that have helped to shape and create the present character of the city; **and**
- (7) **To encourage development of housing while conducting design review and maintaining economic feasibility for applicants.**
- (8) **To enable a diverse portfolio of housing "inside the bypass" that not only increases the availability and affordability of living options, but also supports and enhances Belfast's key strength as a welcoming, hospitable place to live. Residents from all walks of life need more housing that will provide them with walking access to shops, entertainment, and employment opportunities. Proposed projects should recognize the importance of creating a sense of safety and community through building placement and designs that are compatible with the existing context of the neighborhood, address the public way, create light levels appropriate to a walkable, residential community, and provide the feeling of a welcoming, hospitable neighborhood.**

Architectural diversity is a hallmark of Belfast's neighborhoods. In this vein, the code encourages projects to be pedestrian friendly, with building mass, scale, fenestration, and landscaping fitting into the existing context of the neighborhood, without dictating a specific style. The public domain of the sidewalk and street should be conducive to casual, social interaction and promote a sense of wellbeing and safety. Applicants should avoid tall, opaque fences on or near the front property line, blank walls that face the street, and parking between the street and major structures, instead achieving privacy and circulation issues through thoughtful siting and landscaping.

The intention is to maintain a healthy and accessible environment that contributes to the sense of community that makes Belfast such a special place.

The City will pursue these goals through a design review process that emphasizes a productive and respectful dialogue between the citizens, property and business owners, and developers who

choose to live and work in the-community, and the reasonable and flexible application of design standards identified in this chapter.
(Ord. of 3-27-2001, § 1.0)

Sec 80-2. Definitions.

Certificate of Economic Hardship. A certificate issued by the Planning and Codes Department evidencing a hardship variance approved by the Belfast Zoning Board of Appeals in accordance with Article III, Appeals, of this chapter.

Committee Facilitator. The staff representative from the Planning and Codes Department who serves as a non-voting Facilitator at each Committee meeting.

Department refers to the Planning and Codes Department.

In-town Design Review Committee. Committee appointed by the City Council that is responsible for conducting the review of permit applications identified in this chapter, and the review of other applications specifically identified in Chapter 102, Zoning.

Notice of Decision. The Notice of Decision identifies the findings of the In-Town Design Review Committee and the Committee's conditions of approval (conditions that an applicant must comply with) or recommendations (voluntary recommendations that an applicant is not required to comply with). Said Notice typically is prepared by the Committee Facilitator.

Type 1, Mandatory In-town Design Review Permit. A permit which requires applicant compliance with the findings and conditions established by the In-town Design Review Committee; reference Subsection 80.4(a) of this chapter.

Type 2, Major Voluntary In-town Design Review Permit. This definition was repealed on March 6, 2018 **and replaced on DATE TBD. A permit which requires an applicant to submit an application for review by the In-Town Design Review Committee of a proposed new or exterior alteration of any multi-family (3 or more dwellings per structure) or flex housing structure, but does not require an applicant to comply with the Committee's findings and conditions; reference Subsection 80.4(a) of this Chapter. (Note: This draft language would not apply to one-two family dwellings unless they are part of a "flex housing" development.)**

Type 3, Minor Voluntary In-town Design Review Permit. A permit which requires an applicant to obtain review by the In-Town Design Review Committee of a minor alteration to the exterior of an existing structure, but does not require an applicant to comply with the Committee's findings and conditions; reference Subsection 80.4(c) of this Chapter.

Sec. 80-3. Establishment of In-Town Design Review Committee.

- (a) **Membership.** The In-town Design Review Committee shall include no less than five and no more than fifteen qualified persons who have been appointed by the City Council. Five persons from this membership shall be selected to serve in the review of each project

application subject to review as a Type 1 In-town Design Review Permit, and three persons from this membership shall be selected to serve in the review of each project application subject to review as a Type 3 In-town Design Review Permit.

