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CITY OF GARY

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Zoning Department  
City of Gary  
401 Broadway, 3<sup>rd</sup> Floor  
Gary, IN 46402

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Below are the steps in the BZA process.

### **Application Types:**

Type 1 - Use Variance

Type 2 - Special Use Variance

Type 3 - Developmental Standards Variance

## **1. PRE-APPLICATION MEETING**

Prior to applying to the Board of Zoning Appeals, you are required to contact the Planning and/or Zoning Department to discuss your project and to gain a better understanding of zoning code rules and regulations. Contact the Zoning Administrative Assistant at 219.881.1332 **to schedule a pre-application meeting.**

### Conceptual Review:

If you are very early in your project planning, you may meet with Planning and/or Zoning staff to discuss your project **prior to submitting any permit or zoning applications.** Come to the meeting with rough sketches, preliminary site plans, or examples of your development idea. Planning and/or Zoning staff will review applicable zoning and design regulations and answer any questions you have about the process. You will need to complete a Zoning Compliance (\$100.00 initial) or Verification (\$50.00) application, at the time of the meeting. Fees are applicable.

[Zoning-compliance-letter-request-form.pdf \(gary.gov\)](#)

[Zoning-verification-letter-request-form.pdf \(gary.gov\)](#)

A staff planner and/or zoning representative will review your project information, explain the Board of Zoning Appeals (BZA) review process, and answer any questions you have about the application. The Planner and/or Zoning staff will give you an early view of the policy or position of the City as it relates to approved development plans.

A recommendation will be made:

- Proceed to application process or site plan review  
[Site Plan Review | Zoning \(gary.gov\)](#)
- Provide additional information and proceed to application process
- Rejected proposal-provide a refusal letter stating reason (not in keeping with approved development plans/future plans)

## **2. APPLICATION**

Complete the application, including all required attachments, any additional information requested by the staff planner and/or zoning representative, and submit to the Zoning Department along with the application fee. Remember to follow the application instructions carefully and submit all of the requested



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information. If any of the information is missing, your BZA hearing date will be delayed. Once the complete application is received, you will be placed on the agenda for the next available hearing. BZA hearings are held on the second Thursday of each month at 3:00 p.m. Once submitted, all information becomes public record.

## TYPE 1- USE VARIANCE

### Use Variance Application

<https://gary.gov/zoning/wp-content/uploads/sites/32/2021/01/USE-VARIANCE-APPLICATION.pdf>

### GMC Sec. 123-284 - Variances.

- (a) The board of zoning appeals may consider issuing a variance to the terms and provisions of this division provided the applicant demonstrates that:
  - (1) There exists a good and sufficient cause for the requested variance;
  - (2) The strict application of the terms of this division will constitute an exceptional hardship to the applicant; and
  - (3) The granting of the requested variance will not increase flood heights, create additional threats to public safety, cause additional public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- b) The board of zoning appeals may issue a variance to the terms and provisions of this division subject to the following standards and conditions:
  - (1) No variance or exception for a residential use within a floodway subject to [section 123-304](#) (1) or (2) may be granted;
  - (2) Any variance or exception granted in a floodway subject to [section 123-304](#) (1) or (2) will require a permit from the department of natural resources;
  - (3) Variances or exceptions to the building protection standards of [section 123-305](#) may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade;
  - (4) Variances or exceptions may be granted for the reconstruction or restoration of any structure individually listed on the Register of Historic Places or the Indiana State Survey of Historic Architectural, Archaeological and Cultural Sites, Structures, Districts, and Objects;
  - (5) All variances shall give the minimum relief necessary and be such that the maximum practical flood protection will be given to the proposed construction; and



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(6) The board of zoning appeals shall issue a written notice to the recipient of a variance or exception that the proposed construction will be subject to increased risks to life and property and could require payment of increased flood insurance premiums.

(Code 1989, § 163.093; Ord. No. 6705, § 10, 3-16-1994; Ord. No. 8256, § 1(163.093), 2-17-2009)

## TYPE 2 - SPECIAL USE PERMIT

### Special Use Permit Application

<https://gary.gov/zoning/wp-content/uploads/sites/32/2023/01/SPECIAL-USE-APPLICATION-2023.pdf>

### GMC Sec. 123-59. - Special uses.

(a) The formulation and enactment of this chapter is based on the division of the entire city into zoning districts, in each of which are authorized specified land uses that are permitted as mutually compatible, special exceptions, or transitional uses. It is recognized that special exceptions are land uses which it may be necessary or desirable to allow in a given zoning district but which on account of their potential impact upon neighboring land uses or public facilities need to be carefully regulated with respect to location or operation for the protection of the community. These land uses and fall into two categories:

(l) Uses either municipally operated or operated by publicly regulated utilities, or uses traditionally affected by public interest.

