

Board of Zoning Appeals

GENERAL INFORMATION

The Board of Zoning Appeals (BZA) of the Village of Boston Heights (OH) is organized pursuant to Article 713.11(A) of the Ohio Revised Code, and Chapter 1145 of the Codified Ordinances of the Village. The BZA deals primarily with land use cases under the Village *Planning and Zoning Code*, which is Part 11 of the Codified Ordinances (CO).

BZA Powers and Duties

The Board's powers and duties are stated in CO 1145.04. The Board hears and decides requests for **variances** of the Zoning Ordinance, defined as Titles 5 through 9 of the Planning and Zoning Code (Part 11 of the Codified Ordinances). In addition, the BZA hears **appeals** of decisions of the Village Zoning Inspector. Those decisions may be based on findings by the Village Engineer, Solicitor, or other officials concerning land use and zoning matters. The appeal procedure is defined in CO 1145.03. Per the current Village Planning Fee Schedule (and previously, CO 1145.05), **all applications to the BZA require a non-refundable fee of \$100.**

The Board hears evidence, takes testimony under oath, accepts exhibits and makes decisions based on all of the evidence presented at the hearing. The BZA has organized and adopted rules and regulations deemed necessary to implement the Zoning Code (CO 1145.02), which the Zoning Inspector will observe in enforcing the Zoning Code (CO 1143.02). The BZA may be invited to advise the Planning Commission in the role of a special committee. However, the BZA has no legislative power; therefore, it can neither make nor modify the zoning laws or map.

The BZA also has a role in a number of **other matters** assigned by the Village's Codified Ordinances, including:

- * Appeal of Site Clearing permitting decision by Village Engineer — CO 720.05
- * Grant Certificate of Zoning Compliance denied by the Zoning Inspector — CO 1147.01(f).
- * Definition of information required for a Zoning Permit — CO 1147.02(b).
- * Specific approval of location of cemeteries in Residential District — CO 1153.03(d).
- * Specific approval of location of golf courses in Residential District — CO 1153.03(e).
- * Extension of 30 day limit for parking of visitors' RVs — CO 1171.08(b).
- * Permission to establish a rubbish dump — CO 1171.11.
- * Appeal of a riparian setback boundary decision by Summit SWCD — CO 1181.08.
- * Appeals and variances of *Property Maintenance Code, Building Code* — CO 1313.02, .03.
- * Variances to *Fire Districts, Building Code* — CO 1373.12.
- * Appeals and variances of *Flood Damage Prevention, Building Code* — CO 1377.05.
- * Appeals of the findings of the Board of Nuisance Abatement — CO 1379.94.

BZA Members & Village Staff

Four members of the BZA are appointed by the Mayor with the consent of Council, and serve staggered four-year terms. Board members are residents of the village, who volunteer for this service without compensation. A member of Council is also designated as the Council representative to the BZA, and votes with the board. A quorum is three members. The Mayor may appoint substitute members to serve in the absence of regular members. (CO 1145.01,02).

As of January 2017:

Kathleen May — Board Member, through 12/31/17

William Hinkle — Board Member, through 12/31/18

Ronald Dick — Board Member, through 12/31/19

Ted Chandler — Board Member, through 12/31/20

Michael Bush — Alternate Board Member

Don Polyak — Council Representative

OHM Advisors: Frederick Alderman — Zoning Inspector (w/ Jason Grubaugh, David Krock)

Summit County Building Department — Building Inspector

Village Hall Clerk — (applications)

Please direct all inquiries and correspondence to the Clerk, or as directed by the Village Hall. General zoning questions should be directed to the Zoning Inspector. Please *do not* contact members of the BZA directly on matters that may appear before the board.

Meetings

Regular BZA meetings are held in conjunction with the monthly meetings of the Planning Commission, at the Boston Heights Village Hall, 45 E. Boston Mills Road. The BZA typically meets on the first Wednesday of each month, at 7:00PM Eastern time. Additional dates may be scheduled as needed.

All meetings of the BZA are public meetings, except insofar as required by the Ohio Revised Code. A BZA hearing, while quasi-judicial in nature, is still relatively informal. The Board strives to accommodate the public and issue decisions that balance property rights with the public good, and the requirements of the Planning and Zoning Code.

Frequently Asked Questions

These answers are for general information only, and should not be relied upon for legal advice. In all cases, the appropriate ordinances, codes and legal precedent are definitive. If in doubt, please consult your own attorney.

Q1. Is the Board of Zoning Appeals the same as the Planning Commission?