- (b) Qualifications to serve. An individual must meet the following qualifications to serve on the In-town Design Review Committee:
 - (1) Must be a resident of the city; or
 - (2) A property owner in one of the areas subject to design review; or
 - (3) The operator of a business in an area subject to design review; and
 - (4) Must have a demonstrated interest, knowledge, ability, experience or expertise in a field that involves construction, renovation or restoration of structures or downtown and waterfront development.
- (c) Term of appointment. A member shall be appointed for a period of three years and shall serve without compensation. A member may be appointed for additional terms.
- (d) Committee Coordinator. One member of the committee may be assigned the role of serving as coordinator for the committee. The role of the coordinator would include but is not necessarily limited to: maintaining contact among committee members, arranging training sessions for committee members, publishing a newsletter, and assisting the Planning and Codes Department in the Committee performing its assigned responsibilities.
(Ord. of 3-27-2001, § 2.0)

Sec. 80-4. Activities subject to design review.

In-town design review by the In-town Design Review Committee shall apply to the activities identified in subsections (a) and (c) of this section. This requirement also explicitly applies to all construction activities proposed by the city or other governmental, public or quasi-public agencies.

- (a) Type 1 Mandatory In-Town Design Review Permit.

The following construction activities that affect the exterior appearance of any structure occupied by a non-residential use on one or more floors, including such structures that also may include a residential use on one or more upper floors, that are proposed to occur in the following zoning districts shall be subject to obtaining a Type 1 Mandatory In-town Design Review Permit: Downtown Commercial, Residential 1, Residential 2, Residential 3, Waterfront Mixed Use 1 and Waterfront Mixed Use 2.

- (1) The construction of any new primary or accessory structure;
- (2) Any exterior alteration or construction to an existing structure that involves an increase or decrease in height of said structure or change in roof configuration, which also includes rooftop additions, fences or decks.
- (3) Any exterior alteration or construction to an existing structure that involves an increase or decrease in the footprint of an existing structure, which also includes the addition, alteration or removal of exterior stairs, stoop or bulkheads.

- (4) Window or door replacement for an existing structure that results in the enlargement or diminishment in the size of existing openings, or a change in the location of said openings.
 - (5) Any exterior alteration or construction to an existing structure that involves the addition, change or removal of any faced or cladding (facing) material or decorative trim.
 - (6) Any exterior alteration that involves the addition, change or removal of any deck, balcony, porch or pergola.
 - (7) The addition, change or removal of any appurtenances to the exterior of an existing structure such as but not limited to chimneys, antennae, satellite receiving dishes, and solar collectors that exceed two feet by two feet in size.
 - (8) The demolition or relocation of an existing structure.
 - (9) A request for a sign permit that involves erecting or altering a freestanding sign, and
 - (10) If a project that requires review as a Type 1 Permit also proposes to erect new or replace existing on-building signage, such signage shall be subject to Committee review.
- (b) Type 2 Major Voluntary In-town Design Review Permit. This subsection was repealed on March 6, 2018 **and replaced on DATE TBD. The following construction activities that affect the exterior appearance of any structure occupied by a multi-family or flex housing residential use on one or more floors, that are proposed to occur in the following zoning districts shall be subject to obtaining a Type 2 Major Voluntary In-town Design Review Permit: Downtown Commercial, Residential 1, Residential 2, Residential 3, Waterfront Mixed Use 1 and Waterfront Mixed Use 2.**
- (1) The construction of any new primary or accessory structure;**
 - (2) Any exterior alteration or construction to an existing structure that involves an increase or decrease in height of said structure or change in roof configuration, which also includes rooftop additions, fences or decks.**
 - (3) Any exterior alteration or construction to an existing structure that involves an increase or decrease in the footprint of an existing structure, which also includes the addition, alteration or removal of exterior stairs, stoop or bulkheads.**
 - (4) Window or door replacement for an existing structure that results in the enlargement or diminishment in the size of existing openings, or a change in the location of said openings.**
 - (5) Any exterior alteration or construction to an existing structure that involves the addition, change or removal of any faced or cladding (facing) material or decorative trim.**
 - (6) Any exterior alteration that involves the addition, change or removal of any deck, balcony, porch or pergola.**
 - (7) The addition, change or removal of any appurtenances to the exterior of an existing structure such as but not limited to chimneys, antennae, satellite receiving dishes, and solar collectors that exceed two feet by two feet in size.**
 - (8) The demolition or relocation of an existing structure.**
- (c) Type 3 Minor Voluntary In-town Design Review Permit. The following construction activities that affect the exterior appearance of any structure occupied by a non-residential

use on one or more floors, including such structures that also may include a residential use on one or more upper floors, that are proposed to occur in the following zoning districts shall be subject to obtaining a Type 3 Minor Voluntary In-town Design Review Permit: Downtown Commercial, Waterfront Mixed Use 1 and Waterfront Mixed Use 2.

