



CITY OF PENDLETON

Planning Department (541) 966-0204 Fax (541) 966-0251
500 SW Dorion Avenue, Pendleton, OR 97801

MINOR VARIANCE APPLICATION (Type II) File No. MV _____ Fee \$ _____

NOTICE TO APPLICANT: Applicants are advised to review the list of submittal requirements indicated on each application form prior to submitting an application. **Incomplete applications will not be acted upon or scheduled for a public hearing until the Planning Department receives all required submittal materials and fees. Failure to provide complete and/or accurate information may result in delay or denial of your request.**

APPLICANT _____

Mailing address _____

Phone _____ **Fax** _____ **Email** _____

Applicant's interest in property _____

Signature _____ **Date** _____

PROPERTY OWNER _____

Mailing address _____

Phone _____ **Fax** _____ **Email** _____

Signature _____ **Date** _____

If same as applicant, mark SAME. If there is more than one property owner, please attach additional sheets as necessary.

SITE LOCATION AND DESCRIPTION **Zoning** _____

Tax Map #(S) _____ **Tax Lot #(s)** _____

Tax Map #(S) _____ **Tax Lot #(s)** _____

Frontage street or address _____ **Nearest cross street** _____

BUSINESSES Are any businesses operating on the property? If yes, please describe. _____

All businesses operating within the City of Pendleton must obtain a Business License.

SPECIFIC REQUEST **Lot Coverage** **Lot Size/Building Height** **Setbacks** **Driveway** **Fence**

I am / We are asking a request to _____

my (circle one) lot coverage, lot size, building height, setbacks, driveway, fence by / for _____

OFFICE USE ONLY.

This institution is an equal opportunity provider and employer.

120 day time limit Accepted as complete _____ Final decision by _____

DLCD 45-day notice required Y/N Date mailed _____ Date of first hearing _____

Planning Commission hearing date _____ Notice mailed _____

Notice to media Publication date _____ Emailed _____

Notice of Decision Date mailed _____ Appeal deadline _____

Associated applications _____

Describe in detail the specific circumstances that apply to the subject **property (not the applicant)** which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this Ordinance, topography, or other circumstances over which the applicant has no control.

Describe in detail the specific property right that property owners in the same zone or general vicinity have, which is not available to the subject property without approval of a variance.

Describe in detail how approval of this request will not have negative impacts upon property in the same zone or vicinity, or otherwise conflict with City Ordinances, plans and policies.

Describe in detail how the variance requested is the minimum variance which would alleviate the hardship.

The applicant bears the burden of proof to show that there is a specific hardship that applies to the subject property that does not apply to other properties in the vicinity and/or the same zone. Applicants should be prepared to demonstrate that there is no other way to achieve their goal or make reasonable use of the land unless a variance is approved.

SUBMITTAL REQUIREMENTS

The following items must be received in order to deem an application complete and schedule it for a hearing before the Planning Commission. If you need assistance completing the forms, please contact the Planning Department. If you do not have a copy of the deed to your property to verify ownership, contact the Umatilla County Office of County Records at (541) 278-6236 or www.co.umatilla.or.us/records.htm.

1. Original, signed **Application form**. This information is public record and must be reproduced so please type or write clearly using dark ink.
2. All information required above and below, unless specifically waived by the Director.
3. The appropriate **fee**.
4. **10 copies** of all submittal materials for staff and Planning Commission distribution.

Use additional sheets as necessary. Electronic submittals to accompany this application form are encouraged. All text submittals should be provided in Microsoft Word; plans and other images should be formatted as a pdf.

City of Pendleton Unified Development Code
Article XI. Zoning and Related Decisions

- 11.01.1 **Pre-application Conferences.** The City encourages all persons considering any development that requires a land use action to schedule a pre-application conference. The purpose of a pre-application conference is to bring the applicant together with members of City staff to discuss a potential project and identify applicable development requirements, including possible opportunities and constraints.
- A. Participants. Staff at a pre-application conference will vary depending on the proposal. Typically meetings will include the Planner, Community Development Director, Building Inspector and Fire Marshall. Other parties may be included as appropriate.
 - B. Information provided. At such conference, the City Planning Official or designee shall:
 - 1. Cite the comprehensive plan policies and map designations applicable to the proposal;
 - 2. Cite the ordinance provisions, including substantive and procedural requirements applicable to the proposal;
 - 3. Provide available technical data and assistance that will aid the applicant;
 - 4. Identify other governmental policies and regulations that relate to the application; and
 - 5. Reasonably identify other opportunities or constraints concerning the application.
 - C. Disclaimer. Failure of any member of City staff to provide information shall not constitute a waiver of any of the standards, criteria or requirements for the application;
 - D. Changes in the law. Due to possible changes in federal, state and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.
 - E. Waiver. Applicants are not required to attend a Pre-application conference. Failure to attend a pre-application conference may result in application delays if additional information is required from the applicant to deem an application complete.

