

ADJUSTMENT COMMITTEE APPEAL PUBLIC HEARINGS: *A Guide for Presenting Testimony*

INTRODUCTION

Testifying at a public hearing is a principal way to be engaged in civic life and strengthen your community. Elected leaders rely on public testimony to broaden their knowledge about neighborhood and community-wide issues. Still, testifying before at a public hearing can be intimidating, especially if you've never attended one. This outline is designed to help you prepare for and become familiar with the procedures of a public hearing with the Adjustment Committee. If you know what to expect and are prepared, your message is more likely to be effective.



Testifying at an Adjustment Committee hearing, June 2017.

About the Adjustment Committee

The Adjustment Committee is made up of seven volunteer members, none of whom may hold public elective office. The committee must include three persons representing the public at large, two members in either urban design, architecture, or landscape architecture, and two members experienced in either engineering, financing construction, management of buildings, or land development. The members are appointed by the Mayor and confirmed by the City Council.

What are Adjustments?

Adjustments are requests to modify one or more development standards of the Zoning Code for a proposed development. The Adjustment Review process provides a process by which these standards can be modified if the proposed development continues to meet the intended purpose of the regulation. The initial decision on an Adjustment request, called an administrative decision, is made by a Bureau of Development Services staff planner. The Adjustment Committee hears appeals of adjustment decisions where no other land use review is involved. Appeals may be filed by the applicant, the owner, and those entitled to notice, and any person adversely affected or aggrieved by the decision. Additional information about appeals and the appeal application form can be found at the following link:

<https://www.portlandoregon.gov/bds/index.cfm?a=100186>.

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This guide is organized into the following sections:

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2. **DAY OF THE HEARING** – hearing process, signing in, order, and time limits of testifiers.
3. **IMPORTANT CONSIDERATIONS** – reminders and tips for effective testimony.
4. **AFTER THE RECORD CLOSES** – what happens after the public participation part of the hearing is closed.
5. **GLOSSARY OF TERMS** – terms highlighted in orange text are explained here.
6. **RESOURCES** – where to get additional information.

1. PREPARING FOR THE HEARING

- A. **Read the administrative decision and appeal statement.**

The decision contains contact information and facts about the subject site and proposal and the relevant **approval criteria**. Most importantly, it provides the reasons behind the decision. Also, read the appeal statement submitted by the appellant. Understand what parts of the decision are at issue. Adjustment decisions are available on the BDS website, www.portlandoregon.gov/bds/46429.
- B. **Explore other sources of information.**

The case planner and other city staff, neighbors, the applicant, property owner, appellant, and neighborhood and business associations can provide you with information about the case. Become familiar with the relevant sections of the Zoning Code, available online at portlandoregon.gov/zoningcode.
- C. **Tailor your testimony to the relevant approval criteria.**

Only issues related to the **approval criteria** determine whether or not an Adjustment is granted. The Adjustment Review approval criteria are listed below, with additional information.
- D. **Decide the format of your testimony.**

If you wish, you may supplement your oral or written testimony with presentation boards, maps, photos, or PowerPoint presentations. All copies should be submitted to the Hearings Clerk, as follows:

Written testimony will be accepted prior to or at the hearing. Please provide 10 copies. Written testimony provided prior to

the hearing should be submitted to the planner listed in the administrative decision for the Adjustment being appealed.

PowerPoint presentation files (flash drive or other compatible format) should be submitted to the planner listed in the administrative decision prior to the hearing.

Photographs may be provided as part of your testimony. Please provide at 10 copies of each photograph.

Large scale maps or presentations may also be part of your testimony. You must provide at least one reduced 8.5” by 11” copy for the record.

| 33.805.040 Approval Criteria | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met. | |
| Approval Criterion | Additional Information |
| A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and | <i>Every development standard, or regulation, in the Zoning Code has a purpose. The purpose statement(s) is listed at the beginning of the section with the regulation. A list of the purpose statements for single-dwelling zones is here: https://www.portlandoregon.gov/bds/article/98198 and they are all available in the Zoning Code.</i> |
| B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and | <i>For residential zones, livability issues can include topics like privacy, noise, or massing. For other zones, street classifications can be found on PortlandMaps.com, on the “Transportation System Plan” layer. “Desired character” is defined in the Zoning Code, in chapter 33.910, Definitions.</i> |
| C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and | <i>The purpose for the base zones is stated in the beginning of each base zone Zoning Code chapter (the 33.100s).</i> |
| D. City-designated scenic resources and historic resources are preserved; and | <i>This includes properties with the “s” scenic overlay zone, national or local landmarks, or properties in a historic or conservation district that are designated as contributing to the district.</i> |
| E. Any impacts resulting from the adjustment are mitigated to the extent practical; and | <i>If there are impacts that will be caused by granting the Adjustment, how is the applicant mitigating them?</i> |

2. DAY OF THE HEARING

Tips for Giving Testimony:

- *Arrive early to sign up to testify. This will also allow you to listen to testimony from others.*
- *Be polite and project a positive image.*
- *Try to anticipate questions you may receive and consider how you would answer them.*
- *Focus your comments on the specific proposal and location; opinions on more general, city-wide issues aren't as helpful to the committee.*
- *Plan in advance how to tie each of your concerns to the specific language in the approval criteria.*
- *The committee wants to hear what you have to say - your testimony is important. Don't be intimidated by the microphones and dais. Think of the hearing as a conversation.*

Arrive early. Hearings are held at 1900 SW 4th Avenue, Room 2500A. Adjustment Committee meetings are generally on the first and third Tuesday of the month. Confirm the location and time of hearing: Check the Adjustment Committee's calendar at <https://www.portlandoregon.gov/bds/article/402019>.

