



**ZONING ORDINANCE
DIVISION 720
QUASI-JUDICIAL DECISIONS
AND BOARD OF ZONING APPEALS**

720.01 Exercise, delegation, and reservation of quasi-judicial decision-making authority

The City Council may exercise, or may delegate to the Board of Zoning Appeals or other boards so designated, quasi-judicial zoning powers, including the hearing appeals of administrative decisions by the Director of Development Services, hearing and rendering decisions on applications for variances, special administrative permits, conditional use permits, or other similar permits, pursuant to standards for the exercise of such quasi-judicial authority adopted in this division. Where not specifically delegated to the Board of Zoning Appeals or other body, the powers of quasi-judicial decision making are reserved to the City Council and shall be exercised in accordance with the same standards set forth in Division 720.03 below. For variance requests before the City Council which are not being considered as part of a rezoning application, such quasi-judicial hearings shall be governed by the rules of procedure governing City Council hearings set forth in Division 722.05(E).

(Code 1996, Sec. 7-8-2-18-010)

720.02 Board of Zoning Appeals; Establishment, appointment, and organization

- A. There is hereby established a Board of Zoning Appeals ("the Board"), which shall consist of 7 members, residents of the City of Marietta, living in separate wards, appointed by the City Council for terms of 3 years or thereafter until their successors are appointed. Members of the Board shall hold no other City office or position. Any vacancy in the membership of the Board shall be filled for the unexpired term in the same manner as the initial appointment.
- B. The Board of Zoning Appeals shall elect one of its members as chairman, who shall serve for one year or until he is re-elected or his successor is elected. Meetings of the Board shall be held on the last Monday of each month at 6:00 p.m., or as otherwise set by the call of the chairman, or at such times as the Board may decide. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be maintained by the Department of Development Services and shall be a public record. The Board shall be authorized to adopt its own by-laws as described in Division 720.07.

(Code 1996, Sec. 7-8-2-18-020)

720.03 Board of Zoning Appeals; Powers and duties

- A. The Board of Zoning Appeals shall have the powers to:
 1. Hear and decide appeals from the decision of the Director of Development Services where it is alleged there is error in any order, requirement, decision, or determination.
 2. Grant variances from zoning regulations of this article in cases where strict application of such regulations would result in unnecessary hardship; but only in harmony with the spirit and intent of these regulations and is the minimum necessary to grant relief without injury to the public interest. All such variances must be based upon the evidence submitted before the Board of Zoning Appeals and upon its findings, supported by the testimony or by documentary testimony that such variance shall be required by one of the following causes:
 - a) Because of the existence in good faith of a nonconforming structure or physical condition at a time prior to the adoption of the Zoning Ordinance of the City of Marietta, or amendments thereto, requires the continuance of such nonconforming structure or physical condition. Variances for nonconforming uses may not be considered or granted by the Board, and



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decisions on the continuation of nonconforming uses are specifically reserved to the City Council.

- b) There are extraordinary and exceptional conditions creating a substantial hardship to the applicant which pertain to the particular piece of property or building in question because of its size, shape or topography.
- B. Every such judgment of the Board of Zoning Appeals granting a variance or appeal shall be accompanied by a finding of fact specifying the reasons therefor.
- C. In granting any variance under the provisions of this section, the Board of Zoning Appeals may designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master or through traffic plan, the future development of the City.
- D. Variances approved by the Board must be implemented within a period of 12 months, meaning that a building permit must be obtained and the development and construction commenced within the 12-month time period. If the variance has not been implemented within 12 months, Board approval must be obtained again. This provision shall not apply to variances granted by the City Council in connection with zoning decisions.
- E. The Board may in conformity with this article reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and to that end shall have all the duty of the Director of Development Services to carry out the decisions of the Board.
- F. Variances may not be granted by the Board of Zoning Appeals conditioned upon the approval by City Council of an application to amend this article or to amend the Official Zoning Map.
- G. Variances granted by the Board of Zoning Appeals or City Council shall only remain in effect as long as the property to which it applies remains in the same zoning classification such property was in at the time the variance was granted.
- H. No variances may be granted by the Board of Zoning Appeals that would allow any part of a structure to be constructed over a sanitary sewer line, water line or stormwater line, or over any required easement for such lines.
- I. Failure of a Board Member to attend three regular meetings within a calendar year shall be reported to City Council as promptly as possible. City Council may accept the absences as resignation or allow the member to continue serving the term if just cause exists for the absences. Upon such resignation, resignation by other means, or other vacancies occurring in office, the Chairman shall inform the City Council as promptly as possible, so that the City Council may appoint a replacement to fill the unexpired term.

