

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

INTRODUCTION

"It is not the function of our government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error."

- Supreme Court Justice
- Robert Jackson

Testifying at a public hearing is a principal way to be engaged in civic life and strengthen your community. Elected leaders rely on citizens to broaden their knowledge about neighborhood and community-wide issues. Still, testifying before at a public hearing can be challenging, especially if you've never attended one. This outline is designed to help you prepare 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.

About the Adjustment Committee

The Adjustment Committee consists 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.

Adjustments are requests to modify one or more development standards of the Zoning Code for a proposed development. 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.

CONTENTS

This guide is organized into the following sections:

- 1. PREPARING FOR THE HEARING** – things to do in advance of the hearing.
- 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 blue text are explained here.
6. **RESOURCES** – where to get additional information.

1. PREPARING FOR THE HEARING

“If you think you’re too small to have an impact, try going to sleep in a room with a mosquito.”

-- Anita Roddick

- 1) **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. Understand what parts of the decision are at issue. Adjustment decisions are available on the BDS website. See the Resource Section of this document.
- 2) **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 the information needed to shape your testimony. Become familiar with the relevant sections of the Zoning Code, available online at portlandonline.com/bds.
- 3) **Identify issues important to you.**
Specify the aspects of the requested adjustment(s) you support or oppose. To be considered, your issues must be related to the relevant **approval criteria** or to criteria you think should have been addressed.
- 4) **Create an outline of your testimony.**
Base your outline on the relevant approval criteria. How does the proposal meet or not meet the approval criteria. It’s also a good idea to rehearse and note the time. Generally, testimony should be limited to 5 minutes, to ensure that all present have an opportunity to testify.
- 5) **Decide the format of your testimony.**
You may supplement your oral or written testimony with presentation boards, maps, photos, or powerpoint presentations. All copies should be submitted to the adjustment committee clerk, as follows:

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

Powerpoint presentation files (compact disc or other compatible format) should be submitted prior to the hearing. You must bring your own laptop and projector.

Photographs may be provided as part of your testimony. Please provide at least 2 copies of each photograph.

Large scale maps or presentations may also be part of your testimony. You must provide at least one reduced 8-1/2" by 11" copy for the record.

2. DAY OF THE HEARING

"The most common way people give up their power is by thinking they don't have any."

-- Alice Walker

Arrive early. Hearings are usually held at the City of Portland's administrative building, 1900 SW 4th Avenue, Room 2500A. Confirm the location and time of hearing: Check the Adjustment Committee's calendar at www.portlandonline.com/bds.

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 address. If you are submitting written testimony, provide 10 copies to the adjustment committee 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

EXAMPLE of Relevant Approval Criteria:

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

- **Your testimony can only address the applicable adjustment approval criteria.** 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. Note that the adjustment purpose statement (Section 33.805.010) describes the reasons adjustments are considered and is not an approval criterion for the adjustment review itself.
- **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?
- **The burden of proof is on the land use review applicant** to show that each and every element of the 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 should be applied.
- **Testifying as a Group.** Instead of each group member restating the same issue, it is much more effective to 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.

AFTER THE RECORD CLOSES

When will the Adjustment Committee make a final decision? That depends on the committee's decision. After discussion, the Adjustment Committee will vote to either uphold or deny the appeal 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, recognized organizations and persons who responded to the appeal notice, testified at the hearing, or requested notice of the decision.

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 may appeal the decision to the State Land Use Board of Appeals (LUBA) within 21 days of the date the Adjustment Committee's final decision.

4. GLOSSARY OF TERMS

“The job of a citizen is to keep his mouth open.”

-- Gunter Grass

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 a land division 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.

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.

RESOURCES

HOW TO GIVE TESTIMONY AT PUBLIC HEARINGS

Tips:

- *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. . . .*

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

Bureau of Development Services Website

www.portlandonline.com/bds

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

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.