

# City of Beachwood Planning and Zoning Code Changes – Ordinance 2023-11

## Frequently Asked Questions

### 1. Why is the city doing this?

First, we're bringing our zoning code up to date with state and federal regulations, as we must, with updates that will help us avoid the protracted and expensive litigation some of our neighboring cities have endured. Second, we are providing additional protection for our single-family residential neighborhoods, known as U-1. Third, we are providing an opportunity to accommodate smaller institutional uses, whether those be places of worship, private schools, charter schools and other legitimate uses by allowing them to be on smaller lots in the permitted areas, known as U-5.

### 2. Doesn't the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) pretty much mean a city can't stop anyone from opening a place of worship wherever they want?

No. We know there is much confusion about this law. The approach we're taking to land use control and regulation of institutional uses, including religious uses, does not violate RLUIPA. RLUIPA does not exempt religious land uses from land use regulations. But it does require that religious uses be treated on equal terms with nonreligious assembly or institutional uses -- and RLUIPA doesn't permit differential treatment based on religious denomination. With these updates, anyone with a current institutional use, such as a place of worship that is operating improperly, can now understand what needs to be done to operate safely and in compliance with our regulations, and City Council can respond appropriately to variance requests. In short, if someone wants to request a rezoning that may include one or more variances to operate a place of worship, there is a path to doing so under a clearly written zoning code, which has been subjected to strict legal review to make sure we comply with RLUIPA.

### 3. Isn't the City of Beachwood about to open itself up to new lawsuits when people are denied requested zoning changes?

Our new zoning code, by being more compliant with the law, makes the city less vulnerable to litigation. We have a fiduciary duty to reduce that risk for our taxpayers, and this update does that.

### 4. Specifically, what are the major changes?

The changes deal primarily with two zoning districts. The U-5 public and institutional district includes public and private schools, places of worship, libraries, community centers, parks, recreation facilities and other types of public institutional use.

The other district that's primarily affected by the proposed changes is the U-1 district, which is the single-family residential district where all our detached single-family housing is located.

We are maintaining the provision currently in the U-1 district that only permits detached single-family residences, requiring a variance request through our rezoning process for any other use. That protects our residents who have purchased their homes which are, in many cases, the largest investment of their lifetime. We obviously want to protect those neighborhoods.

We are making some modifications to the specifications and requirements in the U-5 institutional districts, reducing the minimum required lot size from three acres to 18,000 square feet. This is less than half an acre, or just a bit smaller than the lot for the BP station near Chagrin Boulevard and Richmond Road or the Beachwood Truck Park, on Chagrin Boulevard. As is obvious, we do not

have many three-acre lots left in the City of Beachwood. We've also reduced the U-5 frontage requirement from 250 feet to 100 feet, which matches the requirement in our U-1 districts for single-family detached residences. We've also made changes to reduce building setbacks so that a house or other building in a residential district being used in a U-5 manner aesthetically and physically fits into the neighborhood. Similarly, our new code requires certain landscaping and screening, particularly where such U-5 uses abut single-family residences. Our new code also maintains the current requirement to provide an off-street parking spot for every 300 square feet of building area devoted to a place of worship.

**5. What's behind the decision to reduce the minimum lot size for places of worship in U-5 districts?**

We are providing an opportunity to accommodate smaller institutional uses, whether those be places of worship, private schools, charter schools and other legitimate uses that meet all requirements for U-5 district. The change from a three-acre minimum to 18,000 square feet also is the legally wise move. Courts across the nation have consistently upheld the principle that zoning regulations imposing specific square footage requirements, such as the three-acre minimum in a U-5 district, in a fully developed city like Beachwood where there are no three acre lots realistically available to acquire, can impede the ability of individuals to gather and practice regular worship.

**6. For a small place of worship, the 18,000-square-foot minimum requirement for a lot still seems unreasonable. How did you come up with that?**

We believe this is a reasonable minimum for an institutional use, such as a place of worship, that naturally will result in more traffic and parking needs than a single-family residence.

**7. How will requests for places of worship in the city be handled?**

Each application for a zoning code change is handled on a case-by-case basis. When an applicant comes forward to the city and makes a request, the Planning Commission and City Council will review that request and act on it accordingly. While each case will be considered separately, the overall impact on the neighborhood and city will be taken into account. This process, by design, is deliberative, and will always include one or more public hearings with 30 days' notice of the hearing, and three council meetings where it is considered, after receiving a report of the Planning Commission.

**8. How do these new rules help public safety?**

Places of worship that operate "under the radar," besides being illegal, can be dangerous and harmful to the entire community, and will be compelled to stop operating until they receive a proper rezoning and permit, as detailed in our amended code. Critical safety concerns like occupancy limits, fire codes, the way doors open and close along with other important safety considerations couldn't be enforced under our old, weaker regulations. Whether a store, an apartment house, a medical building or nursing home, there are a myriad of safety rules that must be complied with before we can issue an occupancy permit. Places of worship, as defined in the new code, must comply with those same rules. So, if a home is being used on a regular basis as a place of worship as defined in the new code or any other purpose where the public gathers, the city has a duty to make certain that the building and participants are safe. On a practical basis, these code changes allow the city to enforce safety regulations on a fair and consistent basis.

**9. Do these changes apply across the city?**

Yes, we are updating our Planning and Zoning Code, to apply across the entire City of Beachwood.

**10. Why was Shaker Heights able to block a proposed house of worship in their city without changing their zoning code, but we have to change our code – and allow more houses of worship?**

A homeowner in that city purchased three parcels with the intent of constructing a home that was much larger than any of the homes in that neighborhood. When the homeowner submitted the building plans for approval, the city and neighboring residents objected to the size. The homeowner did not submit an application to build a shul and, in fact, he denied it would be a shul. Ultimately, the city did not have to issue a ruling nor issue a building permit because the application was withdrawn.

**11. What is going to happen with the existing home shuls or places of worship not currently in a U-5 Zoning District?**

Under the new zoning code, the city will contact the property owner who we believe are operating places of worship. Those properties will have a reasonable amount of time to apply for a rezoning and comply. Property owners who disagree their property is being used as a house of worship, as is defined in the new code, will have the opportunity to make that case. Any place of worship in violation of our code will not be permitted.

**12. How will the city deal with residents who invite family and friends to their homes for informal prayer services?**

The city has no interest in interfering with people’s right to pray with family and friends. As with all matters involving zoning, such as variance applications, applications for rezoning and complaints, each situation will be considered on a case-by-case basis and the city will follow its zoning code. If a resident is not operating a place of worship, and there is no congregation using the residence as a place of worship, as newly defined in our zoning code, they will not need to seek any rezoning or variance.

**Note: This document will be updated as new questions arise.**

**Original date: September 5, 2023**

###