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**720.01 Establishment and appointment**

There is hereby established a Board of Zoning Appeals, 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.

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

**720.02 Organization**

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 at the call of the chairman and 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 Planning and Zoning and shall be a public record.

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

**720.03 Powers and duties**

A. The Board of Zoning Appeals shall have the powers to:

1. Hear and decide special land use permit requests as delineated in this article.
2. Hear and decide appeals from the decision of the Planning and Zoning Director where it is alleged there is error in any order, requirement, decision or determination.
3. 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 non-conforming use at a time prior to the adoption of the Zoning Ordinance of the City of Marietta, or amendments thereto, requires the continuance of such non-conforming use,
  - 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, appeal or special land use permit shall be accompanied by a finding of fact specifying the reasons thereof.

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.



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- D. Approved variances must be implemented within a period of 12 months. After 12 months, Board approval must be obtained again. A building permit must be obtained and the development underway within the 12-month time period.
- 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 Planning and Zoning Director 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 storm water line; or over any required easement for such lines<sup>1</sup>.

**720.04 Procedures**

- 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 Director with respect to this article. Such appeal shall be made within 10 days following notification of the decision appealed from, by filing with the Planning and Zoning Director a notice of appeal and specifying the grounds thereof. The Planning and Zoning Director shall forthwith transmit to the Board all the papers constituting the record upon which the action was taken.
- B. 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.
- C. Any applicant to whom a variance is granted shall be given written notice specifying any variances granted.
- D. 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 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 Public hearings**

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<sup>1</sup> #20170275 approved 6/14/17



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The Board shall hold a public hearing on all requests for special exceptions, variances and appeals on which it acts.

- A. Applications for a hearing and decision on requests for variances, appeals, and special exceptions shall be filed with the Planning and Zoning Director on forms he shall provide at least 30 days prior (or less at staff discretion) to the meeting at which they may be heard. Each application shall contain such information as the Planning and Zoning Director may require to enable the Board 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.
- B. Notice of the time and place of the hearing shall be sent to the appellant and the owners of all the properties abutting or across the street from the property with which the hearing is concerned; provided, however, that where any such abutting property is a condominium development, only the owners of units (exclusive of common areas) lying within 200 feet of the property with which the hearing is concerned shall be entitled to receive notice hereunder; provided, further, that where any such abutting property is owned by a limited partnership, partnership or joint venture, only the person or entity in whose name said property is returned for taxes, as shown by the city tax records shall be entitled to notice hereunder. The names and addresses of all such abutting property owners who are entitled to notice under this section shall be determined from the city tax records as of the date on which the application is filed. As used in this section, the term "street" shall not include an interstate highway. In addition to the above notice requirements, the Department of Planning and Zoning 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. Public notice shall also be given in the local newspaper at least 15 days before the hearing.
- C. No submitted 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.
- D. The Board shall adopt such rules and regulations for the conduct of the public hearing as are consistent with state laws and the City code and are appropriate to its responsibilities.
- E. Notice of requests before the Board shall be sent to all City Council members.  
(Code 1996, Sec. 7-8-2-18-040)

**720.06 Assistance by staff**

The Planning and Zoning Director 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**



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The Board shall adopt such rules for its own internal administration and procedure, including, but not limited to, conflict of interest rules, to insure that no member is entitled to rule on or adjudicate a matter in which he has an interest directly or indirectly.

**720.08 - Appeals**

Any person adversely affected by any determination made by the Board of Zoning Appeals has 30 days to appeal such determination to the City Council. The matter shall be heard de novo and council may approve, modify and approve, or reject the determination made by the Board. Further appeal may be taken by certiorari as provided by Georgia law<sup>2</sup>.  
(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<sup>3</sup>.

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<sup>2</sup> #20170275 approved 6/14/17

<sup>3</sup> #20180091 approved 2/14/18