(2) Uses entirely private in character which on account of their peculiar locational need or the nature of the service they offer to the public may have to be established in a zoning district or districts in which they cannot reasonably be allowed as a permitted use under the zoning regulations. It is also recognized that transitional land uses may be appropriate for those areas along a zoning district border to allow for a mix of land uses from each zoning district that share a common border to provide for an overlap of zoning district land use activities and implement sustainable growth principles and initiatives to overcome strict traditional zoning boundary delineations. Transitional uses may be permitted when located on a lot that is tangential to a zoning district boundary delineation or separated by a right-of-way, alley or public, private or railroad easement.

(b) An application for a special use shall be filed with the planning department upon the form and accompanied by the information established from time to time by the planning department. The city clerk shall forward to the planning department without delay a copy of each ordinance proposed for authorizing a special use.

(c) Special uses shall be authorized by the board of zoning appeals. No special use shall be granted by the board of zoning appeals unless the special use meets the following:

(1) The establishment, maintenance, or operation of the special use will not be detrimental to or

endanger the public health, safety, morals, or general welfare.

(2) The special use will not be injurious to the use and enjoyment of other properties in the immediate vicinity for the purposes already permitted.

(3) The establishment of the special use will not impede or substantially alter the normal and orderly development and improvement of surrounding property for uses permitted in the



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district.

- (4) Adequate utilities, access roads, drainage, and other necessary facilities have been or are being provided.
- (5) Adequate measures have been or will be taken to provide for access management, ingress and egress so designed as to minimize traffic congestion on the public roads.
- (6) The special use will be located in a district where such a use is authorized and all other requirements set forth in this chapter which are applicable to such special use will be met.
- (7) The petitioner documents and presents to the commission that proposed special use provides for the implementation of sustainable growth principles and initiatives as approved by the commission.

- (d) The board of zoning appeals provides conditions or restrictions upon the construction, locations, operation, and time limit that construction must begin or the special use is null and void, including but not limited to provisions for off-street parking and loading, as necessary to secure the general objectives of this chapter and to reduce injury to the value of property in the neighborhood. (Code 1960, § 6-1312; Code 1989, § 163.041; Ord. No. 3376; Ord. No. 4255; Ord. No. 4266; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.041), 2-17-2009)

### **TYPE 3 – DEVELOPMENTAL STANDARDS VARIANCE**

<https://gary.gov/zoning/wp-content/uploads/sites/32/2023/02/DEVELOPMENT-STANDARDS-VARIANCE.pdf>

**GMC Sec. 123-284 - Variances. (see above)**

### **3. BZA APPLICATION WORK SESSION**

BZA members will be given the opportunity to review completed applications prior to setting the agenda for comments. This time will be used to explain the petitioner's application and answer any questions or concerns that the members may have.

### **4. COMMUNITY FEEDBACK**

Petitioners are encouraged to solicit input and/or support from the community. Applicants may connect with adjacent property owners and with neighborhood leaders to gather comments and feedback from those potentially affected by the development or project.

Ten (10) days prior to the BZA hearing, Applicant will send a public notice to property owners within a 100-foot or 400-foot radius of the subject property depending on the application. In addition, The Zoning Department **may inform** local neighborhood association, and other community stakeholders. The hearing notice provides the dates for the BZA hearing. It also informs them of their right to review the request at the Zoning Department and to provide comments about the application at the hearing or in writing.



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## 5. TECHNICAL REVIEW

A staff planner and/or zoning representative will be assigned to conduct a detailed analysis of the application, and develop a report which outlines any concerns and recommendations for the application. This process includes a review of the zoning code regulations, applicable plans and policies, a site visit, and a thorough examination of the submitted site plan and related materials. This review will often include follow-up conversations with the applicant and requests for clarifying information. If outstanding questions are not answered in a timely fashion, the public hearing may be delayed. The staff's final report is submitted to the members of the BZA prior to the scheduled hearing. The staff report will include a recommendation for approval, denial, or approval with specific conditions that may require revisions or additions to your project scope.

## 6. BOARD OF ZONING APPEALS PUBLIC HEARING

The Board of Zoning Appeals will conduct a public hearing and review the application. At the public hearing, the Zoning Department staff will present the staff report, which concludes with their recommendations. Applicants will be given an opportunity to speak to the BZA and provide any additional information that is appropriate. Any person wishing to comment on the case will also be permitted to address the BZA regarding the application.

The BZA will formally act upon the application, (1) a favorable recommendation; (2) an unfavorable recommendation; or (3) no recommendation. In some situations, the BZA may add conditions for approval, or continue the hearing until additional information may be provided. All decisions by the BZA are made public.

Dates for all Board of Zoning Appeals meetings for the coming year can be found on the City of Gary's website.

