

**6-14-10**

**Note to Commission:**

**The following excerpts from other Historic Preservation Boards and Commissions are only a small sample of potential language. Staff has removed language related to filing processes etc., and other language that doesn't relate directly to the findings needed to grant an appeal.**

**Concord, NC**

Any person desiring to appeal a decision of the Historic Preservation Commission may do so by filing an application with the City of Concord Planning Department and submitting the associated application fee.

- When considering such an appeal the Board of Adjustment functions with very limited and narrowly defined review authority.
- In an appeal, the Board of Adjustment is limited to reviewing only evidence heard at the Historic Preservation Commission meeting, or its duly authorized representation.
- Board of Adjustment review of such an appeal involves consideration of the Historic Preservation Commission's decision with respect to the following five questions:
  - 1) Were there errors in the law?
  - 2) Were proper procedures in both statute and ordinance followed?
  - 3) Were due process rights secured (including rights to offer evidence, cross-examine witnesses, and inspect documents)?
  - 4) Was there competent material and substantial evidence to support the decision?
  - 5) Was the decision arbitrary and capricious?
- The item or items the applicant is contesting shall be specified on the written appeal application in order for the appeal to be considered by the Board of Adjustment.
- The Board of Adjustment is authorized to overturn a decision of the Historic Preservation Commission, or to refer the item back to the Historic Preservation Commission only if it makes a finding in regard to one or more of the five questions. Appeal from the Board of Adjustment's decision shall be to the Superior Court of Cabarrus County.

**Berkeley, California:**

**.24.300 Appeals--Procedures required--City Council authority.**

Within twenty-five days following the filing of the notice of appeal, the City Council shall review the action of the commission and may do any one of the following:

1. Refer the matter back to the commission for further consideration, in which case the commission shall conduct such further investigation as it shall deem advisable and report its conclusion to the City Council;
2. If the facts stated in or ascertainable from the application, the notice of appeal, the written statement of the commission setting forth the reasons for its decision, and the other papers, if any, constituting the record do not, in the opinion of the City Council, warrant further hearing, the City Council may affirm the decision of the commission and dismiss the appeal;
3. If, in the opinion of the City Council, said facts warrant further hearing, the City Council shall set the matter for hearing and shall give notice of the time and place of said hearing in the same manner as is provided for giving notice of the time and place for hearing before the commission as set forth in Section [3.24.140](#). The City Council may reverse or affirm wholly or partly, or modify any decision, determination or requirement of the commission, and may make decisions or determinations or may impose such conditions as the facts warrant and its decision or determination shall be final. Any hearing may be continued from time to time.

## **Seattle Municipal Code**

*Chapter 25.24 - Pike Place Market Historical District*

### **SMC 25.24.080 Appeal to Hearing Examiner.**

...D. The Hearing Examiner may reverse or modify an action of the Commission only if the Hearing Examiner finds that:

1. Such action of the Commission violates the terms of this chapter or rules, regulations or guidelines adopted pursuant to the authority of this chapter; or
2. Such action of the Commission is based upon a recommendation made in violation of the procedures set forth in this chapter or procedures established by rules, regulations or guidelines adopted pursuant to the authority of this chapter and such procedural violation operates unfairly against the applicant.

F. The Hearing Examiner's decision shall be final. Any judicial review must be commenced within twenty-one (21) days of issuance of the Hearing Examiner's decision, as provided by RCW 36.70C.040.

## **Cedar Rapids, Iowa**

### **18.11 - APPEALS TO CITY COUNCIL.**

#### **(a) Appeal to the City Council.**

...In deciding such appeal, the City Council shall consider whether the Commission has exercised its powers and followed the guidelines established by law and this chapter, and whether the Commission's action was patently arbitrary or capricious. In exercising the above mentioned powers, the City Council may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the Commission from whom the appeal is taken.

#### **(b) Judicial Appeal.**

If not satisfied with the decision of the City Council, the appellant may appeal to the Iowa District Court for Linn County within 30 days after the City Council's decision.

## **In New York City – there is a separate appeals board for the Landmark Commission**

3021. Hardship appeals panel.

...

3. The panel shall review appeals from determinations of the commission denying applications for certificates of appropriateness, based on the grounds of hardship, to demolish, alter or reconstruct improvements that are exempt from real property taxes, provided that such appeals may be brought only with respect to applications made under applicable law on the grounds of hardship applicable only to tax-exempt properties...

