

## 1212.01 Appeals

- (a) Final Actions and Decisions by the City Manager. Any party-in-interest aggrieved by any final action, decision, or order by the City Manager or his designee pursuant to this Code may appeal to the Board of Zoning and Building Appeals, except that appeals from the action of the City Manager on ~~an application for site plan approval for minor developments shall be to the Planning Commission and appeals from the final action of the City Manager on~~ architecture/design/historic preservation compliance issues involving a minor residential improvement shall be to the AHBR.
- 1) **All appeals to the BZBA shall be governed by Section 1202.03, including the time period for filing the appeal.**
  - 2) ~~All appeals to the Planning Commission shall be filed with the secretary of the PC within ten days from the date of the City Manager's action. The PC shall take final action on the appeal within forty five days from the date that the appeal was filed.~~
  - (2)(3) All appeals to the Architectural and Historic Board of Review from a final action of the City Manager with respect to architecture/design/historic preservation compliance issues involving a minor residential improvement shall be filed with the secretary of the AHBR within ten days from the date of the City Manager's final action. The AHBR shall take final action on the appeal within forty-five days from the date that the appeal was filed **unless the appealing party agrees verbally or in writing to an extension.**
- (b) Final Actions and Decisions by the Architectural and Historic Board of Review. Any party-in-interest aggrieved by any final action, decision, or order by the Architectural and Historic Board of Review pursuant to this Code may appeal to the Board of Zoning and Building Appeals. All appeals shall be governed by Section [1202.03](#), including the time period for filing the appeal.
- (c) Final Actions and Decisions by the Planning Commission. Any party-in-interest aggrieved by any final action, decision, or order by the Planning Commission pursuant to this Code may appeal to the City Council **Board of Zoning and Building Appeals** except that appeals from PC action on an application for conditional use shall be to the Board of Zoning and Building Appeals. **All appeals shall be governed by Section 1202.03, including the time period for filing the appeal.**
- 1) Appeals to the City Council shall be filed with the City Clerk within ten days from the date of the PC's action. The City Council shall take final action on the appeal within forty five days from the date that the appeal was filed.
  - 2) ~~All appeals to the BZBA shall be governed by Section [1202.03](#), including the time period for filing the appeal.~~
- (d) **Final Actions and Decisions by the Board of Zoning and Building Appeals. Other than on an order of remand pursuant to Section 1212.01(f), any party-in-interest aggrieved by any final action, decision, or order by the Board of Zoning and Building Appeals may appeal to the City Council. Appeals to the City Council shall be filed with the Clerk of Council within ten days from the date of the Board of Zoning and Building Appeals' action. The City Council shall take final action**

on the appeal within forty-five days from the date that the appeal was filed unless the appealing party agrees verbally or in writing to an extension.

- (e) Standard of Review. When examining any administrative decision on appeal under this Code, a reviewing body must affirm unless that decision is unlawful, unreasonable, or against the manifest weight of the evidence. A reviewing body shall give deference to the underlying body or decisionmaker's findings of fact. Findings of fact on appeal shall be presumed to be reasonable and may be overturned only if the reviewing body finds that no reasonable fact-finder could have reached the same conclusions.
- (f) A reviewing body shall be confined to the underlying body or decisionmaker's record.
  - 1) The rule found in this subsection (f) applies unless, in the first level of an appeal from any final original order or decision, an appellant requests to submit additional evidence and it appears, on the face of the record, that one of the following applies:
    - A. The record does not contain a report of all evidence admitted or proffered by the appellant;
    - B. The appellant or its attorney was not permitted to appear and be heard in person and requested but was not permitted to do at least one of the following:
      - 1. Present the appellant's position, arguments, and contentions;
      - 2. Offer and examine witnesses and present evidence in support;
      - 3. Cross-examine witnesses purporting to refute the appellant's position, arguments, and contentions;
      - 4. Offer evidence to refute evidence and testimony offered in opposition to the appellant's position, arguments, and contentions; or
      - 5. Proffer any such evidence into the record, if the admission of it is denied by the officer or body appealed from;
    - C. The testimony adduced was not given under oath;
    - D. The appellant was unable to present evidence by reason of a lack of the power of subpoena by the reviewing body or decisionmaker, or the refusal, after request, of that reviewing body or decisionmaker to afford the appellant an opportunity to use the power of subpoena when possessed by that body or official; or
    - E. The underlying body or decisionmaker failed to file with the record conclusions of fact supporting the final order, adjudication, or decision.
  - 2) If any circumstance described in divisions (1)(B)(1) to (5) of this subsection applies, the reviewing body may hear the appeal upon the transcript and consider any additional evidence as may be introduced by any party. At

the hearing, any party may call, as if on cross-examination, any witness who previously gave testimony in opposition to that party.

- 3) The failure of an appellant to request a hearing under divisions (1) and (2) of this subsection shall constitute a waiver of the right to submit additional evidence.

- (g) Remand Orders for Additional Findings of Fact. Upon examining an administrative decision on appeal, a reviewing body may remand the matter to the underlying body or decisionmaker if the original findings in the appealed decision are determined to be incomplete, unclear, or not supported by sufficient evidence. The remand order shall include instructions for the underlying body or decisionmaker to gather more evidence, conduct further analysis, explain its reasoning more clearly, or reexamine the facts and issue a new, more thorough and well-supported explanation for its factual determinations.

Section 1202.03(a)

- (a) Powers and Functions. As amended by the Charter of the City of Hudson from time to time, the powers and functions of the Board of Zoning and Building Appeals ("BZBA") with respect to administering this Code are as follows:

- (1) Appeals. Hold public hearings, review, and take final action on appeals from actions of the Architecture and Historic Board of Review, the Planning Commission, Zoning Inspector, City Manager, Community Development Director, or any other administrative official in interpreting this Code.
- (2) Variances. Hold public hearings, review, and take final action on applications for variances from the terms and provisions of this Code.
- ~~(3) Conditional uses. Hold public hearings, review, and take final action on appeals from the actions of the Planning Commission in denying or allowing a conditional use.~~

~~(3)(4)~~ Nonconforming uses/structures/lots. Hold public hearings, review, and take final action on applications for enlargement, extension, substitution, or replacement of a nonconforming use or structure.

~~(4)(5)~~ Interpretation. Hold public hearings, review, and take final action on appeals from the City Manager's action on disputes concerning, or requests for, interpretations of the Official Zoning Map.

Section 1202.03(b)(2)

(2) Quorum and voting. Three members of the BZBA shall constitute a quorum. The Board shall act by resolution, and the concurring votes of three members of the Board shall be necessary to reverse any order or determination of the Architectural and Historic Board of Review, Zoning Inspector, City Manager, Community Development Director, Planning Commission ~~(in the appeal of a conditional use decision)~~, or any other administrative official in interpreting this Code, or to decide in favor of an applicant in any matter on which the Board has original jurisdiction under this chapter or the Charter or to grant any variance from the requirements of this Code.

Section 1202.03(b)(4)(A)

A. An appeal to the BZBA may be taken by any party-in-interest or by any officer of the City affected by any decision of the Architectural and Historic Board of Review, Zoning Inspector, City Manager, Community Development Director, Planning Commission ~~(in the appeal of a conditional use decision)~~, or any decision in which the BZBA has original jurisdiction