720.04 Applications and notice

- A. An appeal to the Board of Zoning Appeals may be taken by any person, firm, or corporation aggrieved or by any governmental officer, department, board or agency affected by any decision of the Planning and Zoning Division with respect to this article. Such appeal shall be made within 10 days following notification of the decision appealed from, by filing with the Director of Development Services a notice of appeal and specifying the grounds thereof. The Director of Development Services or his designee shall forthwith transmit to the Board all the papers constituting the record upon which the action was taken.
- B. Applications for a hearing and decision on requests for variances and appeals shall be filed with the Director of Development Services, on forms he shall provide, at least 30 days prior to the meeting at



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which they may be heard. Each application shall contain such information as the Director of Development Services may require to enable the Board or City Council to make its decision including, but not limited to, a plat drawn to scale showing the following:

1. All property lines, with dimensions on an appropriate scale to allow staff review;
2. A legal description of the tract involved;
3. Location of buildings and other structures, creeks, and easements referenced to the property;
4. North arrow, land district and land lot number; and
5. Location of setback lines or other requirements from which the variance is sought.

C. A copy of the paid in full tax bill or a letter from the City of Marietta Tax Department stating that all taxes have been paid must accompany the application for a variance before it will be processed.

D. At least 15 but not more than 45 days prior to a quasi-judicial hearing before the Board or City Council for variances and appeals, the Department of Development Services shall notify by regular mail all property owners within 200 feet of the property being considered (excluding owners of common areas or common elements of a condominium development) as shown by the most recent City tax records at the addresses shown on said records. Such notification must include the proposed appeal(s) or variance(s) being considered and the date, time, and place of the scheduled quasi-judicial hearing.

E. Due notice of all quasi-judicial hearings on applications for variances and appeals shall be published at least 15 days but not more than 45 days prior to the hearing in the newspaper denoted as the legal organ of the City and shall include the date, time, and place of said hearing.

F. In addition to the above notice requirements, at least 15 but not more than 45 days prior to the quasi-judicial hearing the Department of Development Services shall post in a conspicuous place on the property a sign or signs which shall contain information as to the date, the time and purpose of the hearing.

G. No submitted variance application may be amended after public notice of the request has been given, provided, however, the Board may allow such application to be amended during the public hearing.

H. Notice of variance requests before the Board of Zoning Appeals shall be sent to all City Council Members by the Director of Development Services or his or her designee.

I. Any applicant to whom a variance or appeal is granted or denied shall be given written notice specifying any variances or appeals granted or denied within 10 days of the decision.

J. Time limit on resubmission. An application for a variance affecting the same property shall not be submitted more than once every 12 months; however, an applicant may petition the Board of Zoning Appeals or the City Council, as appropriate, to waive the 12-month waiting period by demonstrating that the situations or amount of variance requested which led to denial have materially changed or if the request is materially different.

(Code 1996, Sec. 7-8-2-18-030)

720.05 Meetings and procedures for quasi-judicial hearings before the Board of Zoning Appeals

- A. The Board of Zoning Appeals shall hold a public hearing on all requests for variances and appeals on which it acts.
- B. Board of Zoning Appeals Meetings
 1. All members of the Board shall be notified of the meeting at least 48 hours in advance of any meeting (excluding weekend days).
 2. A quorum shall consist of four members for the transaction of all business.



