

# Land Use Appeals

## What Can Be Appealed?

Most City actions can be appealed. Typically, any decision on an application can be appealed. Building Permit appeals follow a different process than Land Use appeals. This handout addresses Land Use appeals. A staff level decision, or a decision by the Planning Commission, can be appealed. Staff level appeals go to the Planning Commission for a hearing. An appeal of a Planning Commission decision goes to the City Council. Any City Council land use action, including an action on an appeal, can also be appealed to a State body called the Land Use Board of Appeals (LUBA).



## Who Can Appeal?

The applicant can appeal. Anyone else would need 'standing.' In most cases\* this means that in order to appeal you would have to bring up your concerns at the hearing (or to staff for a staff level appeal). You can do this by submitting a letter (via mail or email), speaking at the hearing, or both. If you did not raise the issue in enough detail, you can't appeal on the issue. This is often called the raise-it-or-waive-it rule.

### Can I appeal a zone change or Comprehensive Plan amendment?

Yes. The final decision-maker on a zone change or Comprehensive Plan amendment is the City Council, so the only way to appeal that decision is to LUBA. The LUBA appeal time limit is 21 days from date the decision is mailed. The raise-it-or-waive-it rule does not apply to zone changes or Comprehensive Plan amendments.

## How Much Does it Cost to File an Appeal?

Pursuant to Millersburg Resolution 2008-5 an appeal costs half of the filed application cost.

## What are the Time Limits for an Appeal?

An appeal must be filed within 15 days after the Planning Commission (or staff) decision is mailed. Accordingly, when staff writes the decision and mails it to the applicant, that action starts the appeal clock.

\* Most land use cases are what's called "Quasi-Judicial", and with these cases you must raise your concern at the hearing or waive your right to appeal based on that concern. Legislative cases do not require this.

## How do I Appeal?

Any time prior to the 15-day cutoff the appellant would fill out and submit the following:

- Appeal application (found on the City website)
- Fee
- A narrative explaining the basis of the appeal. This would describe *how* you think staff (for a staff level decision) or the Planning Commission (for a PC level) incorrectly applied/interpreted the criteria from the City code. The appeal cannot be filed until the appellant has a written basis for the appeal.

## What is the Process After I File an Appeal? What Should I Expect?

The appeal is filed within 15 days. Staff will then schedule a hearing before the appropriate body (Planning Commission or City Council). A 20-day hearing notice will be sent. The appropriate body will then hold a hearing on the issue. The public will get an opportunity to speak or provide items for the record (see Code Section 5.16.050). The appeal body also has the right to continue the item if they need to; however, the City has to have the whole process—original application, the appeal, and any continuances—wrapped up within 120 days of the original application being deemed complete (unless the applicant has agreed to more time). If the hearing is before the City Council, their decision can be appealed again to LUBA within 21 days of the decision getting mailed.



### What is a "Criteria"?

Land Use applications are for subdivisions, site plans, conditional use permits, partitions, lot line adjustments, and similar cases that address how land is developed or used. Every kind of Land Use application has a list of items that they must address in order to be approved by the City. This list is called the Criteria. These generally require development to be safe, limit impacts to neighbors, help the City meet goals, and address infrastructure impacts for the development like streets, sewer, water, and parks. Criteria are very important because the decision body is only allowed to make a decision based on the criteria. For example, they cannot deny a proposed land division because the applicant has an 8-foot statue of a pink chicken in their front yard. That chicken, as much as they may hate it, has nothing to do with the subdivision, or the criteria for a subdivision. Any appeal concerns or issues must always be centered on the criteria.