- (1) Window replacement within existing window openings.
 - (2) Door replacement within existing door openings.
 - (3) Replacement of existing stoops or steps.
 - (4) Addition or replacement of awnings.
- (d) Activities exempt from in-town design review. Design review shall not be required for the construction activities identified in subsections (a), (b) and (c) above, if the work consists solely of ordinary maintenance, or the work consists solely of an emergency repair of a temporary nature.
(Ord. of 3-27-2001, § 3.0)

Section 80-5. Areas subject to in-town design review.

This Chapter shall apply to certain activities located in the following zoning districts: Downtown Commercial, Residential 1, Residential 2, Residential 3, Waterfront Mixed Use 1, and Waterfront Mixed Use 2, as such are depicted on the adopted official zoning map for the City; reference Chapter 102, Zoning, Article V, District Regulations (copy of map attached).

Sec. 80-6. Guidelines for new construction, renovations and restorations.

The In-town Design Review Committee, in issuing its findings on an application for a Type 1, Type 2 or Type 3 In-town Design Review Permit shall consider the following guidelines, subsections (1) through (3), in making a decision regarding the compatibility of the proposed renovation or restoration of an existing structure, or the proposed construction of a new structure.

- (1) Scale and form.
 - a. Height. In addition to applicable requirements of Chapters 82 and 102, the proposed height of a structure shall be visibly compatible with surrounding structures when viewed from any street or open space, and in compliance with any design guidelines.
 - b. Width. The width of a building shall be visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.
 - c. Proportion of principal facades. The relationship of the width to the height of the principal elevations shall be visually compatible with structures, public ways and open spaces to which it is visually related.
 - d. Roof shapes. The roof shape of a structure shall be visually compatible with the structures to which it is visually related.
 - e. Scale of a structure. The size and mass of structures in relation to open spaces, windows, door openings, porches and balconies shall be visually compatible with the structures, public ways and places to which they are visually related.

- (2) Composition of principal facades.
- a. Proportion of openings. The relationship of the width to height of windows and doors shall be visually compatible with structures, public ways and places to which the building is visually related.
 - b. Rhythm of solids to voids in facades. The relationship of solids to voids in the facade of a structure shall be visually compatible with structures, public ways and places to which it is visually related.
 - c. Rhythm of entrance porch and other projections. The relationship of entrances and other projections to sidewalks shall be visually compatible with the structures, public ways and places to which they are visually related.
 - d. Relationship of materials. The relationship of the color and texture of materials (other than paint color) of the facade shall be visually compatible with the predominant materials used in the structures to which they are visually related.
 - e. Retaining architectural character. The distinguishing original qualities and character of a structure or site and its environment shall be retained, and the removal or alteration of any such material or distinctive architectural feature shall be avoided when possible. Further, any distinctive stylistic features or examples of skilled craftsmanship that characterize a structure or site shall be treated with sensitivity.
- (3) Relationship to street.
- a. Walls of continuity. Facades and site structures, such as masonry walls, fences and landscape masses, shall, when it is a characteristic of the area, form cohesive walls of enclosure along a street to ensure visual compatibility with the structures, public ways and places to which such elements are visually related.
 - b. Rhythm of spacing and structures on streets. The relationship of a structure or object to the open space between it and adjoining structures or objects shall be visually compatible with the structures, objects, public ways and places to which it is visually related.
 - c. Directional expression of principal elevation. A structure shall be visually compatible with the structures, public ways and places to which it is visually related in its directional character, whether this is vertical character, horizontal character or non-directional character.
 - d. Streetscape and pedestrian improvements. Streetscape and pedestrian improvements and any change in the appearance thereof, which are readily visible from any street or open space, shall not be incongruous to the area's character and shall comply with these design guidelines.
 - e. Location of mechanical equipment. Whenever possible, mechanical equipment or other utility hardware on the roof, ground or buildings shall be screened from public view with materials harmonious to the structure, or shall be located so as not to be readily visible from public ways.
- (Ord. of 3-27-2001, § 5.0)
- f. Site Layout and Design. Site layout and design shall be visually compatible with nearby features in the neighborhood.**
 - g. Historic Districts. New construction and exterior alterations in historic districts shall be visually compatible with surrounding structures.**

Sec. 80-7. Standards for demolitions or relocations.