[BOARD OF ZONING APPEALS | Zoning \(gary.gov\)](#)

## 6. DECISION

Within 10 calendar days of receipt of the BZA minutes from the meeting, a copy of the document will be sent to the applicant via the email provided on the petition. If the Board denies the BZA application, the applicant may appeal the decision to the within 30 days of the decision order issuance.

## 7. FAVORABLE RECOMMENDATION

Petition will then go before the Gary Common Council. This process typically takes one to two weeks to be prepared by City Council and submitted to the City Clerk's Office to be assigned a C.P.O. case number. This legislation includes the name and address of the petitioner. The Legal Department or Zoning Legal Assistant will notify the petitioner of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> reading dates within one week of the official meeting.

### Common Council Process

1. Common Council 1st reading (attendance is recommended but not required)  
After its receipt of the BZA's recommendation, the Council will enter the petition into the public record and assign it to committee.



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2. Common Council 2nd reading (attendance is required)  
Petitions will be heard by the Plan Commission of the Common Council. Petitioners are expected to present their case during this meeting.
3. Common Council 3rd reading (attendance is required)  
Petitions that received a favorable review by the Plan Commission will be sent back to a third and final reading at the next meeting of the Common Council. Petitioners are expected to present their case during this meeting. The Common Council makes the final ruling to approve or deny the petition during this meeting.

### **IC-36-7-4-918.6**

(d) **ADVISORY--AREA.** The legislative body shall give notice under IC 5-14- 1.5-5 of its intention to consider the petition at its first regular meeting after the board of zoning appeals files its recommendation.

(e) **ADVISORY--AREA.** A petition is granted or denied when the legislative body votes on the petition as follows:

- (1) In a county described in subsection (a)(1), the legislative body shall vote on the petition within ninety (90) days after the board of zoning appeals makes its recommendation. If the legislative body does not vote to deny the petition within ninety (90) days, the petition is considered approved. In a county described in subsection (a)(2), the legislative body shall vote on the petition within sixty (60) days after the board of zoning appeals makes its recommendations. If the legislative body does not vote to deny the petition within sixty (60) days, the petition is approved.

**ADVISORY--AREA.** If the legislative body approves a petition, it must make the determination in writing as required under section 918.2, 918.4, or 918.5 of this chapter or as required by the zoning ordinance.

Approved petitions can then move on to the next step (i.e. Application for a business license or building permit)

## **8. LEGISLATION DOCUMENTATION**

Petitioner will receive a copy of the recorded Council ruling.

IC 36-7-4-1016

States that final decisions of the board of zoning appeals under both the IC 36-7-4-900 series (administrative appeals, exceptions, uses, and variances); or the IC 36-7-4- 1015 series of this chapter (appeals of commitment, modifications or terminations); are considered zoning decisions.

Source: Indiana Citizen Planners Guide

## **9. APPEAL AND JUDICIAL REVIEW**

Petitioner may appeal a decision by the BZA to the Gary Common Council and/or the State.

### Gary Common Council Process

Contact the Gary Common Council for procedures. City Hall – 401 Broadway, Suite 209, Gary, IN 46402-1299



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219.881.1315

### State of Indiana

It is up to the party appealing the BZA's decision to prove their case, not the BZA per IC 36-7-4-1614(a). The court will review the BZA's decision in accordance with the standards listed below, as applied to the decision at the time it was made. Expect the court to make findings of fact on each material issue on which the court's decision is based. Note that the court shall grant relief under IC 36-7-4-1615 only if the court determines that the BZA's decision is:

- 1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- 2) Contrary to constitutional right, power, privilege, or immunity;
- 3) In excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- 4) Without observance of procedure required by law; or
- 5) Unsupported by substantial evidence.

Source: Indiana Citizen Planners Guide

## **9. ENFORCEMENT**

State Statute allows the board of zoning appeals to bring an action to enforce the Zoning Ordinance or the BZA's decisions. The BZA may also bring an action to enforce conditions or written commitments they imposed. This same section on Indiana Code also enables plan commission and your enforcement official to engage in enforcement. The board of zoning appeals may invoke any legal, equitable, or special remedy in these actions. An action for fines or penalty for enforcement of the Zoning Ordinance may be brought in any court located within the jurisdiction of your board of zoning appeals, and if the BZA is successful, the respondent bears the costs of the action. Note that a change of venue to another county may not be granted.

When an appeal has been filed with the board of zoning appeals, proceedings and work on the premises affected shall be stayed, unless the stay would cause imminent peril to life or property (in that case, proceedings or work may not be stayed except by a restraining order).

Your Zoning Ordinance may still provide that a structure erected, raised, or converted, or land or premises used in violation of this chapter or an ordinance or regulation made under this chapter, is a common nuisance and that the owner or possessor of the structure, land, or premises is liable for maintaining common nuisance'

Source: Indiana Citizen Planners Guide