A1. No. The Planning Commission is a separate body (see CO 1101) with different powers and duties: recommendations for zoning districts and their regulation, approval of plats, control of building characteristics, and review and approval of conditional uses, site plans for business uses within the Village, and signs, among others.

Q2. What is a variance?

A2. A variance is a relaxation of the terms of a zoning regulation when, due to conditions peculiar to the property and not the result of actions by the applicant, a literal enforcement of the regulation would result in “unnecessary hardship” (for a use variance) or a “practical difficulty” (for an area variance). A variance must “not be contrary to the public interest”, must observe the “spirit of the Zoning Ordinance” and let “substantial justice” be done. See CO 1145.04(b). There is a broad range of applicable case law as well, especially with regard to “area variances” which may consider “practical difficulties” that fall short of unnecessary hardship.

Note: The BZA does *not* consider variances to the Platting Regulations (CO 1121); this authority is reserved to the Planning Commission, and those applications should be directed to the PC. These are unusual cases, and the Zoning Inspector will advise when applicable.

Q3. How do I know if I need a variance?

A3. If it is not practical to comply with particular requirements of the Village Zoning Code, you will need to obtain a variance from the Board of Zoning Appeals to have the Village waive those requirements. The Zoning Inspector will advise you as to whether your plans comply with the Zoning Code. If not, you can either bring the plans into compliance or apply for a variance by requesting a hearing before the BZA. Receiving a variance is not guaranteed.

Q4. How and where do I apply for a hearing before the Board of Zoning Appeals?

A4. The application process begins with the Clerk at the Boston Heights Village Hall, 45 E. Boston Mills Road, during its regular business hours.

The Clerk will:

... supply the **BZA Application Form** required for all business before the Board of Zoning Appeals, as well as copies of the Zoning or Building Codes, if required.

... accept and receipt the **BZA application fee of \$100.00** (CO 1145.05 or CO 1101.05).

... direct you to the appropriate Village official (usually the Zoning Inspector), who can explain the process, answer questions, and offer assistance on the completion of the required forms.

The Clerk cannot and will not offer legal advice on Village zoning regulations. The Clerk is not responsible for enforcement or application of zoning rules in the Village.

Please do not harass or abuse the Clerk.

While Village staff may assist in completing your application, please note that it is the **responsibility of the Appellant or Applicant** to compile the necessary documents and complete the forms, including (if required by law) listing owners of surrounding properties, their mailing addresses, parcel numbers, and plot plan details. **The property owner (or legal representative thereof) must also sign each application.** Incomplete applications are not acceptable.

Hearings are scheduled on the basis of receipt, completeness, estimated time considered necessary for the hearing, and attorneys' schedules. In general, **complete** applications received at least **20 days before the next regular meeting** of the BZA will be considered at that meeting, but this is not guaranteed.

Q5. How do I know whether my sign must be reviewed and approved by the Planning Commission (PC) or by the Board of Zoning (BZA)?

A5. The Zoning Inspector can advise you on this point. If the sign is intended to be higher or larger than the Zoning Code allows (CO 1179), or otherwise non-compliant, you will need a variance — *as well as* PC approval for permanent signs.

Early in 2005, the Village of Boston Heights regularized its sign regulations within its Zoning and Building Codes. In general, all permanent signs must be reviewed and approved by the Planning Commission. Only in case of special conditions will the BZA grant variances to these regulations, or to the decisions of the Planning Commission. Some signs, including temporary signs, need only be registered with the Village *if they conform to code*. Contact the Village Hall for the appropriate application forms.

Q6. What occurs at a BZA hearing?

A6. A BZA hearing is your opportunity to present your request to the BZA. The BZA Application Form may indicate documents that you are required to supply for your hearing; see also the requirements of CO 1147.02. In most cases, detailed dimensioned drawings and renderings are necessary. You may present other documents and exhibits to support your request. If the case is complicated, you may wish to use experts to establish substantial competent evidence.

The Zoning Inspector, Building Inspector, or other Village official or employee, may testify regarding their findings. Other interested parties attending the hearing are also given an opportunity to speak regarding your application.

The BZA will generally make a decision at the conclusion of the hearing: approval, approval with conditions, or denial. By law, however, the BZA make take up to 10 days to decide an appeal, or longer if warranted. Decisions on an appeal will be in the form of a resolution (CO 1145.02). Decisions will be followed up with an "official" written decision within thirty (30) days of the hearing.

Q7. Do I need an attorney to present my case to the BZA?

A7. The presence of an attorney is not required. An applicant usually presents his or her own case. However, if the matter is complex, you may wish to be represented by an attorney. This is entirely up to you.

