



City of Derby
Application for a Conditional Use Under the Zoning Regulations

DATE: _____

FEE: \$350.00

This is an application for a Conditional Use. The form must be completed in accordance with directions on the accompanying instructions and filed with the Zoning Administrator at 611 Mulberry, Suite 300, Derby, KS 67037-3533.

Name of Applicant _____

Address _____ Phone _____

Name of agent (if applicable) _____

Address _____ Phone _____

Relationship of applicant to property is that of (owner, tenant, lessee, etc.)

Application is made for a conditional use as an exception as provided for in Section 10-1008 of the City Zoning Regulations to permit the establishment of:

For property located at _____

And legally described as _____

In the City which is zoned as the _____ District.

The applicant herein or his/her authorized agent acknowledges:

1. That he/she has received instruction material concerning the filing and hearing of this matter;
and
2. That he/she has been advised of the fee requirements established and that the appropriate fee is herewith tendered; and
3. That he/she has 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; and
4. That all documents are attached hereto as noted in the instruction; and
5. 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.

CONDITIONAL USE APPLICATION INSTRUCTIONS

1. An application form for a **conditional use** must be completed and signed by all the property owners or by their authorized agent(s) and filed with the Zoning Administrator (or Board of Zoning Appeals Secretary). 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 conditional uses which are specifically provided for by the Zoning Ordinance.
2. **It is very important that the legal description provided on the application be accurate.** Should it be discovered, during the processing of the case, that the legal description contained in required public notices is inaccurate, then the notice shall be considered null and void and the notification process must be started again. In this regard, at least 20 days times must elapse between the date the legal notice is published and the Public Hearing date. Also, at least 20 days times must elapse between the date of mailing notices to persons listed on the ownership list and the hearing date. **As one can see, starting the notification process a second time because of an inaccurate legal on the application will cause the applicant a substantial time delay.**
3. **The application must be accompanied by a current ownership list certified by a licensed abstractor.** The names, mailing addresses and zip codes of nearby property owners shall be provided in accordance with Section 1003 of the Zoning Ordinance.
4. **The application must be accompanied by a filing fee of \$50.00.**
5. The Board of Zoning Appeals meets one a month to consider conditional use applications. **In order for an application to be scheduled it must be filed with the Zoning Administrator at least 25 days prior to the regular meeting date of the Board of Zoning Appeals.**
6. **Deferral of the Public Hearing before the Board of Zoning Appeals** - It is the policy of the Board that any **requests for the Board to defer their consideration of a conditional use case be submitted to the Zoning Administrator at least five days preceding the advertised Public Hearing date.** If, at the discretion of the Board, a deferral request is granted, then notices of such deferral and of the next hearing date will be mailed to those who received the original notice of the Public Hearing. Applicants requesting a deferral, will be charged the cost of preparing and mailing new notices of Public Hearing.
7. **Statement Required** - In accordance with Section 1008(A)(2) of the Zoning Ordinance, the applicant shall submitted a written statement as to why the proposed conditional use will not cause substantial injury to the value of other property near the conditional use location.
8. **Site Plan Required** - In order to demonstrate how the subject property will be developed, if the requested conditional use application is approved, a Site Plan depicting the particulars of the conditional use shall be submitted with the application. This Site Plan shall be drawn to scale and shall indicate how the proposed conditional use will meet the requirements of the Zoning Ordinance and the development standards referenced in Section 1008(C). At the applicant's discretion, information such as photographs, renderings, planting plans or reports may be submitted in addition to the Site Plan, however, such additional information may, at the discretion of the Board, become the property of the Board and a part of the case file.

1008 CONDITIONAL USES AUTHORIZATION.

The Board may grant, as an exception to the provisions of these regulations, the establishment of only those conditional uses that are expressly authorized to be permitted in a particular zoning district or in one or more zoning districts. No such conditional use shall be granted unless it complies with all of the applicable provisions of these regulations.