11.04 Variances

- 11.04.1 Purpose. This Code cannot provide standards to fit every potential development situation. Variances are modifications to land use or development standards that are not otherwise permitted elsewhere in this Code. The variance procedures provide relief from specific code provisions when they have the unintended effect of preventing reasonable development in conformance with applicable standards and requirements. The variance procedures are intended to provide flexibility while ensuring that the intent of this Code is met.
- 11.04.2 The Planning Commission may authorize variances from the requirements of this Ordinance where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of the Ordinance would cause an undue or unnecessary hardship.
- 11.04.3 Allowances. Unless specifically stated otherwise, a person or party may apply for a variance from any standard contained herein.
- 11.04.4 **Findings of fact.** In order to grant any Variance, the Planning Commission must find, based upon evidence provided by the applicant, both factual and supportive, that:
- A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this Ordinance, topography, or other circumstances over which the applicant has no control.
 - B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possessed.
 - C. The variance would not be materially detrimental to the purposes of this Ordinance, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy.
 - D. The variance requested is the minimum variance which would alleviate the hardship.
- 11.04.5 Conditions of Approval. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood or to otherwise achieve the purposes of this Ordinance.
- 11.04.6 **Limitations.** No variance shall allow the use of property for a purpose not authorized within the zone in which the proposed use would be located.
- 11.04.7 Procedure. Variance applications shall be processed according to the standards for a Type III application contained in Article 13.
- 11.04.8 Appeal. Appeal of a Variance shall be processed according to the standards for appeal of a Type III decision contained in Article 13.

Minor Variances

- 11.05.1 Certain Minor Variances which are less likely to result in a change to neighborhood character may be approved by the Planning Director without a public hearing.
- 11.05.2 **Allowances.** Only those specific deviations identified herein shall be eligible for approval of a Minor Variance.
- A. Deviation from lot coverage requirements of 5% or less.
 - B. Deviation from lot size or building height requirements of 10% or less.
 - C. Deviation from minimum setbacks:
 1. Front Yard: No reduction.
 2. Side Yard Abutting a Street: minimum 8 feet.
 3. Side and Rear Yards: minimum 3 feet.
 - D. Deviation, not to exceed 50%, of Length of Driveway Approach Apron
 - E. Front Yard Fence and Wall Waivers. Waiver of the front and side yard (3.5') fence provisions may be sought by any person who proves he can provide equal aesthetic qualities by other means. The Director shall consider such application on the basis of aesthetic value of the substitute plan. The substitute plan must:
 1. Provide adequate vision clearance for automobiles, both those passing on the street and those leaving the development site;
 2. Include landscaping;
 3. Not be detrimental to the public health, safety or welfare, or be materially injurious to properties or improvements in the vicinity.
- 11.05.3 **Approval criteria.** A Type II Variance shall be granted only if the request falls within established allowances.
- 11.05.4 **Procedure.** Minor Variance applications shall be processed according to the standards for a Type II application contained in Article 13.
- 11.05.5 **Appeal.** Appeal of a Minor Variance shall be processed according to the standards for appeal of a Type II decision contained in Article 13.

Article XIII. Land Use Application Procedure

- 13.01 Application Submittal and Completeness Review
The City of Pendleton provides a consolidated procedure by which an applicant may apply at one time for all land use permits needed for a development project.
- 13.01.1 Application Forms and Checklists
- A. The Director shall supply land use application forms pursuant to the standards contained in the applicable state law, comprehensive plan, and implementing ordinance provisions. All applications provided for in this Ordinance shall be made on the application forms prescribed by the City.
 - B. The Director shall supply checklists or information sheets for applications, which shall detail the specific information which must be contained in the application, including format and number of copies. Such checklists may be incorporated into the application forms.
- 13.01.2 Who May Apply
- A. An application for a Special Permit may be filed by:
 1. The owner or the contract purchaser of the subject property, or any person authorized in writing to act as agent of the owner or contract purchaser.
 2. The City Council, Planning Commission, City Manager, or the City Manager's designee, as to property owned by the City, including public right of way and easements, or which the City intends to acquire.
 3. Public agencies that own the property or have passed a resolution declaring that they intend to exercise their statutory authority to condemn the property.
- 13.01.3 **Classification of Applications**
- A. All applications shall be subject to the procedure type specified in this Code. If the Code does not specify a procedure type for a given application and another procedure is not required by law, the Director shall determine the appropriate procedure based on the following guidelines. Where two or more procedure types could be applied to a particular application, the selected procedure will be the type providing the broadest notice and opportunity to participate.

