

ARTICLE 9

VARIANCE

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.
- 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.

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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:

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

TO BE COMPLETED FOLLOWING CONSULTATION WITH PLANNING STAFF:

Section of Zoning Ordinance from which Variance is Requested:

Adjacent Zoning and Land Use:

Table with 2 columns: Zoning, Land Use. Rows for North, South, East, West.

Present Zoning/Land Use of Property:

Proposed Use of Property:

Utility lines or easements that would restrict proposed development:

City of De Soto Procedures Manual

Article 9—Variance

Please indicate below the extent to which the following standards are met, in the applicant's opinion.
The applicant shall provide explanations on a separate sheet.

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.

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.

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.

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.

5. *SPIRIT AND INTENT* ___ Yes ___ No

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

6. *MINIMUM VARIANCE* ___ Yes ___ No

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

SIGNATURE: _____

DATE: _____

BY: _____

TITLE: _____

VARIANCE
DETERMINATION OF THE 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.: _____
Date of Action: _____
Action: _____

On _____, 20_____, the City of De Soto Board of Zoning Appeals, at its regular meeting, _____(Action: Approved, Conditionally Approved, Denied) the variance requested from Section _____ of the Zoning Ordinance for the property at _____ (Address or Location) as requested by _____ (Applicant).

REASONS FOR DETERMINATION:

In _____ (Action) this request, the Board of Zoning Appeals found that the variance (did/did not) fulfill the necessary six conditions for variance approval. Specifically, the Board of Zoning Appeals found: _____

Findings of Board of Zoning Appeals on each of the following conditions:

Table with 3 columns: Condition (a-f), Approved, Denied. Rows include Uniqueness, Adjacent Property, Hardship, Public Interest, Spirit and Intent, Minimum Variance.

Conditions (if any): _____

Please call the Community Development Office at 583-1182 ext. 115 with any questions.

City Clerk

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