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VARIANCE APPLICATION

NOTICE TO APPLICANT: On original application form, please print legibly using black/dark blue ink or type. Applicants are advised to review the list of submittal requirements and recommendations indicated on each land use application form and in the applicable Ordinance prior to submitting an application. When applicable, applicants are also advised to submit three (3) draft application packages in advance of deadline dates for public hearings: a list of meeting dates and deadlines is available on request. **INCOMPLETE APPLICATIONS WILL NOT BE SCHEDULED FOR PUBLIC HEARING UNTIL THE PLANNING DEPARTMENT RECEIVES ALL REQUIRED SUBMITTAL MATERIALS.**

TRACKING INFORMATION (For Office Use Only)

Planner _____ File # _____ Hearing Date _____
Applicant _____ Property Owner _____

SITE LOCATION & DESCRIPTION

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

Frontage Street or Address _____

Nearest Cross Street _____

Plan Designation _____ Zoning _____ Site Size _____ (acres or sq. ft.) Dimensions _____

SUMMARY OF REQUEST

Proposed Project Name _____ Estimated Valuation: \$ _____

Project Type/Narrative Summary: *(Provide a brief summary of variance requested and specify project type: Single-family Residential (SFR) Multi-family Residential (MFR), Commercial, Industrial, Mixed Use)* _____

Subject to previous Land-use approval? Yes No File No. _____ *(attach copy of Notice of Decision)*

NOTE: The summary provided above must be part of a more extensive written narrative that describes the project and justifies the requested variance based on the approval criteria. For more information review the Approval Criteria and Submittal Requirements attached.

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VARIANCE APPLICATION

(CONTINUED)

DETAILED SITE INFORMATION

Are any of the following present on the site? *If so, please specify number of acres and/or percentage of site affected.*

Floodplain _____ Wetlands _____ Significant Natural Resources _____

Cultural Resources _____ Airport Noise Contours _____ Slopes greater than 25% _____

Water Provider: City of Hillsboro Tualatin Valley Water District Other: _____

Does the site have access to City Street(s) Yes No (*Please explain*) _____

Does the site have access to County Road(s) Yes No (*Please explain*) _____

Are there existing structures on the site? Yes No (*If Yes, briefly explain future status of structures.*) _____

OWNERSHIP AND APPLICANT INFORMATION

Property Owner Name(s) _____

Mailing Address/State/Zip _____

Phone # _____ Fax # _____ Email Address _____

Does the owner of this site also own any adjacent property? Yes No (*If Yes, please list tax map and tax lots*) _____

Property Owner's Signature _____ Date: _____

(If more than one property owner, please attach additional sheet with names and signatures.)

Applicant _____

Mailing Address/State/Zip _____

Phone # _____ Fax # _____ Email Address _____

Applicant's Signature _____ Date: _____

Applicant's interest in property _____

COMPLETENESS CHECK

For Office Use Only

Received by _____ Date _____

Accepted as complete by _____ Date _____

Additional reviews pending? YES NO If yes, what is the File # _____

Receipt # _____ Fee(s) Paid _____

APPROVAL CRITERIA AND REQUIREMENTS

(VARIANCE – OUTSIDE OF LIGHT RAIL ZONES AND MIXED USE ZONE DEVELOPMENT AND DESIGN STANDARDS)

The approval criteria and requirements for a Variance outside the light rail zones are listed in Sections 106 through 111 of the Zoning Ordinance as follows:

Section 106. Authorization to Grant or Deny Variances. Excluding the provisions of Section 48A Mixed Use Districts and Section 133 Development Review / Approval of Plans, the Hearings Board may authorize variances from the requirements of this Ordinance. Variances from the provisions of Sections 48A and 133 may be authorized only by the Planning Commission. Either the Hearings Board or the Planning Commission may authorize variances where it can be shown that, owing to special and unusual circumstances related to a specific piece of property or use, the literal interpretation of this Ordinance would cause an undue or unnecessary hardship; except that no variance shall be granted to allow the use of property for purposes not authorized within the zone in which the proposed use would be located. In granting a variance, the Board or the Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and to otherwise achieve the purposes of this Ordinance.