The In-town Design Review Committee shall apply the following standards in evaluating a request to demolish or relocate an existing structure:

- (1) Character of area. The demolition or relocation of the building will not adversely affect the character of the area in which the structure is located, or that the demolition or relocation of the building will positively contribute to the character of the area.
- (2) Use of site. The reuse of the site will be a permitted use or continuation of a nonconforming use that is compatible with the character of the area, and proposed buildings or structures will comply with design guidelines for new construction.
- (3) Alternatives to demolition or relocation. There is no practical alternative that will allow the retention of the building. The Committee can require an owner to demonstrate that the existing building is incapable of earning an economic return.
- (4) Unsafe structure. The building has been deemed unsafe by the Code Enforcement Officer.
- (5) The property owner is unable to obtain insurance on the structure.
- (6) Slum and blight. The building is located in an area that has been formally declared as a slum and blight area by the City, and such designation has been accepted by the State.

(Ord. of 3-27-2001, § 6.0)

Sec. 80-8. Annual meeting of In-town Design Review Committee members.

It is recommended that an annual meeting of all members of the In-town Design Review Committee be held. The purpose of the annual meeting is to share member experiences in the review of permit applications, to evaluate how the design review process is functioning, and to prepare and issue an annual written report to the City Council and citizens of the City. The annual meeting will routinely be held, but shall not be required to be held, between January and March of each year.

(Ord. of 3-27-2001, § 9.0)

Secs. 80-9 -- 80-30. Reserved.

Article II. Applications and Process

Sec. 80-31. Permit application.

A person who proposes to undertake an activity subject to this chapter shall file an In-town Design Review Permit application with the Planning and Codes Department and shall provide all information required on the application form. Department staff at the Planning and Codes Department are authorized to request any and all reasonable information that the In-town Design Review Committee may need to make a finding on a permit application. This information may include but is not limited to sketches, photographs, drawings, plans, and examples of sample materials.

(Ord. of 3-27-2001, § 4.0)

Sec. 80-32. Classification of permit application.

The Planning and Codes Department, upon receipt of an application, shall review the application and determine the classification of permit review required by the In-town Design Review Committee. The two classifications of permits are:

- (1) Type 1, Mandatory In-Town Design Review Permit Review; reference Section 80-33 for a description of the applicable review process.
 - (2) Subsection repealed on March 6, 2018 **and replaced on DATE TBD. Type 2 Major Voluntary In-town Design Review Permit; reference Section 80-34 for a description of the applicable review process.**
 - (3) Type 3, Minor Voluntary In-Town Design Review Permit; reference Section 80-35 for a description of the applicable review process.
- (Ord. of 3-27-2001, § 4.0)

Section 80-33. Review Process for Type 1 Mandatory In-town Design Review Permit.

- (a) Schedule of Committee meeting. The Code and Planning Department, upon receipt of a complete application that requires review as a Type 1 Mandatory In-town Design Review Permit, shall date the application, and within five working days, shall schedule an In-town Design Review Committee meeting to review the application. The meeting of the In-town Design Review Committee shall occur within fifteen working days of the date that the Code and Planning Department deems the application for a Type 1 Permit complete.
- (b) Public notice requirement. The Code and Planning Department, a minimum of ten calendar days prior to the In-town Design Review Committee meeting, shall provide written notice of the application and the proposed meeting date to all property owners located within a radius of 150 feet of the applicant property, and also shall post this notice in City Hall or on the City website.
- (c) Selection of In-town Design Review Committee. The Code and Planning Department shall select the five members of the In-town Design Review Committee that will serve on the review of an application for a Type 1 Permit randomly choosing the members from the list of appointed members. If any of the five members initially contacted to serve on a permit review has a conflict or chooses not to serve on the review of a specific permit application, the Department shall contact additional members on the list of appointed members to select a five member committee. The Code and Planning Department shall provide the five members of the In-town Design Review Committee that will participate in the review of an application for a Type 1 Permit a copy of the application subject to review.
- (d) Process open to public. The Committee will allow an opportunity for public comment at the meeting at which the application is reviewed, and will accept written comment on the application. The open to public comment period will occur prior to the Committee's deliberations on the application. Public comment must be directed to issues which are within the purview of the Committee. All proceedings of the Committee, including any site visits which the Committee may conduct, shall be open to the public to attend and observe.

