



CITY OF BEND

Land Use Appeals

What to Know

Feb. 9, 2023

What We Will Cover

- Different types of land use applications
- The decision-making process/timeline
- Land Use Board of Appeals (LUBA)
- The cost to appeal
- The role of Neighborhood Associations



Land Use Application Types

	TYPE I	TYPE II	TYPE II CONDITIONAL USE PERMIT (CUP)	TYPE III	TYPE IV
WHO DECIDES APPROVAL OR DENIAL?	Administrative approval by City Planning Division.	Administrative approval by City Planning Division.	Administrative approval by City Planning Division.	Planning Commission or a Hearings Officer.	City Council with recommendation of Planning Commission.
APPEAL PROCESS	Can only be appealed by the applicant.	Can be appealed to a Hearings Officer by parties to the record.	Can be appealed to a Hearings Officer by anyone "adversely affected" by the project.	Can be appealed to City Council or the Land Use Board of Appeals.	Can be appealed to the Land Use Board of Appeals.

No local appeal required by state law

Required per ORS 227.175(10)(E)

No local appeal required by state law



The Decision-Making Process



What is LUBA?

- Land Use Board of Appeals
 - A state court dedicated to hearing only land use related cases
 - Comprised of 3 members appointed by the Governor
- LUBA can affirm, reverse or remand.
 - Basically: Say the decision is right, wrong to the point where it needs to be reversed or needs to be sent back to the decision maker to fix elements of it.
- LUBA decisions can be appealed to the Oregon Court of Appeals and then ultimately the state Supreme Court



What it Means to be a “Party to the Record”

Party	Affected Person
<p>Party means one who takes part or participates in a Type II, III, or IV application or a legislative action.</p> <p>A party includes any person who has standing. A person can become a party by appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing</p> <p>The City may designate a representative for persons whose participation consists only of signing a petition.</p> <p>(BDC Chapter 1.2 – Definitions)</p>	<p>Affected Person means any person adversely affected or aggrieved by a decision relating to the development actions covered by the Bend Development Code.</p> <p>Guidance for a local appeal (BDC 4.1.1120.A.4):</p> <p>(a) How the appeal presents issues that have significant public policy or community-wide implications for the City, as opposed to more limited issues which primarily involve the directly affected property or persons involved in the land use decision being appealed.</p> <p>(b) Why it is necessary or desirable for the City Council to review these issues; and why the issues cannot be adequately and fairly reviewed by the Land Use Board of Appeals.</p>



The Cost to Appeal A Decision

- Appeal of Limited / Land Use Decision (Administrative Decision)
 - Examples: Partition, Subdivision, Site Plan Review
 - 100% of the current base fee, up to \$4,780*
 - Fee established by local fee study
- Appeal of Hearings Officer or Planning Commission Decision
 - \$3,135 fee per application appealed*
 - Fee established by local fee study
- Appeal of Expedited Land Division Decision
 - \$300 each
 - Fee established by ORS 197.375(1)(a)

Role of Neighborhood Associations

What the Bend Code says:

The City may provide grants to recognized neighborhood associations through the City's budget process, **may waive land use appeal fees for neighborhood associations by resolution**, and may provide assistance, including coordination and administrative assistance, to neighborhood associations. City grant proceeds may not be used to advocate for or against a declared candidate or ballot measure. Neighborhood associations that receive grants shall provide a written report on the expenditure of grant funds on an annual basis as part of the application for grant funding. **(BC 1.70.060)**

The Bend Code also provides recognized associations the right to notice and comment on certain land use applications and the right to a waiver of appeal fees, consistent with the Bend General Plan provisions on citizen involvement. **The role of neighborhood associations in the land use process does not make them decision-makers or advisory bodies to the decision-makers. (BC 1.70.050)**



Role of Neighborhood Associations (continued)

- Fees are set by Council Resolution and cannot be waived by staff
 - Council can adjust fees through subsequent resolutions
- OK, then how can I ask Council to consider waiving a fee?
 - Talk to your NA Council liaison
 - Bring it up at Neighborhood Leadership Alliance
 - Council will consider citywide interest in its decision, so consider this if/when you advocate for a waived or reduced fee



Questions?

Accommodation Information for People with Disabilities



To obtain this information in an alternate format such as Braille, large print, electronic formats, etc. please contact Brenna Visser at bvisser@bendoregon.gov or 541-323-7173; Relay Users Dial 7-1-1.