A. Application. An application for a conditional use shall (1) be filed with the Zoning Administrator (2) provide the legal description of the property involved with the conditional use, (3) be accompanied by a certified ownership list as required by Section 10-1003 and the filing fee, and (4) contain the following information as well as such additional information as may be prescribed by rule of the Board:

1. A statement or diagram showing compliance with any special conditions or requirements imposed upon the particular conditional use by the applicable district regulations in Section 10-1008(D) if applicable;
2. A statement as to why the proposed conditional use will not cause substantial injury to the value of other property in the neighborhood;
3. A statement as to how the proposed conditional use is to be designed, arranged and operated in order to permit the development and use of neighboring property in accordance with the applicable district regulations; and
4. Present data in support of the standards specified in Section 10-1008(C).

B. Hearing and Notice. A hearing on the application for a conditional use shall be held and notice thereof given as specified under Sections 10-1003 and 1004.

C. Standards. The Board may grant a conditional use when it makes specific written findings of fact based upon the particular evidence presented to it at the hearing which support conclusions that:

1. The proposed conditional use complies with all applicable regulations, including lot size requirements, bulk regulations, use limitations and performance standards, unless a concurrent application is in process for a variance.
2. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood.
3. The location and size of the conditional 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 conditional use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:

- a. The location, nature and height of buildings, structures, walls and fences on the site; the hours of operation; and
 - b. The nature and extent of landscaping and screening on the site.
4. Off-street parking and loading areas will be provided in accordance with the standards set forth in Article 5 of these regulations. Such areas may be screened from adjoining residential uses and located so as to protect such residential uses from injurious effects.
 5. Adequate utility, drainage, sidewalks and other such necessary facilities have been installed or will be provided by platting, dedications and/or guarantees.
 6. 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 so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
 7. Adequate fire and police protection will be provided which promotes the safety of individuals and property.
 8. Orderly land use planning will be achieved in keeping with the goals and proposals of the Comprehensive Plan.

D. Conditions. In granting a conditional use, the Board may attach such conditions upon the premises and/or the applicant benefitted by the conditional use as may be necessary to comply with the standards set out in Section 10-1008(C) in order to reduce or minimize any potentially injurious affect upon other property in the neighborhood and to carry out the general purpose and intent of these regulations. Such conditions may include, but not limited to, further restrictions on bulk regulations; time of operation and ownership limitations; screening, landscaping and fencing; provision of utilities, drainage, sidewalks and other public improvements; additional access or access control; off-street parking and loading requirements; and platting, dedications and/or guarantees. In addition to the guarantees referred to below for parking and/or screening, covenants which run with the land or the property to guarantee that conditions will be carried out at a future date may be filed with the County Register of Deeds. After a zoning permit and/or occupancy certificate is issued for

the conditional use, failure to comply with any of the conditions placed on such use shall constitute a violation of these regulations.

In lieu of actual construction of a required off-street parking or the initial provisions for screening, the Board may accept, in the name of the City, a corporate surety bond, cashier's check, escrow account or other like security in an amount to be fixed by the Board and conditioned upon actual completion of such improvement within a specified time. Such securities shall be filed with the Clerk. The Governing Body may enforce such securities by all equitable means.

E. Decisions and Records. The Board shall render a written decision in the form of a resolution containing specific findings of fact on an application for a conditional use without unreasonable delay after the close of the hearing, but in all cases within 45 days from the close of the hearing. The Zoning Administrator shall maintain complete records of all actions of the Board with respect to applications for conditional uses.

F. Period of Validity. No conditional use granted by the Board shall be valid for a period longer than 180 days from the date on which the Board grants the conditional use, unless within such period:

1. A zoning permit is obtained and the requested conditional use is started: or
2. An occupancy certificate is obtained and a use commenced.

The Board may grant additional extensions not exceeding 180 days each, upon written application, without further notice of hearing.