



# Certificate of Nonconformity

Development & Design Services

305 E Union St Suite A100  
Morganton, NC 28655

Phone (828) 428-5260

**Fee: \$500.00**

*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 Office of the City.

## To the Morganton Board of Adjustment:

I \_\_\_\_\_ hereby make an application to seek a **Certificate of Nonconformity Adjustment** to the requirements of Section \_\_\_\_\_ of the City of Morganton Zoning Ordinance and submit the attached Facts in support of this request. The attached materials offer substantial evidence in support of my request. As applicant I acknowledge that it is my responsibility to attend the quasi-judicial hearing for my case or to have any authorized representative present sworn testimony regarding the facts of this case. I will avoid making contact with Board of Adjustment Members for the purpose of discussing the facts of this case prior to the hearing. Failure to do so may jeopardize my case.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE USE AN ATTACHEMENT IF NECESSARY

### Applicant information

Name: \_\_\_\_\_ City/State/ \_\_\_\_\_  
Mailing Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
Alternate phone: \_\_\_\_\_

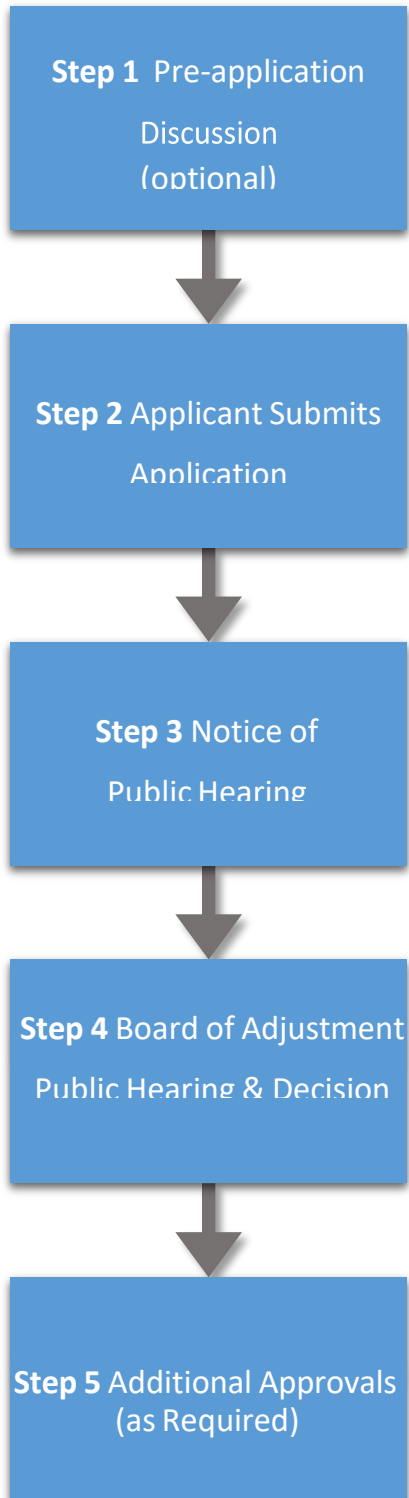
*Email addresses are only used by this office for correspondence with the applicant if needed.*

### Consultant information

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

## 2.2.2 Certificate of Nonconformity Adjustment Procedures

Requests for Certificates of Nonconformity Adjustment shall be heard by the Board of Adjustment. Criteria for Certificates of Nonconformity Adjustment are set forth in [Article 6](#) of the Ordinance. 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)**

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 Certificate of Nonconformity Adjustment application is recommended. The Zoning Administrator shall review the request and discuss it with the applicant.

### **Step 2. Applicant Submits Application and Site Plan (if applicable)**

**(A)** If the request for a Certificate of Nonconformity Adjustment involves new construction, addition, or the use of previously vacant land, then the applicant shall provide a Site Plan with the application and fee. The Site Plan shall provide, at a minimum, the following information:

- (1)** Survey of the property at a scale no smaller than one inch equals 50 feet (1"=50')
- (2)** North arrow
- (3)** Lot lines with bearings and distances
- (4)** Zoning district and applicable overlay districts
- (5)** Adjacent property owner names, parcel numbers and zoning
- (6)** Total acreage
- (7)** Proposed buildings and parking
- (8)** Impervious area in total area and as a percentage of the site
- (9)** Proposed building setbacks (as they relate to the variance request)
- (10)** Any other information pertinent to providing substantial, material, and competent evidence of a hardship preventing reasonable use of the property if the requirements of the Zoning Ordinance are followed.

**(B)** The following submittal requirements may be altered by the Zoning Administrator as applicable.

- (1)** Five (5) full-size paper copies of the Site Plan for the Board of Adjustment

- (2) One (1) digital copy in PDF format or comparable format

### **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 Certificate of Non-Conformity Adjustment 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 public 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 Board of Adjustment shall conduct a quasi-judicial public hearing. Sworn testimony shall be provided by witnesses speaking before the Board on the matter. The Board of Adjustment shall make the following findings-of-fact in granting a Certificate of Nonconformity Adjustment:
  - (1) The request will not increase the intensity of an existing nonconforming use by substantially increasing noise, traffic, or other measurable physical effects.
  - (2) The Certificate of Nonconformity Adjustment is necessary to continue the use of the property in the same manner that it has been used in the past.
  - (3) The nonconforming situation is being presented in a way that does not detract from the property values or aesthetics of the surrounding area.
  - (4) The requested Certificate of Nonconformity Adjustment is consistent with the spirit, purpose, and intent of ordinance, such that public safety is secured, and substantial justice is achieved.
- (B) A simple majority of the members of the Board of Adjustment shall be required to grant a Certificate of Nonconformity Adjustment. 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.
- (C) 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.

- (D) 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 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 the approval of a Certificate of Nonconformity Adjustment by the Board of Adjustment, the applicant may need to obtain additional approvals which may include Zoning, Notice to Proceed, and/or Building Permit approval before work may begin.