1. A Type I (Ministerial) application is subject to non-discretionary criteria or criteria that require the exercise of professional judgment only about technical issues.
 2. A Type II (Ministerial) application is subject to criteria that require the exercise of limited discretion about non-technical issues and about which there may be limited public interest.
 3. A **Type III (Quasi-Judicial)** application is subject to criteria that require the exercise of substantial discretion and about which there may be broad public interest, although the application applies to a limited number of land owners and properties.
 4. A Type IV (Legislative) procedure typically involves the adoption, implementation or amendment of policy or law by ordinance. The subject of a Type IV procedure generally applies to a relatively large geographic area containing many property owners.
 5. When an applicant submits more than one complete application for a given proposal, where each application addresses a separate set of code requirements and the applications are subject to different procedure types, all of the applications are subject to the procedure type of the application which requires the broadest notice and opportunity to participate. For example, a Type II application will be consolidated with a Type III application for the same proposal on the same site, in which case, the Type II application will be reviewed by the decision making authority of the Type III application. The decision making authority's action on the Type II application will be based on the approval criteria governing the Type II application.
- B. In the event that the completed applications involve applications where the decision making authority is a combination of the Director and the Planning Commission, the decision making authority will be the Planning Commission.
- C. Notwithstanding any other provision and at no cost to the applicant, the Director may choose to combine multiple applications for the same development as a way to increase the efficiency of development review.
- D. For applications within the Historic District, the Director shall determine the appropriate decision-making authority between the Façade Committee, the Landmarks Commission and the Planning Commission. Such determination will be based upon the characteristics of the proposal and the associated application, if any.

13.01.4 Application Submittal

- A. Applications for development permits shall be submitted upon forms supplied by the Director. Partial submittal of applications will not be accepted. All of the following items must be submitted to initiate the completeness review:
1. Applications for Type I and Type II actions which do not require a public hearing shall be processed administratively in the order they are received. One copy of the application and all attachments shall be submitted.
 2. All applications for **Type III quasi-judicial** actions shall be submitted to the Planning Department no less than 28 days before the next scheduled meeting of the Planning Commission. Ten complete sets of the application and all attachments shall be submitted.
 3. Any proposal for a Type IV Legislative action to amend the City of Pendleton Comprehensive Plan or any City of Pendleton land use regulation or to adopt a new land use regulation shall be submitted a minimum of 50 days prior to the first evidentiary hearing, consistent with the standards contained in ORS 197.760. Twenty complete sets of the application and all attachments shall be submitted.
 4. In no instance shall an application be scheduled for a public hearing if local or State notice requirements cannot be met. Applications submitted after applicable deadlines shall be scheduled for the next available hearing date upon determination of completeness.
- B. **All applications shall provide the following minimum information, unless specifically waived by the Planning Director:**
1. Application form, including required notarized signature(s) that demonstrate consent of all owners of the affected property;
 2. Deed, title report or other proof of ownership;
 3. Completed checklist provided for each type of application, including all required materials;
 4. A narrative summarizing the project, including (but not limited to) such information as: the nature of the structure(s) and/or activities proposed (Residential, Commercial, Industrial, Institutional, Mixed Use, etc.) number of dwellings/employees/ students/participants, hours of operation, and any other information to assist staff and the public in understanding the proposal. If negative impacts are anticipated, please identify them and provide a proposal for mitigation.
 5. Plans and specifications, drawn to scale, showing the following:
 - a. The actual shape and dimensions of the lot or site to be built upon. Site drawings should be provided at a scale of 1" = 20' or 1" = 40' unless a large site dictates a more appropriate scale, which shall in all cases be consistent with a U.S. Standard Engineer scale.
 - b. The sizes and locations of all structures on the site (existing and proposed), including all setbacks.
 - c. Elevations of any proposed buildings, if part of or relevant to the application.
 - d. The number of dwelling units, if any, that exist on the site or are proposed for construction.
 - e. The relationship of the property to the surrounding area.

