

## VARIANCE

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### GENERAL PROCEDURE

- Variance applications are subject to Article 12 of the Zoning Regulations and Article 9 of the Procedures Manual available on the City website.
- Arrange for a pre-application meeting with staff
- Submit completed application, \$100 fee & other documentation by deadline
- Staff notifies applicant within one week if application is incomplete
- Staff schedules meeting with the Board of Zoning Appeals
- Applicant notifies surrounding property owners within 200-feet by certified letter concerning the request and the date/time of the meeting.
- Staff comments sent to the BZA and the applicant five days prior to the meeting.
- The determination of the BZA is final and can only be appealed to the District Court.

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### REQUIRED SUBMITTALS

- Eight (8) copies of sketch map and information detailing why a variance from the regulations is necessary.
- A buffer list & map of surrounding owners within 200-feet (or 1,000 feet if property owners are outside of city limits). You can obtain this from the Johnson County Dept. of Records, 111 S. Cherry St, Suite 1200, Olathe, KS.
- Certified letter receipts from notification letters (template attached) sent to surrounding property owners. Letters must be mailed at least 20 days prior to the Board of Zoning Appeals meeting.
- A written statement to the Board justifying the variance requested, indicating specifically the provisions of the Zoning Regulations from which the variance is requested.

\*\*Failure to submit all of the required documentation may result in delay of the Board meeting.

## CITY CONTACTS (913) 583-1182

Linda Bohnsack  
City Planner, ext 115  
lbohnsack@desotoks.us

Mike Brungardt  
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Kevin Ritter  
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## 2009 APPLICATION REVIEW SCHEDULE

The Board of Zoning Appeals meets on an 'as needed' basis. When an application is received staff will schedule a meeting. Generally, it will be held on a Tuesday evening approximately 4-5 weeks following the submittal of an application. Meetings are held in the Council Room at City Hall, 32905 W. 84<sup>th</sup> Street in De Soto.

Application Submittal Deadline	Notification Date	Board of Zoning Appeals Meeting
Approximately 4 weeks prior to meeting date	Minimum 20 days prior to meeting date	3 <sup>rd</sup> Tues or as Available

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## ARTICLE 9 – VARIANCE PROCEDURE

When an applicant feels that the strict application of the requirements of the zoning regulations would create an undue hardship, he or she may request a variance from the Board of Zoning Appeals. The Board of Zoning Appeals must base its decision, to as great a degree as possible, on factual evidence, and not the personal opinion of the applicant, neighbors, or others. The request for a variance should be based on a conflict between the restrictions on the development of the property due to the zoning ordinance and the restrictions on the development of the property due to its physical characteristics. A variance should be issued only to the specific restrictions on physical construction and not to the list of permissible land uses within a given zone.

- The applicant shall first meet with planning staff and receive a complete explanation of the zoning requirement in question, the variance procedure, and an application form. (Application on page 35)
- The applicant shall submit a completed application form and pay the appropriate fee. As a part of the application, a sketch map shall be submitted showing proposed and existing structures and uses on the property for which the variance is being requested and on immediately adjacent properties. An application shall not be processed unless it has been fully completed, the fee paid, and all required information submitted.

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**IMPORTANT:** Review Zoning Regulations, Article 12 and Procedures Manual, Article 9 available at [www.desotoks.us](http://www.desotoks.us), Online Documents and Regulations

- Planning staff shall schedule a regular meeting of the Board of Zoning Appeals and send copies of the application to Board of Zoning Appeals members upon receipt of a fully completed application. Twenty (20) days prior to the Board of Zoning Appeals meeting, an official notice to the public shall be published in a newspaper of general circulation in the City explaining the variance request and the time and place of the scheduled hearing.
- At the scheduled meeting, the Board of Zoning Appeals shall hear all facts and testimony from all parties wishing to be heard concerning the requested variance. In each case, the Board of Zoning Appeals shall not grant a variance unless it finds, based on the evidence presented, facts which conclusively support all of the following findings:
  1. *UNIQUENESS*  
The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by actions of the property owners or applicant. Such conditions include the peculiar physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.
  2. *ADJACENT PROPERTY*  
The granting of the variance will not be materially detrimental or adversely affect the rights of adjacent property owners or residents.
  3. *HARDSHIP*  
The strict application of the provisions of the zoning regulations from which a variance is requested will constitute an unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be a sufficient reason by itself to justify the variance.
  4. *PUBLIC INTEREST*  
The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.
  5. *SPIRIT AND INTENT*  
Granting the requested variance will not be opposed to the general spirit and intent of the zoning regulations.
  6. *MINIMUM VARIANCE*  
The variance requested is the minimum variance that will make possible the reasonable use of the land or structure.

Minutes of the public meeting, including evidence presented during the proceedings and the findings of the Board of Zoning Appeals, shall be kept. The Board of Zoning Appeals may grant, grant conditionally, or deny the application for a variance. The Board of Zoning Appeals' written determination shall be sent to all affected parties, including the Planning Commission.