Section 107. Conditions for Granting a Variance. No variance shall be granted unless it can be shown that all of the following conditions exist:

- (1) Exceptional or extraordinary conditions apply to the property that do not apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size or shape, topography, or other circumstances over which the applicant has no control.
- (2) The variance is necessary for the preservation of a property right of the applicant substantially the same as is possessed by owners of other property in the same zone or vicinity.
- (3) The authorization of the variance shall not be materially detrimental to the purposes of this Ordinance, be injurious to property in the zone or vicinity in which the property is located, or be otherwise detrimental to the objectives of any city development plan or policy.
- (4) The variance requested is the minimum variance from the provisions and standards of this Ordinance which will alleviate the hardship.

Section 107A. Criteria for Granting a Parking Variance. No parking variance shall be granted unless it can be shown that all of the following criteria are met:

- (1) The property or use possesses characteristics that are unique and do not generally apply to other properties or uses in the same zone or vicinity.
- (2) All reasonable alternatives to comply with the parking standards have been exhausted.
- (3) If the parking variance seeks to exceed the parking maximum then it shall be demonstrated that any excess parking is located in a fashion such that the portion of the site occupied by the excess parking can be redeveloped at some future time if the use changed and excess parking was not needed.

Section 107B. Criteria for Granting a Regulatory Floodplain Standard Variance. No regulatory floodplain standard variance shall be granted unless it can be shown that all of the following criteria are met:

- (1) Generally, the only condition under which a variance from the standards set out in Section 131 may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the following items have been fully considered:
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;

APPROVAL CRITERIA AND REQUIREMENTS

(CONTINUED – OUTSIDE OF LIGHT RAIL ZONES AND MIXED USE ZONE DEVELOPMENT AND DESIGN STANDARDS)

- (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) The importance of the services provided by the proposed facility to the community;
- (e) The necessity to the facility of a waterfront location, where applicable;
- (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (g) The compatibility of the proposed use with existing and anticipated development;
- (h) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
- (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

As the lot size increases the technical justification required for issuing the variance increases.

- (2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.
- (3) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
- (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) In addition to the conditions for granting a variance in Section 107 regulatory flood plain standard variances shall only be issued if the following conditions also exist:
 - (a) A showing of good and sufficient cause; and
 - (b) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (6) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
- (7) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of flood proofing than watertight or dry-flood proofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except Section 107B(1), and otherwise complies with the standard that all improvements be constructed to minimize flood damage, by using flood resistant materials, anchoring, and the protection of on-site public and private utilities where applicable.

APPROVAL CRITERIA AND REQUIREMENTS

(CONTINUED – OUTSIDE OF LIGHT RAIL ZONES AND MIXED USE ZONE DEVELOPMENT AND DESIGN STANDARDS)

- (8) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Section 108. Application and Fee. A request for a variance may be initiated by a property owner or authorized agent by filing an application with the *Planning Department*. The applicant shall submit plans to the Commission as provided in Section 119 and shall pay the fee as set in Section 129.

Section 109. Public Hearing on a Variance. Before acting on a request for a variance, the Hearings Board shall consider the variance at a Public Hearing held within 40 days after filing of the application. Not less than 10 days prior to the date of the Hearing, the City Recorder shall give written notice by mail of the hearing to owners of property situated within a 200 foot radius of the boundary of the property subject to the request, using for this purpose names and addresses of owners as shown upon the current records of the County Assessor. Failure of a person to receive the notice specified in this Section shall not invalidate any proceeding in connection with the application for a variance.

Section 110. Recess of Hearing on a Variance. The Hearings Board may recess a hearing on a request for a variance in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested in the proposed variance. Upon recessing for this purpose, the Board shall announce the time and date when the hearing will be resumed.

Section 111. Action of the Hearings Board. The Board may attach conditions to an authorized variance which it feels are necessary to protect the public interests and carry out the purpose of this Ordinance. The City Recorder shall notify the applicant for a variance, in writing, of the Board's action within five days after the Board has rendered its decision.

