



611 Mulberry Road, Suite 300
 Derby, KS 67037
 Phone 316-788-6632
www.derbyks.com

**APPLICATION FOR:
 EXCEPTION**

This form must be completed in accordance with directions on the accompanying instructions and filed with the City Planner or Authorized Agent at Derby City Hall, 611 Mulberry, Derby, Kansas 67037.

AN INCOMPLETE APPLICATION CANNOT BE ACCEPTED

Date: _____

Fee: \$350*¹

** Potentially qualifies for fee waiver,
 contact Derby Planning & Engineering Department
¹ Additional recording fees may apply*

CONTACT INFORMATION

Owner(s) of the property requesting the Exception:

Name: _____

Address: _____

Phone: _____ Email: _____

Primary Contact? Yes ___ No ___ (Please Check)

Agent representing the applicant (if applicable):

Name: _____

Address: _____

Phone: _____ Email: _____

Primary Contact? Yes ___ No ___ (Please Check)

Contract Purchaser (if applicable):

Name: _____

Address: _____

Phone: _____ Email: _____

Primary Contact? Yes ___ No ___ (Please Check)

REQUEST INFORMATION:

1. Requested Exception: _____

2. Zoning District of Property: _____

3. Location:

- a. Address (if assigned): _____
- b. Legal Description: Lot(s) _____, Block _____, _____ Addition
- c. If Property is not platted, a metes and bounds description and location map shall be provided with this application. An Exception will not be officially approved until subject property/ properties have been platted

4. Written Statement: A written statement in compliance with Article 1004.A of the Zoning Regulations is required to accompany this application.

5. Site Layout Plan: A site layout plan indicating the location of the use, parking, screening, landscaping, and utilities in compliance with Article 1004.C of the Zoning Regulations is required to accompany this application.

CERTIFICATION

The undersigned acknowledges and certifies the following:

- 1. They have been advised of the fee requirements established and that the appropriate fee is herewith tendered.
- 2. That the information given herein is correct.
- 3. This application is accompanied by a current ownership list certified by an abstractor for the notification area.
- 4. They have been advised of his/her rights to bring action in the District Court of the County to appeal the decision of the Derby Board of Zoning Appeals.
- 5. That all documents are attached hereto as noted in the instruction.
- 6. That the Derby Board of Zoning Appeals has the authority to require such conditions as are deemed necessary and reasonable in order to serve the public interest.
- 7. That this application cannot be processed unless it is complete and accompanied by all required documents.

Property Owner(s)

Date

Agent (if applicable)

Date

Contract Purchaser (if applicable)

Date

<p>OFFICIAL USE ONLY</p> <p><input type="checkbox"/> Fee <u>OR</u> <input type="checkbox"/> Fee Waived</p> <p><input type="checkbox"/> Certified Ownership List</p> <p><input type="checkbox"/> Written Statement</p> <p><input type="checkbox"/> Site Plan</p> <p>This application has been checked and found to be complete and accompanied by the required documents and the appropriate fee. _____</p> <p style="text-align: center;">City Planner or Authorized Agent</p>	<p><stamp date received></p>
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EXCEPTION APPLICATION INSTRUCTIONS

1. **Eligibility:** The Board of Zoning Appeals is authorized to grant exceptions for the following provisions of the Zoning Regulations:
 - a. Lot Sizes
 - b. Bulk Regulations
 - c. Use Limitations
 - d. Permitted Limitations
 - e. Screening and Landscaping Requirements
 - f. Off-Street Parking and Loading Requirements
 - g. Signs

If a case does not qualify for an exception, the applicant may apply for a variance with the Board of Zoning Appeals.

2. **Application:** An application form for an exception must be completed and signed by all the property owners their authorized agent(s) (if applicable), and/or contract purchasers/lessees (if applicable) and filed with the City Planner or their Authorized Agent. If spaces on the application ask for information that is not applicable to the request, then such spaces shall be marked N/A. Applicants are advised that the Board of Zoning Appeals is authorized only to grant exceptions which are specifically provided for by the Zoning Regulations (see Article 1004 of the Zoning Regulations).

In order for an application to be scheduled, it must be filed with the City Planner or Authorized Agent, by one of the specific “closing dates” established by the Board of Zoning Appeals. A copy of the “closing dates” may be obtained upon request.

All exception applicants are encouraged to meet with applicable City staff prior to filing an exception application. The purpose of the pre-application conference is to provide staff and the applicant an opportunity to discuss all forthcoming steps and any other applications or steps that may be necessary prior to commencement of a specific building project.