- f. Documentation of the public improvements abutting the site (streets, curb/gutter, sidewalks, etc.).
 - g. Elevation Certificate and/or topographic map prepared by a registered land surveyor to show compliance with floodplain standards, if applicable.
 - h. Any other information deemed necessary by the Planning Director to determine conformance with this Ordinance or compatibility with the general neighborhood or zone.
6. Special reports or plans required to demonstrate that the specific proposal and its site constraints comply with applicable codes. These are noted on the application checklist.
 7. Application narrative to address each applicable approval criteria and standards.
 8. Any mitigation proposed to address actual or potential negative impacts.
 9. A Trip Generation study or Traffic Impact Analysis, if deemed necessary pursuant to this Ordinance and/or the City of Pendleton Transportation System Plan.
 10. Electronic copies of all submittal materials, if possible.
 11. Payment for the appropriate land use application fee(s) and deposit(s), based on the fee schedule in effect on the date of application submittal.

13.01.5 **Completeness Review**

- A. The Director shall review the application submittal and advise the applicant in writing whether the application is complete or incomplete within thirty (30) calendar days after the city receives the application submittal.
- B. Incompleteness shall be based solely on failure to pay required fees, failure of the applicant's narrative to address the relevant criteria or development standards, or failure to supply the required information listed in the checklist and shall not be based on differences of opinion as to quality or accuracy. Determination that an application is complete indicates only that the application contains the information necessary for a qualitative review of compliance with the Development Code standards.
- C. Submittal and/or acceptance of the required fees shall not constitute acceptance of a complete application.
- D. Failure to provide necessary or relevant information may result in delay or denial of an application.
- E. If the application was complete when first submitted or the applicant submits additional information within 180 days of the date the application was first submitted, and a decision has not been issued, approval or denial of the application shall be based upon the standards and criteria that were in effect at the time the application was first submitted.
- F. If an application is incomplete, the Director shall prepare a notice of incompleteness. The notice shall list what information is missing and allow the applicant to submit the missing information. The completeness notice shall include a form, to be returned to the Director by the applicant, indicating whether or not the applicant intends to amend or supplement the application.
- G. The application will be deemed complete for purposes of this Section upon receipt by the city of:
 1. All of the missing information;
 2. Some of the missing information and written notice from the applicant that no other information will be provided; or
 3. Written notice from the applicant that no additional information will be provided.
- H. The application will be deemed void if the application has been on file with the city for more than 180 calendar days and the applicant has not met the obligations of subsection G. above.
- I. The City shall take final action on an application for a permit, limited land use decision or zone change consistent with the standards contained in ORS 227.178, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete. The 120 calendar day time limit may be extended pursuant to subsection J. below or as may otherwise be permitted under State law.
- J. The 120 calendar day time line may be extended at the written request of the applicant. The total of all extensions may not exceed 245 calendar days, for a total of 365 days from the date the application is deemed complete.

13.01.6 **Withdrawal of an Application**

- A. An applicant may withdraw an application at any time before the application is deemed complete.
 1. An applicant may withdraw an application previously deemed complete at any time prior to adoption of a final City decision if the Director determines that:
 2. The owners or contract purchasers or the interest holders in the property consent in writing to withdraw the application.
- B. No violation of this Code has been identified on the subject property and processing of the application would not correct the identified violation.
- C. The City Manager or his designee may withdraw any City-initiated application at any time.
- D. If an application is withdrawn after public notice has been mailed, the Director shall send written notice stating the application has been withdrawn to all persons to whom notice of the application or hearing has been sent. This provision shall not apply to legislative applications that require Citywide mailed notice.
- E. Once an application has been withdrawn, the application fees shall be refunded by the following formula:
- F. Application withdrawn prior to being deemed complete: 85%.

- G. Application withdrawn prior to publication or distribution of public notice: 50%.
- H. Application withdrawn after publication or distribution of public notice: no refund.
- I. There shall be no refund of fees for appeal of a Type III/Planning Commission decision; appeal fees may be refunded if the appellant prevails in an appeal of a Type II decision pursuant to ORS 227.175.

13.06 Burden of Proof

The following language shall be included with all decisions for Type II, III and IV actions.