VARIANCE APPLICATION  
BOARD OF ZONING APPEALS

Return Form to:  
City of De Soto Planning Department  
P.O. Box C, 32905 W. 84th Street  
De Soto, KS 66018  
(913) 583-1182 ext. 115  
Fax: (913) 583-3123

For Office Use Only

Case No.: \_\_\_\_\_  
Filing Fee: \_\_\_\_\_  
Deposit: \_\_\_\_\_  
Date Advertised: \_\_\_\_\_  
Date Notices Sent \_\_\_\_\_  
Public Hearing Date: \_\_\_\_\_

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APPLICANT: \_\_\_\_\_ PHONE: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_ FAX: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ ZIP: \_\_\_\_\_  
OWNER: \_\_\_\_\_ PHONE: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_ FAX: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ ZIP: \_\_\_\_\_  
LOCATION OF PROPERTY: \_\_\_\_\_  
LEGAL DESCRIPTION: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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TO BE COMPLETED FOLLOWING CONSULTATION WITH PLANNING STAFF:

Section of Zoning Ordinance from which Variance is Requested: \_\_\_\_\_  
\_\_\_\_\_

Adjacent Zoning and Land Use:

	<u>Zoning</u>	<u>Land Use</u>
North	_____	_____
South	_____	_____
East	_____	_____
West	_____	_____

Present Zoning/Land Use of Property: \_\_\_\_\_  
Proposed Use of Property: \_\_\_\_\_  
Utility lines or easements that would restrict proposed development:  
\_\_\_\_\_  
\_\_\_\_\_

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Please indicate below the extent to which the following standards are met, in the applicant's opinion. When answering the questions below, please provide full, complete, descriptive answers. Bear in mind that it is the function of the Board to investigate completely any proposed adjustment to how the regulations are applied to your property, to be sure that it is the least change necessary, and that it will not have a negative affect upon the surrounding property owners and property values.)

1. **UNIQUENESS** \_\_\_ Yes \_\_\_ No

The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by actions of the property owners or applicant. Such conditions include the peculiar physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.

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2. **ADJACENT PROPERTY** \_\_\_ Yes \_\_\_ No

The granting of the variance will not be materially detrimental or adversely affect the rights of adjacent property owners or residents.

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3. **HARDSHIP** \_\_\_ Yes \_\_\_ No

The strict application of the provisions of the zoning regulations from which a variance is requested will constitute an unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be a sufficient reason by itself to justify the variance.

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4. **PUBLIC INTEREST** \_\_\_ Yes \_\_\_ No

The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

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5. **SPIRIT AND INTENT** \_\_\_ Yes \_\_\_ No

Granting the requested variance will not be opposed to the general spirit and intent of the zoning regulations.

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6. **MINIMUM VARIANCE** \_\_\_ Yes \_\_\_ No

The variance requested is the minimum variance that will make possible the reasonable use of the land or structure.

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SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**SAMPLE MEMO FROM APPLICANT TO THE BOARD OF ZONING APPEALS**

Date: \_\_\_\_\_

(Please print)

Applicant's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Applicant \_\_\_\_\_

To: City of De Soto Board of Zoning Appeals

Re: Variance Request

Listed below is the information requested by City staff in connection with my/our request for a Variance from the \_\_\_\_\_ regulations. This variance is needed because: \_\_\_\_\_

1. **Uniqueness.** *(What physical surroundings, shape, or topographical conditions make this property unique or different from others and creates a practical difficulty or unnecessary hardship in meeting this regulation).*
2. **Adjacent Property.** *(Will varying the regulation be detrimental or adversely affect the rights of adjacent property owners or other residents of the City)*
3. **Hardship.** *(What type of hardship would result in strict application of the regulations)*
4. **Public Interest.** *(Why will the variance not have an adverse affect upon the public health, safety, morals, order, convenience, or general welfare of De Soto)*
5. **Spirit and Intent.** *(How will the spirit and intent of the regulations be met with the Variance)*
6. **Minimum Variance.** *(Request is for the minimum variance necessary for proposed use)*

Sincerely,

\_\_\_\_\_  
(Applicant's Name)  
(Business Name)

**SAMPLE LETTER OF NOTIFICATION FOR VARIANCE APPLICATION**

**(Current Date)**

**(Name of adjacent Property Owner)**  
**(Address)**  
**(City, State, Zip)**

Dear **(insert name)**:

Notice is hereby given that a request for a Variance from the Zoning Regulations has been filed with the De Soto Board of Zoning Appeals. Said Variance would apply to property located at:

**(insert address and general description of the location of the property, i.e.—8228 Lexington Avenue, located about 400 feet West of the intersection of 82<sup>nd</sup> Street and Lexington Avenue.)**

The zoning of the property is **(insert zoning district)** District.

The current regulations state the following: **(insert regulation(s) in dispute)**

If the Variance request is approved, the regulations will be adjusted as follows for the above described property only: **(insert desired adjustment to the regulations)**

The De Soto Board of Zoning Appeals will consider this application at their meeting at **(insert time)** p.m. on **(insert meeting date)** at City Hall, located at 32905 West 84<sup>th</sup> Street in De Soto, Kansas. As provided by City zoning regulations, you are being notified because this action may have an affect upon property under your ownership, which is within 200 feet (or **1000 feet** if in the unincorporated area of the County) of the property under consideration. All persons interested in this application may be heard by the Planning Commission during their consideration of this application.

The complete request is available for inspection in the Community Development office at City Hall between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday. For additional information, please see the City website at [www.desotoks.us](http://www.desotoks.us) or contact Linda Bohnsack, the city planner at (913)583-1182, ext. 115 or by email at [lbohnsack@desotoks.us](mailto:lbohnsack@desotoks.us) .

Sincerely,

\_\_\_\_\_  
**(Insert applicant's name & signature)**

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