Q8. How may I prepare myself for an appearance before the BZA?

A8. You may wish to attend a hearing before your case is heard. By listening to the presentations and questions asked by the BZA, you will get a sense of the workings of the Board.

Q9. Someone else in the Village has already done "X" in the Village -- why can't I be allowed to do "X" also?

A9. There are different zoning districts in the Village, where different regulations apply. In addition, some past uses and permits are due to "grandfathering" of a specific parcel or use. Some have been granted under earlier zoning regulations or districting, or because of special circumstances as defined by law or by the findings of the Board of Zoning Appeals. Some past uses and permits may have been granted in error, or on the basis of legal opinions that have been found to be no longer applicable to the Village of Boston Heights.

Q10. May I appeal a BZA decision to the Village Council?

A10. This is not defined by the Codified Ordinances of the Village of Boston Heights. You may wish to contact the Village Solicitor, or consult your own attorney. Also see Ohio Revised Code Chapter 2506, *Appeals from Orders of Administrative Officers and Agencies*.

Q11. May I appeal a decision of the Zoning Inspector to the BZA?

A11. Yes, any person aggrieved by a decision of the Zoning Inspector may appeal that decision to the BZA. The same application process and fee apply to appeals.

Q12. What is a conditional use?

A12. A conditional use is a particular use that is permitted in a particular zoning district only after the Planning Commission has conducted a hearing, applied specified criteria, and imposed conditions when appropriate. Previous to September 7, 2007 the BZA was responsible for considering and granting conditional uses. On or after that date, the Planning Commission is responsible for granting conditional uses; please apply to the PC instead.

Q13. How do I get a zoning change (rezoning) for my property?

A13. The BZA does not have the authority to change the zoning designation of your property. Only the Village Council can rezone property, after receiving the recommendation of the Planning Commission. You may contact the Clerk of the Planning Commission to obtain the rezoning procedures and forms. You may also wish to discuss your proposal with the Zoning Inspector. See CO 1143.03 and 1147.03.

The Board of Zoning Appeals

Guidelines

Excerpted from: *Zoning Regulations*

David J. Civittolo / Community Development Agent, OSU Extension
<http://landuse.osu.edu/PDF%20files/Zonreg%20.pdf>

Major Functions:

- Act on Appeals
- Act on Variance
- An applicant has the right to appeal a decision of the zoning inspector.
The BZA must interpret the Zoning Code.
- Under Boston Heights law, there are a number of other responsibilities, which are also listed on the BZA Info Sheet. The VBH BZA does not handle conditional uses.

Variance:

A modification of the strict terms of the relevant regulations where such modification will not be contrary to the public interest and where conditions peculiar to the property and not the result of the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship. (Model Zoning Code)

Two Types of Variances

1. Use
2. Area/size variances

The standards for the two are different - over time a number of standards have applied.

Boston Heights code primary addresses Use variances in CO 1145.04(b): "To authorize, upon appeal, such variation from the terms of the Zoning Ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this Zoning Ordinance will result in unnecessary hardship, and so that the spirit of the Zoning Ordinance shall be observed and substantial justice done."

Use Variance

- Granted upon the finding of unnecessary hardship
- Property owner cannot make any economically viable use of property under current zoning
- Use means exactly that: Use of property as opposed to zoning restrictions on setbacks, building height etc.
- Standards to consider:
 - Unique condition to property not found in the same district
 - Hardship not created by owner
 - The granting of the variance will not adversely affect adjacent owners....or public health, safety and general welfare
 - Consistent with spirit and intent of code
 - Variance is the minimum which will afford relief to owner
 - No other economic use of property

Area/Size Variance

- Less Stringent than Use variance
- Practical difficulty instead of unnecessary hardship
- Duncan v. Middlefield, 1986
 - Established factors that must be considered
 - BZA can establish their own factors

- Factors from Duncan v Middlefield
 - Will the property yield a reasonable return or can there be a beneficial use of the property without a variance?
 - Is the variance substantial?
 - Would the variance cause a substantial alteration in the neighborhood or cause a “substantial detriment” to the adjoining neighborhood properties?
 - Would the variance affect the delivery of governmental services?
 - Did the property owners purchase the property with the knowledge of the zoning restriction?
 - Could the problem be solved in some other manner than the granting of the variance?
 - Would the variance preserve the “spirit and intent” of the zoning requirement and “substantial justice “ be done by granting the variance?

BZA Decisions and Findings:

The BZA is quasi judicial in nature and [decisions are] presumed by the courts to be valid [if properly arrived at and documented].