



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

**APPLICATION FOR:
 VARIANCE FROM ZONING
 REGULATIONS**

The 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: \$350.00*¹

**Potentially qualifies for fee waiver, contact Derby Planning & Engineer Department for qualifications.*

¹Additional recording fees may apply

CONTACT INFORMATION

Owner(s) of the Property Requesting the Variance:

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 Variance** (*Describe Request*): _____

2. **Relief from:** Article _____, Section _____

3. **Zoning District of Property:** _____

4. **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.

5. **Written Statement:** A written statement in accordance with the attached instructions shall be included with this application.

6. **Site Plan & Additional Information:** A site plan, drawings, photographs, and additional documentation in accordance with the attached instructions shall be included with 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>_____ City Planner or Authorized Agent</p>	<p><stamp date received></p>
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VARIANCE APPLICATION INSTRUCTIONS

1. **Application:** An application form for a variance 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 variances in accordance with the provisions of Section 1003 of the Zoning Regulations (attached).

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 variance applicants are encouraged to meet with applicable City staff prior to filing an variance 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.

2. **Legal Description:** The legal description provided on the application must be accurate. Should it be discovered that the legal description included as part of public notices is inaccurate, the Zoning Administrator may declare that notices are null and void and that the notification process, required by State Law, must be started over again. 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.
3. **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").
4. **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.
5. **Public Hearing Notice:** Notice of public hearing by the Board of Zoning Appeals will be published in the official city newspaper so that at least 20 days elapse between the date of publication and hearing date. Notices of the hearing will also be mailed to all property owners on the ownership list, the appellant and the Secretary of the Planning Commission so that at least 20 days shall elapse between the mailing date and the hearing date.
6. **Public Hearing Sign:** A sign advertising the date, time, location, and purpose of the public hearing shall be posted on the property subject to rezoning 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 1003.A of the zoning regulations, the applicant shall submit written statements explaining:
 - a. The particular requirements of the regulations which prevent the proposed use or construction.
 - b. The characteristics of the requested property which prevent compliance with the requirements of the regulations.
 - c. The reduction of the minimum requirements of the regulations which would be necessary to permit the proposed use or construction; and
 - d. The particular hardship which would result if the non-varied requirements of the regulations were applied to the subject property.

- e. When seeking a variance from the Floodplain Management provisions of 17.08 of the Derby Municipal Code, all such data, evaluations, or other information specified in section 17.08.080(E) of said Municipal Code shall be addressed.
8. **Site Plan Required:** In order to demonstrate how the subject property will be developed if the requested variance is approved, a site plan depicting existing structures and the structures proposed which necessitate the request. The site plan shall be drawn to scale, include all appropriate dimensions, and any other information which assist staff and the Board in reviewing the request. Additional information may include photographs, drawings, renderings, and/or reports. Such materials will be made a part of the case file and become public record.
9. **Additional Information:** 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 shall hold the public hearing advertised in the official notices in accordance with State law. At the meeting, the applicant(s) shall 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 shall deliberate. The Findings of Fact are as follows:
 - a. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.
 - b. That the granting of the variance will not adversely affect the rights of adjacent property owners or residents.
 - c. That the strict application of the provisions of the regulations of which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
 - d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.
 - e. That granting the variance will not be opposed to the general spirit and intent of the regulations.

The Board shall adopt a resolution to approve or deny the variance request. The Board may attach additional conditions of approval to the variance 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 variance 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 & Extensions:** An approved variance shall lapse and become ineffective if the variance is not commenced upon the property within 180 days and/or continuously maintained on the property thereafter; provided, that the Board may grant additional extensions not exceeding 180 days each, upon written application, without further notice or hearing.

Section 1003 Variances (Excerpt from Article 10 of the Zoning Regulations)

When deemed necessary by the Board, the Board may also grant variances from these regulations, in accordance with the requirements of K.S.A. 12-759(e), to authorize in specific cases a variance from the specific terms of these regulations which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of these regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done.

A. Application. An application for a variance by a property owner shall be filed with the Zoning Administrator, provide the legal description of the property involved with the variance, be accompanied by a certified ownership list of property owners for notification as required by subsection B below and the filing fee, and contain the following information as well as such additional information as may be requested by the Board:

1. The particular requirements of these regulations which prevent the proposed use or construction;
2. The characteristics of the requested property which prevent compliance with the requirements of these regulations;
3. The reduction of the minimum requirements of these regulations which would be necessary to permit the proposed use or construction; and
4. The particular hardship which would result if the non-varied requirements of these regulations were applied to the subject property.

B. Notice and Hearing. Upon receipt of a complete application, the Board shall then fix a reasonable time for the hearing concerning such application for a variance. Notice of the time, place and subject of such hearing, and the legal description or a general description sufficient to identify the property under consideration shall be published once in the official newspaper so that at least 20 days shall elapse between the date of such publication and the date for the hearing. Additionally, for land inside the city limits, the Board shall also provide notice to all owners of record of lands located within 200 feet of the exterior boundary of the property under consideration. If the applicant's property is located adjacent to but within the city limits, the area of notification in addition to the 200 feet inside the City, shall be extended to 1,000 feet in the unincorporated area. Such notice shall be mailed so that at least 20 days shall elapse between the mailing date and the hearing date. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available when only a general description of the property is provided in the notice. Failure to receive such notice after it has been properly addressed and deposited in the mail shall not invalidate any subsequent action taken by the Board.

C. Standards. A request for a variance may be granted in compliance with subsection A above, upon a finding by the Board that all of the following conditions have been met: (A) That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant; (B) that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents; (C) that the strict application of the provisions of these regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application; (D) that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and (E) that granting the variance desired will not be opposed to the general spirit and intent of these regulations.

D. Conditions. In granting a variance, the Board may attach such conditions upon the property and/or the applicant benefited by the variance it deems necessary to address issues raised during the

application and hearing process. The variance is subject to ongoing compliance with these conditions and shall lapse and become ineffective if such conditions are not continually complied with.

- E. Decision.** The Board shall render and issue a written decision to the applicant in the form of a variance to be filed with the Sedgwick County Register of Deeds Office or a written denial of the requested permit containing specific findings of fact to be filed with the application within 45 days from the close of the hearing.
- F. Period of Validity.** A variance issued pursuant to these regulations shall lapse and become ineffective if the variance is not commenced upon the property within 180 days and/or continuously maintained on the property thereafter; provided, that the Board may grant additional extensions not exceeding 180 days each, upon written application, without further notice or hearing.