... 5. The panel shall review the petition, consider the arguments made in the memoranda submitted to it, afford the parties the opportunity to present oral argument, and review the record of the commission including the statements of those who appeared before the commission, the documents in the record, including materials prepared by members of the commission, staff and their consultants, the statements of members of the commission and staff in the record and the findings of, and the reasons given by, the commission for its determination. The panel shall not substitute its own judgment for that of the commission. It shall not take testimony or consider any evidence that was not in the record below. If the panel finds that the determination of the commission has a rational basis supported by substantial evidence in the record, it shall affirm the determination of the commission; otherwise it shall reverse the commission's determination and remand the matter to the commission, which shall then issue a

preliminary determination of insufficient return and take such steps as are provided by law following such preliminary determination.

**Pittsburgh, PA**

§ 1101.06 CERTIFICATE OF ECONOMIC HARDSHIP.

... (b) *Standard to be applied.*

(1) *Exterior Alterations other than Demolition, New Construction, Additions, and Relocation.* The Commission shall only approve an application for a Certificate of Economic Hardship upon determination that the denial of the Certificate of Appropriateness for alterations has resulted in substantial hardship to the property owner.

(2) *Demolition, New Construction, Additions, and Relocation.* The Commission shall only approve an application for a Certificate of Economic Hardship upon a determination that the denial of the Certificate of Appropriateness, except in the case involving a Certificate of Appropriateness for alteration, has resulted in the denial of all reasonable use of and/or return from the property.

(c) *Consideration of evidence.* In applying this standard, the Commission shall consider among other things any evidence presented concerning the following:

(1) Any estimates of the cost of the proposed alteration, construction, demolition or relocation and an estimate of any additional cost that would be incurred to comply with the recommendations of the Commission for changes necessary for it to be approved.

(2) Any opinions from a licensed engineer or architect with experience in renovation, restoration or rehabilitation as to the structural soundness of any structures or objects on the property and their suitability for continued use, renovation, restoration or rehabilitation.

(3) Any estimates of the market value of the property in its current condition; after completion of the proposed alteration, construction, demolition, or relocation; after any expenditures necessary to comply with the recommendations of the Commission for changes necessary for it to approve a Certificate of Appropriateness; and in the case of a proposed demolition, after renovation of the existing property for continued use.

(4) In the case of a proposed demolition, any estimates from architects, developers, real estate consultants, appraisers, or other real estate professionals experienced in rehabilitation as to the economic feasibility of restoration, renovation or rehabilitation of any existing structures or objects.

(5) Any and all applicable zoning provisions, the possibility of modifications to zoning provisions and incentives available to the applicant.

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**Blacksburg Virginia;**

Sec. 3278 - Appeal to Town Council.

The applicant or any person aggrieved by a binding decision of the Historic or Design Review Board may appeal the decision to Town Council, by submitting a written notice of appeal to the Zoning Administrator, setting forth the grounds for the appeal, within thirty days of the Historic or Design Review Board's decision. Town Council shall schedule a public hearing, and shall hear and decide the appeal within sixty days of receipt by the Zoning Administrator. Failure of the Town Council to decide the appeal within this time shall constitute denial of the appeal. The Town Council may uphold, reverse, or modify the Historic or Design Review Board's decision.

Sec. 3279 - Appeal to circuit court.

The applicant or any person aggrieved by a final decision of the Town Council may appeal to the Circuit Court for Montgomery County by filing a petition at law, setting forth the alleged illegality of Town Council's action, within thirty days after the final decision is rendered by the Town Council. The filing of the petition shall stay the decision of the Town Council pending the outcome of the appeal to the court, except the filing of the petition shall not stay the decision of the Town Council if the decision denies the right to raze or demolish a historic landmark, building or structure. The court may reverse or modify the decision of the Town Council, in whole or in part, **if it finds upon review that the decision is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion**, or it may affirm the decision of the Town Council.

**St Petersburg Florida:**

The City of St. Petersburg Community Preservation Commission (CPC) is comprised of nine persons appointed by the Mayor and confirmed by the City Council. Actions of the Community Preservation Commission are final and are only **appealable to the Clerk of Circuit Court**.

**Savannah, Georgia (Chatham County):**

16. Appeals. ... The Board of Commissioners may approve, modify, or reject the determination made by the Commission, if the appeals body finds that the Commission abused its discretion in reaching its decision. Design criteria shall not be the basis for appeal of an adverse decision. Appeals from decisions of the Board of Commissioners may be taken to the Superior Court of Chatham County in the manner provided by law for appeals from zoning decisions of the Board of Commission. Decisions of the Preservation Professional shall be appealed first to the Commission.