

**CITY OF MERRIAM, KANSAS**  
**COMMUNITY DEVELOPMENT DEPARTMENT**

**Procedures for VARIANCES or APPEALS to the Board of Zoning Appeals**

The City of Merriam has adopted a Zoning Ordinance which regulates the use of land within the City of Merriam. All property in the City has been classified within one of the Zoning Districts for which requirements have been established in the Zoning Ordinance. The Zoning Ordinance specifies what uses of land are allowed within each Zoning District, and establishes standards for the placement of structures, accessory uses, lot sizes, yards, fences, signs, off-street parking and other requirements. The Zoning Ordinance also specifies certain uses, including Home Occupations, which may be permitted as Conditional Uses in each Zoning District.

In certain circumstances where Unique Conditions exist and where the strict application of the regulations would impose an undue hardship, a variance may be requested from the Board of Zoning Appeals. Where a person believes that an error has been made in the enforcement of the regulations, an Appeal may be made to the Board of Zoning Appeals.

**Procedures:**

1. Application:

An Application for a VARIANCE or an APPEAL is included with these instructions. The Applicant Information and Property Information sections must be filled-in completely. The complete correct legal description of the property must be provided. If the legal description requires more space than provided on the form, it may be provided on a separate sheet attached to the application. The Section which addresses Conditions for Variances must be answered completely. The application must be signed by the owner(s) of the property, or a properly executed power of attorney which authorizes action on behalf of the owner(s) must be filed with the application.

2. Fees:

The Zoning Ordinance specifies the required fee for an application for a VARIANCE is \$100. The Application will be accepted for processing by the Community Development Department only after the fee has been paid.

3. Publication of Notice:

State law requires that a legal notice be published one time in the official City newspaper at least 20 days prior to the date the Board of Zoning Appeals will hold a public hearing on the application. The City will prepare and place the Notice of Public Hearing in the newspaper.

4. Notification of Surrounding Property Owners:

The City Code also requires that the owners of all property located within two hundred (200) feet of the property for which a re-zoning or conditional use is sought, be notified no less than 10 days prior to the date of the hearing.

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- a. The Community Development Department will provide the applicant a copy of the Legal Notice to be published in the newspaper. Copies of this notice must be mailed to the surrounding property owners. The applicant may also add a cover letter to be mailed with the notice.
- b. The applicant must obtain a list of the owners of all of the property located within 200 feet. This list may be obtained from the Johnson County Clerk's Office, County Square, Administration Building, 111 S. Cherry Street, Olathe, Kansas, or may be provided by a Title Company.
- c. The applicant must mail, by CERTIFIED MAIL - RETURN RECEIPT REQUESTED, a copy of the Notice of Public Hearing to each owner of property located within 200 feet of the property. These notices must be mailed no later than 10 days prior to the date of the public hearing. You may include a cover letter explaining your request with the notice if you wish. The list of property owners obtained from the Appraisal Office and the proof of mailing provided by the Post Office must be provided to the Community Development Department prior to the hearing.

5. Notice Placed on the Property:

The Community Development Department will provide a poster to the applicant which provides notice that an application has been filed for a Variance or Appeal. This poster must be posted on the property, facing the street so as to be visible to the public.

6. Schedule:

The process of considering an application for a Variance or Appeal use requires a minimum of approximately one (1) month. The Board of Zoning Appeals meets the second Monday of each month when it has business to conduct. Generally, applications filed by the second Monday of any month will be considered by the Board of Zoning Appeals during their meeting the following month. The Community Development Department can provide a complete schedule for the processing of applications each month.

7. Variance Powers:

The powers of the Board of Zoning Appeals to grant variances are contained in state law at K.S.A. 12-759(e) and in Section 20-27 (c) of the Merriam Code, as follows:

**“When deemed necessary by the board of zoning appeals, the board may grant variances and exceptions from the zoning regulations on the basis and in the manner hereinafter provided: (1) to authorize in specific cases a variance from the specific terms of the regulations which will not be contrary to the public interest and where due to special conditions, a literal enforcement of the provisions of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done.”**

Section 20-27(c) further sets forth specific findings of fact which shall be made by the board in order to grant a variance, as follows:

**“A request for a variance may be granted in such case, 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 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 the zoning regulations of which variance is requested will constitute undue 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 the granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations...”**

8. Additional Information:

Additional information is contained in the Zoning Ordinance. A copy of the Zoning Ordinance may be purchased from the City Clerk's office. If you have questions or wish to file an application for a Variance or Appeal you should contact:

The City of Merriam  
Community Development Department  
9000 W. 62nd Terrace  
Merriam, Kansas 66202  
Phone (913) 322-5520  
Fax (913) 322-5505

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**ALL PROPERTY OWNERS ARE ENCOURAGED TO REVIEW THE ZONING ORDINANCE AND DISCUSS THEIR SPECIFIC SITUATION WITH THE COMMUNITY DEVELOPMENT STAFF PRIOR TO FILING AN APPLICATION FOR A VARIANCE OR AN APPEAL.**