- (e) Committee Facilitator. A staff representative from the Code and Planning Department shall serve as the Facilitator of an In-town Design Review Committee meeting at which an application for a Type 1 Permit is considered. The Facilitator shall not have a vote on a permit application.
- (f) Committee review meeting and decision. The In-town Design Review Committee shall review each application for a Type 1 Permit to determine if the proposed construction activity is compatible with the design review guidelines identified in Sections 80-6 and 80-7. The Committee shall pursue each review as a constructive dialogue between the applicant and the Committee, with the goal of encouraging an applicant to use construction practices that satisfy the guidelines in this chapter. The Committee shall make its findings in its Notice of Decision, and shall present said Notice of Decision to the applicant and the Code and Planning Department as soon as practical, but not later than 30 working days of the date of the initial Committee meeting. This date may be extended upon the mutual written consent of the applicant and the Committee.
- (g) Permit issuance. The Code Enforcement Officer shall acknowledge the Notice of Decision for a Type 1 Permit that complies with the findings of the In-town Design Review Committee on the respective building permit issued by the Code Enforcement Officer
- (h) Binding decision. The written decision and conditions of approval (Notice of Decision) established by the In-town Design Review Committee shall be binding upon the applicant.
- (i) Other permit requirements. The design review process shall not be interpreted as a waiver of any City regulation governing the issuance of a building permit or other City land use permit. In cases when a Type 1 review is required by this chapter, completion of the design review process shall be a precondition of receipt of a building permit.
- (j) Appeal of Committee decision. An applicant may seek an Administrative Appeal or an Economic Hardship Variance from the Belfast Zoning Board of Appeals with respect to permit requirements established by the In-town Design Review Committee. All appeals shall comply with guidelines established in Section 80-50 of this chapter.

Sec. 80-34. Review process for Type 2 Major Voluntary In-town Design Review Permit.

This section was repealed on March 6, 2018 **and replaced on DATE TBD.**

- (a) Schedule of Committee meetings. The In-town Review Committee shall meet on an as needed basis to review any complete applications that are filed for a Type 2 Major Voluntary In-town Design Review Permit. The Planning and Codes Department shall schedule all meetings of the In-town Design Review Committee associated with the review of Type 2 Major Voluntary Permits, and shall inform the Committee members of the meeting schedule. A preliminary workshop with the Applicant and members of the Committee is also be available at the Applicant's request.**

- (b) **Public notice requirement.** The Planning and Codes Department shall post in City Hall and on the City website a public notice of the agenda for a meeting of the In-town Review Committee that involves the Committee's review of a complete application for a Type 2 Major Voluntary In-town Design Review Permit. This notice shall be posted a minimum of 48 hours prior to the scheduled meeting. No other public notification is required of this Committee meeting.
- (c) **Selection of In-town Design Review Committee.** The Planning and Codes Department shall select the three members of the In-town Design Review Committee that will serve on the review of an application for a Type 2 Permit by randomly choosing the members from the list of appointed members. If any of the three members initially contacted to serve on a permit review has a conflict or chooses not to serve on the review of a specific permit application, the Department shall contact additional members on the list of appointed members to select a three-member Committee. The Planning and Codes Department shall provide the three members of the In-town Design Review Committee that will participate in the review of an application for a Type 2 permit a copy of the application subject to review.
- (d) **Process open to the public.** All scheduled meetings of the In-town Design Review Committee for the review of a Type 2 Major Voluntary In-town Design Review Permit, including any site visits, shall be open to the public. The Committee is not required to accept oral public comment on a permit application at the meeting. All public comments should be submitted in writing to the Committee.
- (e) **Committee Facilitator.** A representative of the Planning and Codes Department shall serve as the Facilitator of the In-town Design Review Committee meeting. The Facilitator shall not have a vote on a permit application.
- (f) **Committee review meeting and decision.** The In-town Design Review Committee shall review each application for a Type 2 Major Voluntary In-town Design Review Permit to determine if the proposed construction activity is compatible with the design review guidelines identified in Section 80-6. The Committee shall pursue each review as a constructive dialogue between the applicant and the Committee, with the goal of encouraging an applicant to use construction practices that satisfy the guidelines in this chapter. The Committee shall make its findings in its Notice of Decision, and shall present said Notice of Decision to the applicant and the Code and Planning Department as soon as practical, but not later than 15 working days of the date of the initial Committee meeting. This date may be extended upon the mutual written consent of the applicant and the Committee.
- (g) **Permit issuance.** Reserved.
- (h) **Nonbinding decision.** The Notice of Decision of the In-town Design Review Committee with respect to a Type 2 Permit shall be nonbinding upon the applicant. While the Committee and the City will strongly encourage an applicant to adhere to the decision of the In-town Design Review Committee, the City will not deny an applicant a building

