

Summary of Procedures

for requesting a Zoning Variance from the Brecksville Board of Zoning Appeals

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The following is a summary of procedures designed to facilitate the processing of your appeal for a variance from the zoning ordinances of the City. **Please direct any questions or concerns you may have with respect to these matters to members of the Brecksville Building Department by calling (440) 526-2630.**

What You Need to Know About Requesting a Variance to the Zoning Code:

The City of Brecksville is governed by zoning ordinances pertaining to the use of private and commercial property ("Zoning Code"). If it is determined that the action you wish to take with respect to your property is in conflict with limitations imposed by the Zoning Code, you may file a formal application with the Brecksville Board of Zoning Appeals ("BZA") to request that a variance, or exception, for your project be approved. The BZA has the authority to hear and recommend to City Council approval for any such requests with respect to the application or enforcement of ordinances governing zoning. City Council is the only body that can actually grant a zoning variance.

Your application for a variance is a request to be permitted to do something which is otherwise prohibited by the Zoning Code. You have the burden to demonstrate a good and valid reason why the law which governs everyone in the City of Brecksville should not apply to your situation. Accordingly, you will need to provide an explanation as to the hardship, practical difficulties and/or other reasons you feel the BZA should recommend to City Council the nature of your request as set forth in section 1197.10 of the Brecksville Zoning Ordinances which is reproduced below. (See the section entitled "Applicable City Codes and Ordinances.")

As an important part of this process, serious consideration is given to the impact your project will have on neighboring properties. For that reason, your neighbors will be given formal notice by the City of your request and the date and time your appeal will be heard. We suggest you also share your plan(s) with your surrounding neighbors, particularly those with a line-of-sight to your property, and to let them know they are welcomed to attend the upcoming public meeting to hear the proceedings and/or to state their views if they wish. Those who are unable to attend but wish to express their viewpoint can forward a note or a letter to the Brecksville Building Department (Attn: Chairman, BZA) prior to the meeting.

What You Will Need to Do to Request a Variance:

1. Complete the Request for Variance application below stating the variance you request and the hardship and/or practical difficulty that supports your request. Members of the Building Department can assist you with identifying the variances needed.
2. Pay the application fee: \$50 to process a single variance request, and \$15 for each additional request.
3. Attach any additional information that may be needed to support your request. Drawings larger than 11"x17" must be provided on a CD in a PDF format. (Site drawings must be drawn to scale.) Petitions for a variance must be accompanied with contour maps when applicable.
4. Sign and return your completed Request for Variance application along with two copies of your proposed project to the Building Department by the deadline prior to the next BZA meeting. Please refer to the Board of Zoning Appeals Calendar below. (If you are applying for a building permit at the same time, two additional copies of your proposed project are required.) Applications must be received by the Application Deadline date prior to the next BZA meeting in order to process your request and meet the advertising requirements for the legal notices (as noted in the "What Happens Next" section below). It is recommended you apply before the deadline to give ample time for plan review and to prevent any delay.
5. Stake out the boundary lines of your proposed project within your parcel as needed to outline its shape and size. The City of Brecksville is not responsible for verifying property line measurements. If you are not sure where your property lines are located, it is your responsibility to have the property surveyed.
6. Conspicuously post the City-provided BZA notice sign in your front yard for all to see (e.g., near the street) no later than 10 days prior to the upcoming meeting. Failure to do so could delay your appeal.

What Happens Next:

1. Your application, including any attachments, will be distributed by the Building Department to members of the BZA (and others as needed) for their review and consideration.
2. At least 10 days before the BZA Public Hearing meeting date, your immediate neighboring property owners (usually no more than 10) will be notified in writing by the City of your variance request, and the upcoming Public Hearing to discuss your planned project.
3. Members of the BZA and possibly other City representatives may visit your property in the days leading up to the Public Hearing meeting date to better understand your request and to evaluate the existing conditions.
4. Legal notices will be sent to local newspapers for publishing.
5. Your official request for a variance will be discussed and voted upon at the next upcoming monthly meeting of the Board of Zoning Appeals held at City Hall. BZA meetings are held on the first Monday following the first Tuesday of each month beginning at 7:30 p.m. in the City Hall Community Room (the lower level) as noted on the schedule below. You (as the Appellant) and/or your representative must appear to present your request to the Board during the Public Hearing portion of the meeting and to answer any questions Board members may have about your planned project. If you are sending a representative to present your request, you must provide a letter of authorization for that representative. Failure to appear will delay the consideration of your request.
6. Immediately following the Public Hearing, a Regular Meeting will be called to order for the purpose of voting on your request. For your application for a variance to be approved, four "yes" votes are required, even if fewer than all seven Board members are in attendance at that particular meeting.
7. Section 1197.42 of the City code states that all variances and exceptions granted by the Board of Zoning Appeals shall be subject to a final review and approval by the Brecksville City Council before becoming effective. Therefore, approved actions of the BZA will be forwarded to City Council for their final approval which will take place on Tuesday of the week following the week of the Public Hearing. Your presence at this meeting is not required. (You can call the Building Department the day after City Council meets to learn whether your project has been officially approved.) Denied variances are not subject to Council's action.

If Your Request is Approved By City Council:

Application for a building permit must be applied for within six months (180 days) of City Council's approval of a variance. Failure to do so will result in the request-for-a-variance process having to be started all over again should you decide to move forward with your project at any later date.

If Your Request is Denied By The Board of Zoning Appeals:

The process ends. You may not re-apply for another variance request for the same or similar project unless, at the discretion of the Brecksville Building Commissioner, the new project you present at any later date is sufficiently different from the original project/variance request to allow it to proceed.

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Applicable City Codes and Ordinances:

The following City Codes and Ordinances apply in cases involving Requests for Zoning Variances:

- 1197.10 **BASIS OF GRANTING VARIANCES OR EXCEPTIONS** – The following factors shall be considered by the Board or Council, where applicable, when determining whether an applicant will suffer an unnecessary hardship; such hardship must be demonstrated by clear and convincing evidence as to ALL of the following:
- (a) The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which it is located;
 - (b) The variance(s) request stems from a condition which is unique to the property at issue and not ordinarily found in the zoning district;
 - (c) The hardship condition is not created by actions of the applicant;
 - (d) The applicant purchased the property without knowledge of the zoning restriction;
 - (e) The variance(s) sought is the minimum which will afford relief to the applicant;
 - (f) The granting of the variance(s) will not adversely affect the rights of those property owners to whom notice is required;
 - (g) The granting of the variance(s) will not adversely affect the public health, safety, or general welfare; and
 - (h) The variance(s) will be consistent with the general spirit and intent of this Zoning Code.

1197.11 **VARIANCES AND EXCEPTIONS RELATING TO DIMENSIONS AND SETBACK** – The following factors shall be considered and weighed by the Board or Council, where applicable, when determining whether an applicant will experience practical difficulty:

- a) Whether there exist site conditions, such as narrowness, shallowness, or topography, unique to the property in question that are not applicable generally to other lands or structures in the same zoning district;
- b) Whether the property in question is located near a non-conforming or non-harmonious use, structure, or site conditions, or whether the property in question abuts a less restrictive zoning district;
- c) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance(s);
- d) Whether the variance(s) is substantial;
- e) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance(s);
- f) Whether the variance(s) would adversely affect the delivery of governmental services (e.g., water, sewer, refuse removal);
- g) Whether the property owner purchased the property with knowledge of the zoning restriction;
- h) Whether the property owner's predicament feasibly can be obviated through some method other than a variance(s); and
- i) Whether the spirit and intent of the Zoning Code would be observed and substantial justice done by granting the variance(s).