APPROVAL CRITERIA AND REQUIREMENTS

(VARIANCE – WITHIN THE LIGHT RAIL ZONES)

The approval criteria and requirements for a Variance within the light rail zones are listed in Section 136(X.) of the Zoning Ordinance as follows:

X. VARIANCES

A. Purpose. The development and design standards in Sections 137 through 142 are intended to achieve the purposes of Section 136 and implement the goals and policies of the Comprehensive Plan. Variances to these standards are discouraged. However, some sites may be difficult to develop in compliance with these regulations. In those instances, the Variance process provides relief where the proposed development continues to meet the intended purpose of these regulations. Due to the heightened impacts of development and design in the higher intensity Station Community Planning Areas, requests for Variances from the provisions of Section 137 through 142 shall be reviewed by the Planning Commission, rather than by the Planning and Zoning Hearings Board.

B. Standards

1. Variances to the requirements of Sections 137 through 142 need not comply with the criteria in Sections 106 and 107 of this Code, but shall follow the procedure of Sections 108 through 111. Variances to the provisions of Sections 137 through 142 shall be subject to the criteria listed below. The Planning Commission may authorize Variances from the requirements of Sections 137 through 142 and may attach conditions which it finds necessary in order to carry out the purpose and intention of those Code sections.
2. Variance requests by an applicant that has an approved Concept Development Plan as provided in Section 136.VII.B., shall be subject to the provisions of Sections 136.VII.B.2.e. and B.7.b.
3. A Variance may be granted to any development regulation or design standard contained in Sections 137 through 142, excluding those regulations listed in paragraph 5. below, provided the Planning Commission finds that by granting the Variance:
 - a. The adjustment will equally or better meet the purposes of the Station Community Planning Area and of the regulation to be modified;
 - b. The Variance or cumulative Variance adjustments results in a project which is still consistent with the overall purpose and intent of the district; and
 - c. The Variance will not result in significant detrimental impacts to the environment or the natural, historic, cultural or scenic resources of the City.
4. The Planning Commission may approve a Variance from the standards listed below if, in addition to the criteria listed in subsection (B) (3), the proposal meets the following criteria:
 - a) Minimum floor area ratio, minimum residential density, maximum building setback, minimum usable open space, and sidewalk and roadway width requirements. Variances may be permitted to preserve inventoried significant natural, historic and cultural resources, and natural resource areas designated by appropriate State or Federal agencies concerned with wetland and natural resource issues.
 - b) Maximum height requirements. Variances to the height limit cited in Tables 1 of Section 137 may be permitted as provided in Section 137.X.B.3., upon a finding that the overall density of the project will increase, or is required to site a permitted use, and the increased height does not conflict with the height limitations of the FAA or with specific height limits contained in Sections 139 through 142.
 - c) Street and alley grid system layout and maximum block perimeter length. Variances may be granted upon finding that the proposed alternative layout and perimeter length provides for connectivity, is of pedestrian scale and affords equal or better access to and throughout the SCPA.

APPROVAL CRITERIA AND REQUIREMENTS

(CONTINUED - VARIANCE – WITHIN THE LIGHT RAIL ZONES)

