



Zoning Ordinance Appeal of Zoning Interpretation Application

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Fee: \$0

Fees are subject to change without notice

All pages must be completely filled out before application is accepted. For assistance filling out this application, contact Development & Design Services.

To the Morganton Board of Adjustment:

I, _____ hereby make an application to seek an Appeal to the Zoning Administrator's Interpretation to the requirements of Section _____ of the City of Morganton Zoning Ordinance as herein requested. (Specifically describe the section of the ordinance for which an Appeal is requested. If the applicant seeks an Appeal to more than one section of the ordinance, please list each section separately and fully describe why you believe the decision made by the Zoning Administrator is incorrect. Please provide contested facts based upon competent, material, and substantial evidence. Failure to provide evidence to the specific requirements of the Ordinance will result in denial of the Appeal request.)

PLEASE USE AN ATTACHEMENT IF NECESSARY

Applicant information

Name: _____ **City/State/Zip:** _____

Mailing Address: _____ **Email:** _____

Phone: _____

Alternate phone: _____ *Email addresses are only used by this office for correspondence with the applicant if needed.*

Consultant information

Name: _____

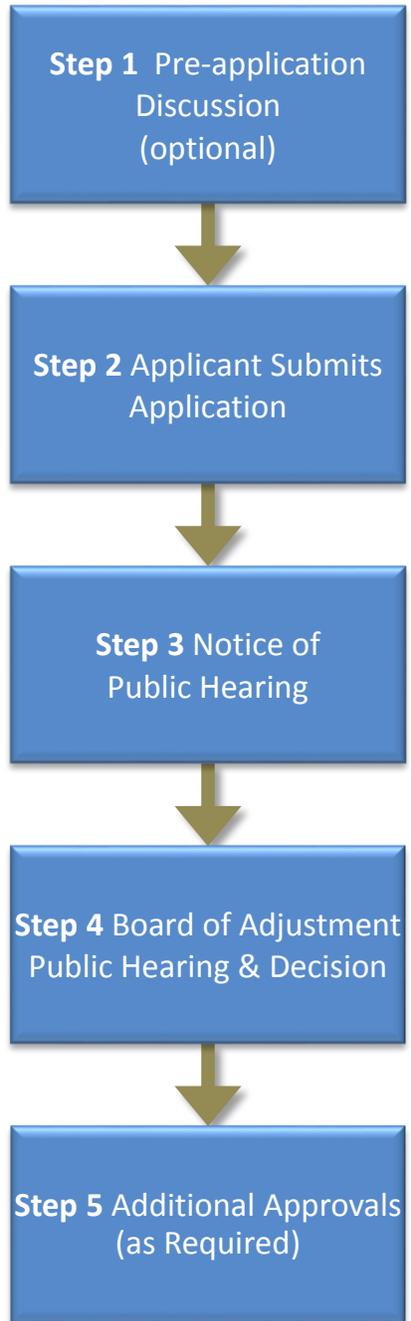
Address: _____

Phone: _____

Email: _____

2.2.5 Appeal Procedures

Appeals shall be heard by the Board of Adjustment. The steps in the boxes below correspond with a detailed description of each step of the process on the following pages.



Step 1. Pre-Application Discussion (optional)

- (A) The Board of Adjustment shall hear and decide appeals of decisions of administrative officials charged with enforcement of the Zoning Ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:
 - (1) Any person who has standing under NCGS 160A-393(d), or the City, may appeal a decision to the Board of Adjustment.
 - (2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner.
 - (3) The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
 - (4) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
 - (5) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
 - (6) The Board of Adjustment shall hear and decide the appeal within a reasonable time.
- (B) To minimize costs, avoid misunderstanding or misinterpretation, and ensure compliance with the requirements of this Ordinance, pre-application consultation between the

applicant and the Zoning Administrator concerning the application is recommended. The Zoning Administrator shall review the request and discuss it with the applicant.

- (C) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution.

Step 2. Applicant Submits Application and Site Plan

The applicant shall submit the application, fee and any other information pertinent to the appeal request.

Step 3. Notice of Public Hearing

The Zoning Administrator shall provide notice of the public hearing in the following manner as prescribed by NCGS 160A-388. Notice of hearing shall be mailed to the person or entity whose application is the subject of the hearing, to the owner of the property that is the subject of the hearing (if the owner did not initiate the hearing), and to owners of property adjacent to the property for which the Variance is requested. The mailed notices shall be deposited in the mail at least 10 days, but no more than 25 days, prior to the date of the hearing. The City shall also prominently post a notice of the hearing on the site that is the subject of the hearing on an adjacent street or highway right-of-way. This notice shall be posted at least 10 days, but no more than 25 days, prior to the date of the hearing.

Step 4. Board of Adjustment Public Hearing and Decision

- (A) The official who made the decision being appealed shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (B) The Board of Adjustment shall conduct a quasi-judicial public hearing. Sworn testimony shall be provided by witnesses speaking before the Board on the matter.
- (C) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the City would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.
- (D) When hearing an appeal pursuant to NCGS 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in NCGS 160A-393(k).

- (E) A simple majority of the members of the Board of Adjustment shall be required to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- (F) The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the Board or such other office or official as the ordinance specifies. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.
- (G) Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to NCGS 160A-393. A petition for shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

Step 5: Additional Approvals (as required)

Following any reversal of a decision by the Board of Adjustment, the applicant may need to obtain additional approvals which may include Zoning Permit and Building Permit approval before any work may begin.