

## BZA: USE VARIANCE

## INFORMATION

City of Cleveland Heights

Application available at [www.citizenserve.com/clevelandheights](http://www.citizenserve.com/clevelandheights)

Contact: [BZA@clevelandheights.gov](mailto:BZA@clevelandheights.gov) or 216-291-4878

Prospective applicants are strongly advised to consult with Planning & Development Department staff before applying. Properties in the City of Cleveland Heights are governed by the City's Zoning Code. A property only may be occupied by land uses that are explicitly permitted by the Code in the Zoning District in which the property is located. Property owners wishing to use their land for a use not permitted by the Code must apply to the Board of Zoning Appeals (BZA) for a use variance. BZA must find and City Council approve that the applicant will suffer unnecessary hardship if strict compliance with the terms of the code is required. The applicant has the burden of demonstrating such hardship by clear and convincing evidence to all seven (7) of the criteria listed below. The BZA must find that all the listed factors apply.

### **Board of Zoning Appeals Meeting**

Meetings are held on the third Wednesday of each month at 7:00pm at City Hall, in Council Chambers, unless otherwise indicated. Applications are due by 5:00 p.m. on the third Wednesday of the previous month, unless otherwise indicated. The applicant or the applicant's representative must be present at the meeting. During the public hearing, City staff will make a presentation summarizing the requested variance and applicable zoning regulations. City staff may also present neighborhood and historical context. The applicant then will have the burden to demonstrate to BZA that strict compliance with the terms of the Code will result in the applicant suffering unnecessary hardship. The Code requires such hardship must be demonstrated by clear and convincing evidence as to all seven (7) of the criteria listed below. Accordingly, the submitted application must address each factor and how it relates to the property. An application that does not address each factor shall be considered incomplete and shall not be presented to BZA until complete. Neighbors, who will be notified in advance of the meeting by mail, and other interested parties will have the opportunity to participate during the public-hearing portion of the BZA meeting. BZA may grant or deny the variance, or it may postpone deciding to consider or seek additional information. It is the BZA's responsibility to make decisions based on the facts presented, within the framework of criteria set by the Zoning Code. Variances denied by BZA are not reviewed by City Council.

### **City Council Review**

A use variance is granted and has effect only following approval by City Council. A certified copy of the finding of the BZA granting the use variance is filed with Council. The record before the BZA is provided to Council and a staff report summarizing the same shall be made before the Committee of the Whole. Council shall approve the variance if it finds that the applicant has demonstrated, by clear and convincing evidence, all the criteria set forth in Section 1115.07(e)(2). If Council does not find that the applicant has demonstrated all of the criteria set forth to the Board by clear and convincing evidence, Council shall disapprove the action of the BZA. Council will state the specific reasons for such disapproval.

### **Hardship Criteria**

No variance shall be granted to allow a use not permissible under the terms of this Zoning Code in the zoning district in which the property is located unless the Board finds, and Council approves, that the applicant for the variance has demonstrated that the applicant will suffer unnecessary hardship if strict compliance with the terms of the Code is required and the applicant has met the burden of demonstrating such hardship by clear and convincing evidence as to all of the following criteria:

- A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district;
- B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
- C. The hardship condition is not created by actions of the applicant;
- D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
- E. The granting of the variance will not adversely affect the public health, safety or general welfare;
- F. The variance will be consistent with the general spirit and intent of the Zoning Code; and
- G. The variance sought is the minimum which will afford relief to the applicant.