The specific findings made in granting a Permit shall be factual and supported by substantial evidence. The burden of producing substantial evidence to support the requisite findings is on the applicant seeking the approval of the Permit. If no evidence is produced by the applicant concerning any of the findings, the application may be denied based upon improper or inadequate findings. All evidence produced must be recited in the findings relating to approval or denial of an application.

- A. The applicant has the burden of proof regarding all requests affecting a subject property, and the applicant recognizes that it is the sole obligation of the applicant to substantiate the request.
- B. If any administrative review, suit or action is instituted in connection with any appeal of a decision, the applicant shall be required to either (1) reimburse the City for all costs incurred in defending this action, including but not limited to attorney fees, staff costs, any materials and other related costs, or (2) notify the City that the applicant does not desire to undertake such costs and will drop its request.
- C. The applicant shall notify the City Manager within five (5) days from City’s receipt of any notice of appeal by delivering a written statement to the City Manager within said five (5) days advising the City Manager whether the applicant will reimburse the City for all costs as described above or desires to drop the request.
- D. In the absence of written communication from the applicant within the allotted five (5) days the City may at its option presume the applicant desires to drop the request and the City shall have no obligation to defend the appeal.
- E. In appeals involving questions of City-wide significance, the City Council may determine to participate in part of the costs specified herein. Nothing in this condition shall affect applicant’s right to retain independent counsel in making their own legal appearance upon appeal.
- F. If any suit or action, including rescission, is instituted by the applicant in connection with any controversy arising out of a request, there shall be taxed and allowed to the City as a part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees in such suit or action, both at trial and upon appeal. In addition, the City may charge a fee for preparation of a written transcript, not to exceed the actual cost of preparing the transcript, up to \$500 plus one-half the actual costs over \$500.

Please refer to Section 13.04 Type III Procedure (Quasi-Judicial) of the Unified Development Code for procedural language for all Type III applications.

Article XV. Administrative Provisions

15.03 Compliance with Ordinance Provisions

- 15.03.1 The provisions of this Ordinance shall be deemed minimum requirements for the preservation of the public safety, health, convenience, comfort, prosperity and general welfare of the people of the City of Pendleton.
- 15.03.2 A lot may be used and a structure or part of a structure may be constructed, reconstructed, altered, occupied or used only as this Ordinance permits.
- 15.03.3 No lot area, yard or other open space existing on or after the effective date of this Ordinance shall be reduced below the minimum required for it by this Ordinance.
- 15.03.4 No lot area, yard or other open space which is required by this Ordinance for one use shall be used as the required lot area, yard, or open space for another use.
- 15.03.5 Development shall not commence until the applicant has received all of the appropriate land use and development permits (including but not limited to a Development Permit and building permits).

15.12 Consent to Annexation Required

Pursuant to the Joint Management Agreement with Umatilla County, any land use action on land in the Joint Management Area (lands inside the Pendleton Urban Growth Boundary but not inside the Pendleton city limits) is subject to all City of Pendleton criteria and standards. However, such properties do not pay City taxes, rely on Umatilla County as the primary response for police and fire service, and are also subject to a surcharge for water and sewer service. In order to reduce inter-jurisdictional issues, all land use actions inside the JMA shall carry, as a condition of approval, that:

- A. If the property abuts the City limits of the City of Pendleton, property owner shall provide a consent to the City for annexation; or
- B. If the property is inside the Urban Growth Boundary but does not abut the City limits of the City of Pendleton,

property owner shall provide a consent to the City for annexation at such time as the property does abut the city limits.

15.14 Violation of Conditions

The Planning Commission, on its own motion, may revoke any Permit for noncompliance with conditions set forth in the granting of said permit after first providing notice and holding a public hearing pursuant to the standards for a Type III application. The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a Permit.

15.15 Agreements for Conditional Approvals

Conditions imposed upon rezoning approvals, discretionary permits, land divisions, or any other authorizations to applicants pursuant to this Ordinance, may be incorporated into an agreement which shall be binding on the applicant and the applicant's successors, heirs and assigns as a continuing obligation running with the property which is the subject of such authorization. The Mayor and City Recorder are hereby authorized to execute such agreements when approved by the Planning Commission in the case of discretionary permits, or by the City Council in the case of rezoning ordinances, appeals on discretionary permits, or other authorizations requiring Council action.

Where the conditions imposed by any provision of this Ordinance are less restrictive than comparable conditions imposed by any other provisions of this Ordinance or of any other ordinance, the provisions which are more restrictive shall govern.