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3. Board members are subject to the Code of Ethics as set forth in Chapter 14 of Article 1 of the City's Code of Ordinances, including the abuse of office and conflict of interest provisions set forth therein.
4. All meetings shall comply with the requirements of the Georgia Open Meetings Act. The order of business at meetings shall be at the discretion of the Chairman.
5. During a public hearing, the applicant and all those in opposition shall be allowed 20 minutes to present their argument(s). The applicant can reserve any portion of his remaining time for rebuttal. The Chairman may request representatives of the opposition to speak for the entire group. If more than one speaker represents a group, the 20 minutes shall be divided among the various speakers. In no case, however, shall any group be allowed more than the allotted time no matter how many speakers represent the group unless extended by a majority vote of the Board members present.
6. At the public hearing, the applicant or any other party may appear on his own behalf or be represented by agent or attorney. No case shall be considered for approval if the applicant or his agent does not appear. If the applicant or his agent does not appear, the Board may vote to deny the request or table the case to a future meeting. If the Board votes to table the request, the applicant shall bear the cost of any additional filing or advertising fees incurred, unless waived by majority vote of the Board.
7. If the applicant elects to withdraw his application prior to the hearing at which the application is scheduled to be considered, a written request must be received in the office of the Director of Development Services not later than 48 hours before the scheduled hearing (excluding weekends). The Board may by majority vote allow an applicant to withdraw an application without prejudice at any time during consideration of the application.
8. An applicant may request his application be tabled until the next scheduled meeting of the Board upon written request received in the office of the Director of Development Services no later than 48 hours prior to the scheduled hearing (excluding weekend days). Alternatively, a majority of the Board members present at the meeting may vote to table the application. If a motion to table is made at the request of an applicant, the applicant shall bear the cost of any additional filing or advertising fees incurred because of the request, unless waived by majority vote of the Board.
9. No applause or disruptive behavior shall be allowed by individuals there to express support either for or against an issue before the Board of Zoning Appeals.
10. The Board of Zoning Appeals shall not request a show of hands for or against an issue.
11. All speakers shall be accorded due respect by other citizens in attendance at the meeting.

C. Presentation of Evidence

1. Variance requests should be orally presented to the Board by the applicant or his representative, along with any documentation necessary to demonstrate his need for such variances.
2. The Board is permitted to ask any pertinent questions of the applicant or his representative to aid in their understanding of the case.
3. After such presentation by the applicant, the Chairman shall ask if there be anyone present who is in opposition to the granting of such variances.
4. Those appearing in opposition should offer oral evidence and any documentation to show why granting the variance would create a specific hardship or hazard to their interests.
5. The Board is permitted to ask any pertinent questions of the opposition to aid in their understanding of the case.
6. All presentations and remarks by the applicant and opposition shall be directed to the Board.



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(Code 1996, Sec. 7-8-2-18-040)

720.06 Assistance by staff for Board of Zoning Appeals

The Director of the Department of Development Services or his or her designee shall provide such technical and clerical assistance as the Board may require and shall maintain permanent and complete records of the activities of the Board.

(Code 1996, Sec. 7-8-2-18-050)

720.07 By-laws for Board of Zoning Appeals

The Board shall adopt such rules for its own internal administration including, but not limited to, the election of the Chairman and Vice Chairman and the adoption of rules not in conflict with this division.

720.08 - Appeals of Quasi-Judicial Decisions

- A. Any person adversely affected by any quasi-judicial decision made by the Board of Zoning Appeals or City Council shall have 30 days from the date of the written decision to appeal such decision to the Superior Court of Cobb County by filing a petition for review as described in Chapter 3 of Title 5 of the Official Code of Georgia. Such appeals shall be reviewed on the record which shall be brought to the superior court as provided in Title 5.
- B. In connection with such an appeal from a quasi-judicial decision of the Board or City Council, the City Clerk shall have authority, without additional action by the Board, to approve or issue any form or certificate required by Chapter 3 of Title 5 of the Official Code of Georgia.
- C. In connection with such an appeal from a quasi-judicial decision of the Board or City Council, service of a petition for review pursuant to Chapter 3 of Title 5 of the Official Code of Georgia may be made upon the City Clerk during normal business hours at City Hall.
- D. An appeal to the Superior Court of Cobb County shall stay all legal proceedings in furtherance of the action appealed from, unless the Board of Zoning Appeals or City Council from which the appeal is taken certifies that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In such actions, the applicant for the quasi-judicial decision shall be a necessary party and shall be named as a defendant in the action and served in accordance with the requirements of Chapter 3 of Title 5 or Chapter 11 of Title 9 of the Official Code of Georgia, as appropriate.

(Code 1996, Sec. 7-8-2-18-060)

720.09 – Attorney for Board

The Attorney for the Board of Zoning Appeals and the Planning Commission shall be served and advised by a common Attorney as engaged by the City with concurrent advisement from said two Boards. Current serving Marietta City Attorney may be considered to represent concurrently one or both of said Boards.



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