permit for failing to adhere to the Committee's Notice of Decision, will not establish conditions on a building permit that are related solely to the Notice of Decision of the In-town Design Review Committee, and will not revoke a building permit if an applicant who received a Notice of Decision on a Type 2 Permit subsequently fails to comply with recommendations identified in said Notice.

- (i) Other permit requirements. The design review process shall not be interpreted as a waiver of any City regulation governing the issuance of a building permit. In cases when a Type 2 Major Voluntary In-town Design Review Permit application review process is required by this chapter, completion of the design review process shall be a precondition of receipt of a building permit.**

Sec. 80-35. Review process for Type 3 Minor Voluntary In-town Design Review Permit.

- (b) Schedule of Committee meetings. The In-town Review Committee shall meet on an as needed basis to review any complete applications that are filed for a Type 3 Minor In-town Design Review Permit. The Planning and Codes Department shall schedule all meetings of the In-town Design Review Committee associated with the review of Type 3 Permits, and shall inform the Committee members of the meeting schedule.
- (b) Public notice requirement. The Planning and Codes Department shall post in City Hall and on the City website a public notice of the agenda for a meeting of the In-town Review Committee that involves the Committee's review of a complete application for a Type 3 Minor In-town Design Review Permit. This notice shall be posted a minimum of 48 hours prior to the scheduled meeting. No other public notification is required of this Committee meeting.
- (c) Selection of In-town Design Review Committee. The Planning and Codes Department shall select the three members of the In-town Design Review Committee that will serve on the review of an application for a Type 3 Permit by randomly choosing the members from the list of appointed members. If any of the three members initially contacted to serve on a permit review has a conflict or chooses not to serve on the review of a specific permit application, the Department shall contact additional members on the list of appointed members to select a three member Committee. The Code and Planning Department shall provide the three members of the In-town Design Review Committee that will participate in the review of an application for a Type 3 permit a copy of the application subject to review.
- (d) Process open to public. All scheduled meetings of the In-town Design Review Committee for the review of a Type 3 Minor In-town Design Review Permit, including any site visits, shall be open to the public. The Committee is not required to accept oral public comment on a permit application at the meeting. All public comment should be submitted in writing to the Committee.
- (e) Committee Facilitator. A representative of the Planning and Codes Department shall serve as the Facilitator of the In-town Design Review Committee meeting. The Facilitator shall not have a vote on a permit application.

- (f) Committee review meeting and decision. The In-town Design Review Committee shall review each application for a Type 3 Minor In-town Design Review Permit to determine if the proposed construction activity is compatible with the design review guidelines identified in Section 80-6. The Committee shall pursue each review as a constructive dialogue between the applicant and the Committee, with the goal of encouraging an applicant to use construction practices that satisfy the guidelines in this chapter. The Committee shall make its findings in its Notice of Decision, and shall present said Notice of Decision to the applicant and the Planning and Codes Department as soon as practical, but not later than 15 working days of the date of the initial Committee meeting. This date may be extended upon the mutual written consent of the applicant and the Committee.
- (g) Permit issuance. This subsection repealed on March 6, 2018.
- (h) Nonbinding decision. The Notice of Decision of the In-town Design Review Committee with respect to a Type 3 Permit shall be nonbinding upon the applicant. While the Committee and the City will strongly encourage an applicant to adhere to the decision of the In-town Design Review Committee, the City will not deny an applicant a building permit for failing to adhere to the Committee's Notice of Decision, will not establish conditions on a building permit that are related solely to the Notice of Decision of the In-town Design Review Committee, and will not revoke a building permit if an applicant who received a Notice of Decision on a Type 3 Permit subsequently fails to comply with recommendations identified in said Notice.
- (i) Other permit requirements. The design review process shall not be interpreted as a waiver of any City regulation governing the issuance of a building permit. In cases when a Type 3 Minor In-town Design Review Permit application review process is required by this chapter, completion of the design review process shall be a precondition of receipt of a building permit.
(Ord. of 3-27-2001, § 4.0)

Sec. 80-36. Failure to submit a permit application or obtain an appropriate permit.