3. **Legal Description:** The legal description provided on the application must be accurate. Should it be discovered during processing the case that the legal description used for required public notices is inaccurate, then the notice shall be considered null and void and the notification process, required by State Law, must be started over. This will necessitate the repayment of the application fee. In this regard, at least 20 days must elapse between the date the legal notice is published and the public hearing date. Also, at least 20 days must elapse between the date of mailing notices to persons listed on the ownership list and the hearing date.
4. **Ownership List:** Applicants must submit a current ownership list certified by a licensed land abstractor. The ownership list shall include names, mailing addresses and zip codes of all landowners within 200 feet of the boundary of the area described in the application if within the city limits. If such area is located adjacent to the city limits, the ownership list, in addition to the 200 feet inside the city limits, shall also provide the names, mailing addresses and zip codes of all landowners extending 1,000 feet into the unincorporated area (see section 1003.B “Notice and Hearing”).

5. **Fee:** The application must be accompanied by a filing fee of \$350.00. A project may qualify for a fee waiver, contact Derby Planning & Engineering department for more information.
6. **Public Hearing Sign:** A sign advertising the date, time, location, and purpose of the public hearing shall be posted on the subject property a minimum of 20 days prior to the public hearing date. The sign shall remain onsite and continually displayed for the general public's viewing until after the public hearing.
7. **Written Statements Required:** In accordance with Section 1004.A of the zoning regulations, the applicant shall submit written statements explaining:
 - a. How compliance with limitations and/or special conditions or requirements imposed by the Zoning Regulations prevent the proposed use or construction.
 - b. Why the proposed exception will not cause substantial injury to the value of other property in the neighborhood;
 - c. How the proposed exception is to be designed, arranged and operated in order to permit the development and use of neighboring property in accordance with the applicable regulations; and
 - d. Present other data which supports the standards specified in Section 1004.D (attached).
8. **Site Plan Required:** In order to demonstrate how the subject property will be developed if the requested exception is approved, a site plan depicting the particulars of the exception shall be submitted with the application. The site plan shall be drawn to scale and shall indicate how the proposed exception will meet the requirements of the zoning regulations and the development standards referenced in Section 1004.E (attached).
9. **Additional Materials:** Information such as photographs, renderings, landscaping/screening plans or other reports may be submitted and/or required by the City Planner or Authorized Agent along with the site plan. Such materials will be made a part of the case file and become public record.
10. **Public Hearing:** The Board of Zoning Appeals will hold the public hearing advertised in the official notices in accordance with State law. At the meeting, the applicant(s) will be provided time to offer a statement along with members of the general public. Staff will present the written findings of fact and the Board will deliberate. The standards for an exception are attached for reference (Article 1004.D).

The Board will adopt a resolution to approve or deny the exception request. The Board may attach additional conditions of approval to the exception request. A copy of the resolution will be provided to the applicant(s) by City staff. If approved, the applicant may proceed with applying for necessary building and zoning permits for construction of the project for which the exception was requested. The applicant is required to abide by any and all conditions of approval made by the Board of Zoning Appeals.

11. **Deferral of the Public Hearing:** The applicant may, prior to or at the advertised Public Hearing, request that the Board's recommendation on the merits of their application be deferred or tabled until an upcoming meeting of the Board. Approval of any such request shall be at the discretion of the Board of Zoning Appeals. If the Board determines a deferral or tabling of action on an Exception request is appropriate, then the required Public Hearing shall be continued to a date and time that is certain in the future. Such future date and time for continuation of the advertised

Public Hearing will be stated as part of the Board's action to table or defer consideration of a rezoning case.

12. **Period of Validity & Extension:** An exception approved by the Board of Zoning Appeals shall lapse and become ineffective if the exception is not commenced upon the property within 180 days and/or continuously maintained on the property thereafter. The Board may grant additional extensions not exceeding 180 days each, upon written application, without further notice and hearing.

Section 1004.D. Derby Zoning Regulations
(Excerpt from Article 1004 of the Zoning Regulations)

D. Standards. The Board may grant an exception based upon specific written findings of fact made after consideration of the request and any comments and/or evidence presented to the Board before and during the hearing provided in accordance with subsection C above in light of relevant factors, including but not limited to the following:

1. The proposed exception will not cause substantial injury to the value of other property in the neighborhood.
2. The location and size of the use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the exception will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.
3. Adequate utility, drainage, sidewalks and other such necessary facilities have been installed or will be provided by platting, dedications and/or guarantees.
4. Adequate access roads, entrance and exit drives and/or access control is available or will be provided by platting, dedications and/or guarantees and shall be designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
5. The exception will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.
6. Orderly land use planning will be achieved in keeping with the goals and proposals of the Comprehensive Plan.
7. An alternative approach accomplishes the general spirit and intent of the provision in a manner that is equal to or better than strict compliance with the provision.
8. Strict compliance with the provision is not feasible due to topography, existing development, or a natural area or feature or constitutes an unnecessary hardship upon the property owner.
9. The proposed exception arises from such a condition that is unique to the property and that is not ordinarily found in the same zone or district.
10. The proposed exception would be compatible with existing or permitted uses in surrounding areas.