Testimony. Testimony cards are available as you enter Room 2500A. Please fill in the requested information. You may write comments on this card for the Adjustment Committee to consider, even if you do not want to testify orally. To receive a copy of the final decision, you must provide your complete mailing address on the testimony card. If you are submitting written testimony, provide 10 copies to the Hearings Clerk.

Introducing your Testimony. State your full name and address for the record. Speak directly into the microphone.

Time Limits. Generally, the Adjustment Committee does not place time limits on testimony. For hearings involving a large number of testifiers, the Committee may request that testifiers adhere to a time limit in order for all testimony to be heard.

Order of Presenters and Testifiers

| Presenter/Testifier | Notes |
|----------------------------------------------|--------------------------------------------------------------|
| City Planner, Bureau of Development Services | Presents summary of decision. Explains issues of the appeal. |
| Appellant | Presents appeal issues. |
| Supporters of the Appellant | |
| Principal Opponent of the Appeal | Presents arguments. |
| Other Opponents | |
| Appellant Rebuttal | |
| Adjustment Committee discussion and decision | |

3. IMPORTANT CONSIDERATIONS

- **Your testimony should only address the applicable** Adjustment **approval criteria**. Be specific and state how you think the proposal meets or falls short of meeting the approval criteria. Adjustment approval criteria are found in Zoning Code Section 33.805.040 (<https://www.portlandoregon.gov/bps/?c=34566&a=54249>). Note that the Adjustment purpose statement (Section 33.805.010) describes the reasons Adjustments are

considered, but is not an approval criterion for the adjustment review itself.

**Example of
an Approval Criterion for
Adjustments:**

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified.

- **Be clear about your position.** Your testimony should clarify your role and interest in the Adjustment Review. Do you agree with the administrative decision and oppose the appeal? Or, do you support the appeal and disagree with the administrative decision? Be specific on **why** you support or oppose the administrative decision or appeal.
- **The burden of proof is on the land use review applicant** to show that each and every element of the relevant approval criteria can be satisfied. Testifiers may argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied, or additional approval criteria listed in Zoning Code Section 33.805.040 should be applied.
- **Testifying as a group.** Instead of each group member restating the same issue, it is more efficient, and equally effective, to have a single spokesperson, or have each group member address a different issue and to state that they support the previous testimony on an issue.
- **Requests to the Adjustment Committee.** Any party may request that the hearing be continued or that the record be kept open for submittal of new evidence.

4. AFTER THE RECORD CLOSES

When will the Adjustment Committee make a final decision?

After discussion, the Adjustment Committee will vote to either uphold or deny the appeal, and/or impose or remove conditions of approval, and adopt findings. This may occur at the initial appeal hearing or at a later public meeting. The decision is final and effective on the day the notice of decision is mailed.

Who is notified of the final decision? The Bureau of Development Services will mail the final decision to the applicant, owner, appellant, recognized organizations, and persons who responded to the appeal notice, testified at the hearing, or requested notice of the decision. The final decision is also posted on our website with the other land use decisions:

<https://www.portlandoregon.gov/bds/46429>.

Appeal rights. The Adjustment Committee's decision is a final land use decision and may not be appealed to another review body within the City. If you appeared before the Adjustment Committee orally or in writing, you have standing to appeal the decision to the State Land Use Board of Appeals (LUBA) within 21 days of the date the Adjustment Committee's final decision. LUBA may be contacted at 1-503-373-1265 for additional information.

5. GLOSSARY OF TERMS

Approval criteria. The set of statements that must be answered, supported by facts, and be satisfied in their entirety in order for a proposal to be approved. There are many different sets of approval criteria in the Portland Zoning Code; each set is applied to a specific type of review such as an Adjustment or Conditional Use. The relevant approval criteria for a specific adjustment request are identified throughout the process in the following documents: the public notice, the administrative decision and the Adjustment Committee's decision. They are also stated during the public hearing for an appeal. They are also found in Zoning Code Section 33.805.040 (<https://www.portlandoregon.gov/bps/?c=34566&a=54249>).

Burden of proof. The burden to present facts and evidence that demonstrate that the approval criteria have been satisfied.

Continued hearing. The Adjustment Committee may decide to continue the hearing to a future date, in order to hear additional testimony. The Adjustment Committee chair will state the date and time of the continued hearing.

Record closed. After all testimony, evidence, and rebuttal are submitted, the Adjustment Committee will end the public participation portion of the hearing. This means the Committee will accept no more oral or written testimony.

Record held open. A participant may request and the Adjustment Committee may decide to leave the record open until a specified date, to allow submission of additional information and rebuttal of that information. The record will close after that date.

6. RESOURCES

Case Planner, Bureau of Development Services (503) 823-7300 (or direct line listed on front page of the decision).

Bureau of Development Services Website

<https://www.portlandoregon.gov/bds>

Contains information for land use review procedures. Land use decisions are posted by neighborhood area. Adjustment Committee agendas are also posted here.

Portland Zoning Code

<https://www.portlandoregon.gov/zoningcode>

Oregon Dept. of Land Conservation and Development

(503) 373-0050, www.oregon.gov/lcd -- publications/citizen involvement. Tips about How to Testify at Land Use Hearings.

State Land Use Board of Appeals (503) 373-1265

www.oregon.gov/luba – how to file an appeal, hearings schedules, final decisions.