It is the responsibility of an applicant to be aware of the requirements of the City Code of Ordinances and to submit the appropriate application for a permit identified in this chapter. The failure to submit an application and to obtain the appropriate permit prior to the start of construction activities shall be subject to the following penalties:

- (1) An applicant that fails to submit an application or obtain a permit for an activity subject to review as a Type 1 Mandatory In-town Design Review Permit shall be subject to the same penalties that apply to the failure to submit and obtain a building permit that are identified in chapter 102, zoning.
- (2) Subsection repealed on March 6, 2018 **and replaced on DATE TBD. An applicant that fails to submit an application or obtain a permit for an activity subject to review as a Type 2 Major Voluntary In-town Design Review Permit shall be subject to the same penalties that apply to the failure to submit and obtain a building permit that are identified in chapter 102, zoning.**

- (3) An applicant that fails to submit an application or obtain a permit for an activity subject to review as a Type 3 Minor Voluntary In-town Design Review Permit shall be subject to a penalty of \$50.00.

The City Council shall have the authority to waive any and all penalties that may be assessed per this chapter.

(Ord. of 3-27-2001, § 7.0)

Sec. 80-36. Application fee.

The fee to submit an application for a Type 1 Mandatory In-town Design Review Permit, **a Type 2 Major Voluntary In-town Design Review Permit**, or a Type 3 Minor Voluntary In-town Design Review Permit shall be established by the City Council, and may be adjusted from time-to-time by the Council.

(Ord. of 3-27-2001, § 8.0)

Secs. 80-37 --- 80-49. Reserved.

Article III. Appeals

Sec 80-50. Permit subject to appeal.

An applicant for a Type 1 Mandatory In-town Design Review Permit may request an Administrative Appeal of a decision by the In-town Design Review Committee, or may request a Certificate of Economic Hardship Variance from the Belfast Zoning Board of Appeals. The process for the review of an application for an Administrative Appeal or a Certificate of Economic Hardship Variance are identified in this article. An applicant cannot request either an Administrative Appeal or a Certificate of Economic Hardship Variance for **a Type 2 Major Voluntary In-town Design Review Permit** or a Type 3 Minor Voluntary In-town Design Review Permit since any decision of the In-town Design Review Committee with respect to said permit is non-binding on an applicant.

Sec 80-51. Administrative appeal of a Type 1 Mandatory In-town Design Review Permit.

- (a) Process to receive and review an appeal. An applicant who has received or has been denied the issuance of a Type 1 Mandatory In-town Design Review Permit by the In-town Design Review Committee may file and request that the Zoning Board of Appeals consider an application for an Administrative Appeal regarding the Committee decision on said permit and their interpretation of the requirements of Chapter 80, In-town Design Review. The following standards identified in Chapter 102, Zoning, Article II, Administration, Sec 102-134 shall apply to said Administrative Appeal: (a) Filing; (b) Public Hearing required, notice; (c) Failure to receive notice; (d) Right of parties to appear by agent or attorney; (e) Attendance at hearing by city officials; (g) De novo review and (h) Conduct of hearing.
- (b) Standard of review of an appeal. The Zoning Board of Appeals shall act as an appellate board which shall entertain all evidence of record submitted in the underlying hearing,

including any transcripts, findings of fact, and decisions made by the In-Town Design Review Committee. The Board shall review the entire record and determine if the evidence of record compels the Zoning Board of Appeals to find that all or part of the decision on appeal was arbitrary or capricious and compels a contrary decision based on substantial evidence in the record. In such Administrative Appeals the Zoning Board of Appeals is hereby authorized to take the following action.

1. Approve the decision issued by the In-town Design Review Committee.
2. Reverse in total the decision of the In-town Design Review Committee.
3. Remand to the Design Review Committee for further proceedings necessary to:
 - a. Compare the record in the event that the Board finds it unable to render a decision due to the absence of critically important factual information;
 - b. Consider how a decision of the Zoning Board of Appeals to reverse part of the decision of the Design Review Committee affects the proposed improvement; or
 - c. Remand for further proceedings consistent with the order of the Zoning Board of Appeals.