- d) Destruction of an existing use. Variances to the development regulations of Sections 137 and the design standards of Section 138 may be granted where an existing dwelling is destroyed by fire or natural disaster upon a finding that the application for Variance pertains solely to those regulations and standards that would otherwise prohibit the reconstruction, in substantial form, of the dwelling at the same location on the lot.
- e) Multiple main building entrances required to be oriented to the street by Section 138.V.3. Variances may be granted to allow a single secured entrance to an establishment upon a finding that the internal security measures which are standard operating procedures of the applicant would be irreparably harmed by this requirement; except in no case shall there be less than one main entrance oriented to the street unless otherwise authorized by an exception contained in Sections 137 through 142.
- f) Ground floor windows. A variance to the percentage of window area required for ground floor windows in building facades adjacent to Major Pedestrian Routes may be allowed upon findings that:
 - 1. such windows would unavoidably compromise necessary personal privacy or security within the building (for example, privacy in a clinic examination room, security in a pharmacy storeroom, or security and privacy in a research and development laboratory);
 - 2. due to the design of the structure or other demonstrable restrictions or constraints, the required personal privacy or security cannot otherwise be provided; and
 - 3. the loss of the window area cannot be recaptured elsewhere on the facade.
- g) Maximum residential densities. Variances to the maximum residential densities specified in Tables 137.1. may be granted upon finding that the existing traffic and infrastructure are adequate to support the increased density, and that the project demonstrates outstanding compliance with the design guidelines of Sections 138, 139, 140, 141, and/or 142, as applicable.)
- 5) Variances under the following circumstances or from the specific development regulations and design standards cited shall not be granted:
 - a) To allow a development project where the proposed residential density or floor area ratio is less than 90% of the minimum density of the district;
 - b) To allow residential densities greater than specified for the district;
 - c) To allow accessory industrial uses to exceed a combined thirty percent (30%) of the net developable area of the campus of a major institution in a SCRP District.
 - d) To allow a development project with less than 85% of the minimum required usable open space;
 - e) To the street and alley performance standards contained in Sections 137.XVI.B.1.;
 - f) To allow surface parking or loading areas between a major pedestrian route and an adjacent building, except as specifically provided in Sections 137 through 142;
 - g) To allow off-street surface parking lots, or commercial service or loading areas outside the public right-of-way to be located or temporarily located or expanded adjacent to, cater-cornered or across the street from a light rail station site;
 - h) To the requirement for pedestrian-related office, service or retail uses on the ground floor of parking structures;
 - i) To the minimum access requirements; and
 - j) To the requirements of Section 138.XII.C., Streetscape Design Standards.

APPROVAL CRITERIA AND REQUIREMENTS

(VARIANCE – MIXED USE ZONE DEVELOPMENT AND DESIGN STANDARDS)

The approval criteria and requirements for a Variance within Mixed Use zones are listed in Section 48A(V)(D) of the Zoning Ordinance as follows:

D. VARIANCES.

The development and design standards in Section 48A are intended to implement the goals and policies of the Comprehensive Plan. Variances to these standards are discouraged. However, some sites may be difficult to develop in compliance with these regulations. In those instances, the Variance process provides relief where the proposed development continues to meet the intended purpose of these regulations.

1. Standards

- a) A Variance by the Planning Commission may be granted to any development regulation or design standard contained in Section 48A, provided the Commission finds that by granting the Variance:
 - i. The adjustment will equally or better meet the purposes of the Mixed Use Districts and of the regulation to be modified;
 - ii. The Variance or cumulative Variance adjustments results in a project which is still consistent with the overall purpose and intent of the district; and
 - iii. The Variance will not result in significant detrimental impacts to the environment or the natural, historic, cultural or scenic resources of the City.
- b) The Planning Commission may approve a Variance from the standards listed below if, in addition to the criteria listed in subsection (D)(1)(a), the proposal meets the following criteria:
 - i. Multiple main building entrances required to be oriented to the street. Variances may be granted to allow a single secured entrance to an establishment upon a finding that the internal security measures which are standard operating procedures of the applicant would be irreparably harmed by this requirement; except in no case shall there be less than one main entrance oriented to a public or private street unless otherwise authorized by an exception contained in this Section.
 - ii. Ground floor windows. A variance to the percentage of window area required for ground floor windows in building facades where required by this Section may be allowed upon findings that:
 - a) such windows would unavoidably compromise necessary personal privacy or security within the building (for example, privacy in a clinic examination room, security in a pharmacy storeroom, or security and privacy in a research and development laboratory);
 - b) due to the design of the structure or other demonstrable restrictions or constraints, the required personal privacy or security cannot otherwise be provided; and
 - c) the loss of the window area cannot be recaptured elsewhere on the facade.

APPROVAL CRITERIA AND REQUIREMENTS

(CONTINUED - MIXED USE ZONE DEVELOPMENT AND DESIGN STANDARDS)

2. Application and Fee

A request for a variance may be initiated by a property owner or authorized agent by filing an application with the *Planning Department*. The applicant shall submit plans to the Commission as provided in Section 119 and shall pay the fee as set in Section 129.

