

a difference in the approval by the Board of Adjustment or the City Council of the site specific development plan; or

- (6) Upon enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan in which case the approval authority may modify the affected provisions, upon a finding that the change in law has a fundamental effect on the plan, by ordinance after notice and hearing.

- (8) A petition for annexation filed with the city shall contain a signed statement declaring whether or not any zoning vested right with respect to the property subject to the petition has been established under G.S. 160A-385.1 or G.S. 153.344.1. A statement that declares that no zoning vested rights has been established under G.S. 160A-385.1 or G.S. 153-344.1 or the failure to sign a statement declaring whether or not a zoning vested right has been established shall be binding on the landowner and any zoning vested right shall be terminated.

(Ord. 96-10, passed 3-4-96)

**Sec. 9-4014. Board of Adjustment.**

(a) *Established.*

- (1) There shall be and hereby is created a Board of Adjustment consisting of five members and three alternate members, each member or alternate member to serve for a term of three years.
- (2) Four of the members and two of the alternate members shall be appointed by the City Council and shall reside within the corporate limits of the city. One member and one alternate member shall be appointed by the Board of Commissioners for Burke County, North Carolina, and shall reside within the perimeter area of the zoning jurisdiction of the city.
- (3) Those regular and alternate members previously appointed by the City Council or the Board of County Commissioners and serving on the effective date of this Article under the zoning ordinance prior hereto, shall continue in office and shall be considered as the duly appointed members

and alternates of the Board and each shall serve the remainder of the term to which he was appointed.

(b) *Authority of members.*

- (1) Alternate members may attend any regular or special meeting of the Board, but shall serve, participate and vote only in the absence of a regular member. During the absence of any regular member, an alternate member, regardless of his residency, shall have and may exercise all the powers and duties of a regular member.
- (2) Regular members and alternate members appointed and serving as outside representatives from the perimeter area shall have equal rights, privileges and duties with all other members of the Board regardless of whether the matters at issue arise within the city or within the extraterritorial area.

(c) *Procedure and meetings.*

- (1) The Board shall elect one of its members as chairman, and shall appoint a secretary and such other subordinates as may be necessary to complete its work. The Board shall also adopt a seal, and may adopt rules of procedure so long as such procedures do not contravene the laws of the State of North Carolina or any ordinances or resolutions adopted or made effective by the City Council.
- (2) All meetings of the Board shall be held at a regular place, and shall be open to the public. The Board shall keep minutes of its proceedings in a book maintained for that purpose only, showing the vote of each member upon each question, or any member's absence or failure to vote. The final disposition of all appeals to the Board shall be recorded by resolution which indicates the reasons for the Board's action. No final action shall be taken on any matter unless a quorum of four members or alternates are present.

(d) *Powers.* The Board shall have the following powers:

- (1) To hear and decide appeals from the review any order, requirement, decision or determination made by an administrative official charged with the enforcement of the zoning ordinance.

(2) To interpret the intent of the zoning map as to the location of the zoning boundary lines as provided in the zoning ordinance.

(3) To authorize upon appeal in specific cases such variances from the terms of this Article as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Article would result in unnecessary hardship. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Article. A variance from the terms of this Article shall not be granted by the Board unless and until all of the following findings are made:

(a) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the six following conditions exist:

(1) If he complies with the provisions of the ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the ordinance that will make possible the reasonable use of his property.

(2) The hardship results from the application of the ordinance to the property rather than from other factors such as deed restrictions or other hardship.

(3) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(4) The hardship is not the result of the actions of an applicant.

(5) The hardship is peculiar to the applicant's property, rather than the result on conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.

(6) The hardship relates to the physical condition of the property; deprivation of better earnings is not an unnecessary hardship within the meaning of the law.

(b) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.

(c) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this Article.

(4) To perform the powers and duties as set forth in § 9-7024 of this Code regarding Watershed provisions.

(5) To perform the powers and duties as set forth in § 9-6-5004 of this Code as regarding Flood Damage Prevention provisions.

(6) To hear and decide requests for vested rights as set forth in § 9-4013.

(7) To hear and decide such special exceptions as are provided for in this Article.

(8) To serve as the Morganton Housing Appeals Board pursuant to G.S. 160A-446.

(e) *Appeals from the zoning enforcement officer.*

(1) An appeal from the decision of the zoning enforcement officer or any administrative

officer charged with the enforcement of the zoning ordinance may be taken to the Board of Adjustment by any person aggrieved or any officer, department, board or bureau of the city affected by such decision. Such appeal shall be taken within a reasonable time as provided by the rules of the Board by filing with the zoning enforcement officer and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit all papers constituting the record upon which the action appealed from was taken.

- (2) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board, after the notice of the appeal shall have been filed with him, that because of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, or that because the violation charged is transitory in nature, a stay would seriously interfere with the enforcement of the ordinance. In that case, proceedings shall not be stayed, except by restraining order, which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
- (3) The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time.
- (4) The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and shall make any order, requirement, decision or determination that in its opinion ought to be made in the premises. To this end, the Board shall have all the powers of the officer from which the appeal is taken.
- (5) The concurring vote of four-fifths of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official charged with the enforcement of this zoning ordinance, or Article E of Part 9 of the Charter and Code of Ordinances of the City of Morganton, or to decide in favor of the applicant any matter upon which it is required to pass under the zoning ordinance or to grant a variance

from the provisions of the zoning ordinance.

(f) *Appeals from the decisions of the Board.*

Any person or persons, jointly or severally, aggrieved by any decision of the board, or any taxpayer, or any officer, department, board of bureau may seek review by the superior court of Burke County, North Carolina, of the Board's decision, by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the Board is filed, in the office of the Board, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or the chairman of the Board at the time of its hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail, return receipt requested.

(Ord. 96-10, passed 3-4-96)

**Sec. 9-4015. Amendment procedures; conditional use permits.**

(a) The City Council may amend, supplement or change the Zoning Ordinance text and zoning district lines and designations according to the following procedure. It is the intent of this Article that the applicant for rezoning to any district other than a Conditional Use District shall be prohibited from offering any testimony or evidence concerning the specific manner in which he intends to use or develop the property. If the applicant believes that the development of his property in a specific manner will lessen adverse effects upon surrounding properties or otherwise make the rezoning more in accordance with the principles underlying the city's comprehensive zoning plan, he shall apply for rezoning to the appropriate Conditional Use District and simultaneously apply for Conditional Use Permit specifying the nature of his proposed development. No permit shall be issued for any development within a Conditional Use District except in accordance with an approved Conditional Use Permit.

(b) *Amendment initiation.* Applications to change, supplement or amend this Article may be initiated by:

(1) Textual amendment.

- (a) The City Council;
- (b) The Planning Commission;
- (c) Anyone who owns property or resides in the area of jurisdiction of this Article or the agent of such person.

(2) Map amendment.