The actions described in subsections (c) – (e) below may or shall occur in response to the above decisions of the Zoning Board of Appeals.

- (c) Zoning Board of Appeals decision to approve decision issued by the In-town Design Review Committee. If the Zoning Board of Appeals acts pursuant to (b)1. above to approve a decision of the In-town Design Review Committee an aggrieved applicant may appeal said decision to the Maine Superior Court. (d) Zoning Board of Appeals decision to reverse in total a decision of the In-town Design Review Committee. If the Zoning Board of Appeals chooses to reverse a decision of the In-Town Design Review Committee, (b) 2. above, the decision of the Zoning Board of Appeals shall be binding unless said decision is appealed to the Superior Court.
- (e) Remand by Zoning Board of Appeals. If the Zoning Board of Appeals chooses to reject in part a decision of the In-town Design Review Committee and to remand a specific decision to the In-town Design Review Committee, pursuant to (b)3. above, the membership of the In-town Design Review Committee which initially heard the application shall sit in review of the remand order. The Committee shall confine its review to the remand decision issued by the Zoning Board of Appeals, and shall issue findings describing how it has addressed issues identified in the order from the Zoning Board of Appeals. The decision of the In-town Design Review Committee regarding such a remand is subject to the administrative appeal procedure identified in this section.

Sec. 80-52 Zoning Board of Appeals review of a Certificate of Economic Hardship.

- (a) An applicant that asserts it cannot comply with conditions of approval established by the In-town Design Review Committee for issuance of a Type 1 Mandatory In-town Design

Review Permit may apply to the Zoning Board of Appeals for relief by issuance of a Certificate of Economic Hardship. Said application shall be submitted on the official form within 30 days of the written Notice of Decision of the In-town Design Review Committee to the Code and Planning Department. The Department shall schedule the request for a Certificate for a meeting before the Zoning Board of Appeals. Zoning Board of Appeals review of the application shall occur in accordance with the process for the review of variances that is described in Chapter 102, Zoning, Article II, Administration, Section 102-133, Variances.

- (b) The Zoning Board of Appeals shall approve an application for a Certificate of Economic Hardship only upon a determination that applicant compliance with conditions of approval established by the In-town Design Review Committee will result in the loss of all reasonable use of the structure.
- (c) In considering an application for a Certificate of Economic Hardship, the Zoning Board of Appeals shall consider among other things any evidence presented concerning the following:
 - (1) Any opinion from a licensed engineer or architect with experience in renovation, restoration or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration or rehabilitation.
 - (2) Any estimates of the cost of the proposed alteration, construction, demolition or removal and an estimate of any additional cost that would be incurred to comply with the conditions of approval established by the Committee.
 - (3) Any estimates of the market value of the property in its current condition; after completion of the proposed alteration, construction, demolition or removal; and after any expenditures necessary to comply with conditions of approval established by the Committee.
 - (4) A comparison of the cost of improvements associated with 1 – 3 above, as proposed by the applicant, and the cost of improvements required to comply with conditions of approval established by the Committee.
 - (5) Information supplied by the applicant with respect to the following:
 - a. The assessed value of the property and/or the structure for the current year.
 - b. Real property taxes paid for the previous two years.
 - c. The amount paid for the property by the owner, the date of purchase and the party from whom purchased.
 - d. The current balance of any mortgages or other financing secured on the property and annual debt service on the property.
 - e. Any appraisals obtained within the last 2 years.
 - f. Any listings of the property for sale or rent, including the price asked and offers received, if any within the past 2 years.
 - g. All studies commissioned by the owner as to the profitable renovation, rehabilitation or utilization of any structures on the property.

- h. For income producing property, itemized income and expense statements for the property for the previous two years.

Notwithstanding this list of information, the Zoning Board of Appeals may request additional information to assist in its decision regarding the issuance for a Certificate of Economic Hardship.

- (d) The Zoning Board of Appeals, in its written decision, shall define why or why not the Certificate of Economic Hardship should or should not be granted, and the specific conditions that apply to the issuance of a Certificate. The only appeal of any decision regarding issuance or denial of an Economic Hardship Variance shall be to the Superior Court.

Secs. 80-53 --- 80-60. Reserved.