3. Public Hearing on a Variance

Before acting on a request for a variance, the Planning Commission shall consider the variance at a Public Hearing held within 40 days after filing of the application. Not less than 20 days prior to the date of the Hearing, the City Recorder shall give written notice by mail of the hearing to owners of property situated within a 200 foot radius of the boundary of the property subject to the request using for this purpose names and addresses of owners as shown upon the current records of the County Assessor. Failure of a person to receive the notice specified in this Section shall not invalidate any proceeding in connection with the application for a variance.

4. Action of the Planning Commission

The Commission may attach conditions to an authorized variance which it feels are necessary to protect the public interests and carry out the purpose of this Ordinance. The City Recorder shall notify the applicant for a variance, in writing, of the Commission's action within five days after the Commission has rendered its decision.

SUBMITTAL REQUIREMENTS (VARIANCE)

- Completed, Signed Application Form:** Original plus ten (10) copies of the completed, signed application form. The original application form must include a “wet ink” signature from the property owner or authorized agent. This information must be reproduced so please write clearly using black/dark blue ink or type. Twenty-five (25) copies for applications within Mixed Use zone development and design standards and applications requesting a variance from the standards of Section 133 Development Review/Approval of Plans, or Sections 137 through 142 Station Community Planning Areas.
- Site Plans/Narrative:** Original plus ten (10) copies of a site plan and other materials essential to understanding the proposal, as well as a detailed written narrative describing and justifying the variance requested. Twenty-five (25) copies for applications within Mixed Use zone development and design standards and applications requesting a variance from the standards of Section 133 Development Review/Approval of Plans, or Sections 137 through 142 Station Community Planning Areas.
- Clean Water Services (CWS) Service Provider Letter:** One (1) copy of either: A CWS Service Provider Letter, or a determination by CWS or the Hillsboro Engineering Department that a Site Assessment is not necessary.
- Traffic Impact Report:** Original plus three (3) copies of the traffic impact report may be required when the Director determines that the developments’ traffic impacts would cause significant change to the function of adjacent or nearby streets or the flow of traffic thereon. *This requirement should be determined in a pre-application meeting.* The Report shall analyze the impact of the most intensive uses allowed in the applicable zone on City, County and State roads and street systems within at least one (1) mile of the project, to such distance at which traffic impacts have dissipated to less than ten percent (10%) over current conditions. The Report shall be prepared and certified by a registered traffic engineer. For Report requirements see Section 79 of the Hillsboro Zoning Ordinance.
- Electronic Application Packet:** *(in addition to hard copy submittal requirements):* When available, please provide one (1) electronic version of all application materials such as project narrative, site, utility, lighting, and landscaping plans; traffic, geotechnical, and environmental reports (as applicable). Electronic files may be submitted in PDF format on a DVD/CD. Contact the assigned Planner or Planning Technician for additional information or assistance.
- Complete Application Packet Sets:** Submittals should include one complete, original application packet along with the applicable number of copies indicated above. All copies must be folded and collated into complete application packet sets. All plans (full-sized and/or reduced) must be measured to a legible and reasonable scale. Examples of preferred plan scales include:
 - Site plans: 1" = 20' for full-size plans (24" x 36"); 1" = 40' for reduced (11" x 17")
 - Landscape plans: 1" = 20' for full-size plans (24" x 36"); 1" = 10' for detailed plans; 1" = 40' for reduced (11" x 17")
 - Architectural drawings: floor plans, building elevations, and other architectural drawings: ¼" = 1' for full-size plans (24" x 36"); 1/8" = 1' reduced (11" x 17")
- Fee:** The appropriate filing fee. **MAKE CHECKS PAYABLE TO CITY OF HILLSBORO.** Please consult the fee schedule for current fees.

SUBMITTAL RECOMMENDATIONS

- Applicants are advised to schedule a pre-application meeting with Planning staff to discuss request prior to submittal of application.
- Applicants are advised to submit three (3) draft application packages one week in advance of deadline dates for public hearings.

FOR MORE INFORMATION PLEASE CONTACT:

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