



Zoning Ordinance Variance Application

Development & Design Services
305 East Union St Suite A100
Morganton, NC 28655
Phone (828) 438-5260
permits@morgantonnc.gov

Fee: \$500.00 +advertisement cost

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.

Fees are subject to change without notice

To the Morganton Board of Adjustment:

I _____ hereby make a application to seek a Zoning Variance 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 semi-judicial hearing for my case or to have any authorized representative present sworn testimony regarding the facts of this case. I further acknowledge that this request is being made subject to a unique hardship which is being created on the subject property due to current zoning regulations and that this request does not constitute a Use Variance. Failure to provide specific evidence and facts in support of this request will most likely result in the denial of my request for Variance. 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: _____ **Address:** _____
Company: _____ **City/State/ZIP:** _____
Phone: _____ **Email:** _____
Alternate phone: _____

Consultant Information

Name: _____
Address: _____
Phone: _____
Email: _____

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

Applicant's Statement of Findings of Fact.

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state-enabling act, the Board is required to reach all four of the following conclusions before it may issue a variance to the Zoning Ordinance:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

The spaces provided below will help you establish a factual basis that is necessary to obtain a Variance. These items must convince the Board it can properly reach the four conclusions discussed above.

Practical Difficulties/Unnecessary Hardships

Please list any other alternatives that you have explored to meet the ordinance before seeking this Variance:

What is unreasonable about the City's Zoning Rules regarding your particular request? (check all that apply)

- | | Yes | No | N/A | |
|----|--------------------------|--------------------------|--------------------------|---|
| 1. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | My request is unique when compared to others. <i>(You will be asked to explain.)</i> |
| 2. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | It would be an extreme financial hardship for me to comply with the regulations. <i>(Documentation is required such as written quotes or sworn expert testimony showing the extreme amount of additional costs to you in complying with the rules.)</i> |
| 3. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | This rule makes my lot unusable if a variance is not granted. |
| 4. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Signage can be seen from the public right-of-way. <i>(Sign Ordinance requests only)</i> |
| 5. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | My problem relates to the shape, size, width or topography of my lot. |
| 6. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Other. Explain: _____
_____ |

Harmony and Intent

My request will not disrupt the surrounding area because:

- | | Yes | No | N/A | |
|----|--------------------------|--------------------------|--------------------------|---|
| 1. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | There are similar situations in the adjoining area. |
| 2. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | My request will improve the surrounding area. |
| 3. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | My adjoining property owners have been contacted and have no problem with my request. |
| 4. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | My request can be viewed from adjoining properties. |
| 5. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Property values in the area will be negatively affected by my request. |

My request meets the general intent of the ordinance in my particular situation because: (Ask City Zoning Official to state the ordinance's intent so that you may explain how your request will be consistent with that intent)

My request will be consistent with the overall intent of the ordinance because _____

Public Safety and Welfare

Issuance of the Variance will not create a public safety or welfare problem because:

- | | Yes | No | N/A | |
|----|--------------------------|--------------------------|--------------------------|--|
| 1. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Will danger, fear, or anxiety be created in the neighborhood? |
| 2. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Will traffic be increased or driving hazards created? |
| 3. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Will noise be generated? |
| 4. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Will noxious fumes be created? |
| 5. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Will public improvements such as water, sewer, or streets be impacted? |
| 6. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Will future problems be created in regard to providing public services such as emergency services, trash collection, utility extension, etc? |

I certify that all of the information presented by me in this application is true and accurate to the best of my knowledge, information, and belief:

Applicant: _____

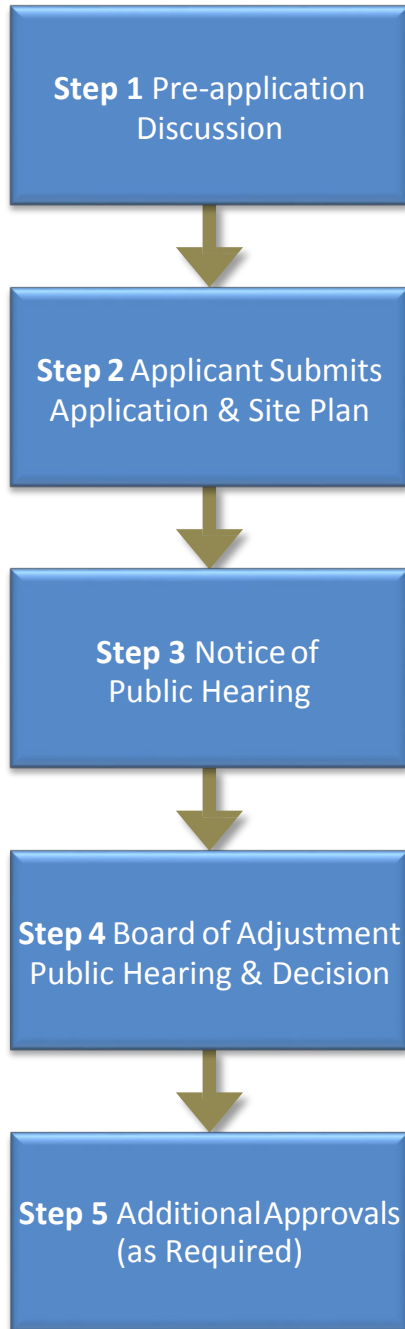
Date: _____

The foregoing information will be made available to the Board of Adjustment Members for review. You may submit additional information to aid the Board in determining a decision in your case.

*******NOTE: Unless otherwise specified, any order or decision of the Board granting a variance shall expire if a building permit or certificate of occupancy of such use is not obtained by the applicant within six (6) months from the date of the decision.**

2.2.4 Variance Procedures

Variance requests 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 with Sketch Plan (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 application is recommended. The Zoning Administrator shall review the request and discuss it with the applicant.

Step 2. Applicant Submits Application and Site Plan

- (A) The applicant shall submit the application, fee and the Site Plan that provides, 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) Existing and proposed impervious area in square feet 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 Board of Adjustment hearings shall be mailed to the person or entity whose appeal, application, or request 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 the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. In the absence of evidence to the contrary, the City may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the City shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

Step 4. Board of Adjustment Public Hearing and Decision

- (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. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:
 - (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
- (C) No change in permitted uses may be authorized by variance.
- (D) Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

- (E) The concurring vote of four-fifths (4/5) of the Board shall be necessary to grant a variance. 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 review 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 this Section. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.
- (H) The chair of the Board or any member acting as chair and the clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully testifies falsely is guilty of a Class 1 misdemeanor.

Step 5: Additional Approvals (as required)

Following the approval of a variance by the Board of Adjustment, the applicant may need to obtain additional approvals which may include subdivision, Zoning Permit, or Building Permit approval before work may begin.

