



ACCESSORY DWELLING UNITS REGULATIONS

**Johnson County, Kansas
Resolution No. 009-13 Adopted March 7, 2013**

Article 18: ACCESSORY STRUCTURES, BUILDINGS AND USES

Section 7. ACCESSORY USES IN GENERAL

D. Accessory Dwelling Uses:

1) Purpose and Intent:

- a. The general purpose and intent of allowing Accessory Dwelling Units (ADU) in the unincorporated portion of the County is to:
 - 1) Allow life-style choices in single-family neighborhoods that respond to changing demographics and economic conditions;
 - 2) Respond to the needs of family members with health concerns or disabilities in a manner that is appropriate for people at a variety of stages in their life cycle by providing homeowners with a means of obtaining companionship, security, and services (e.g., on-site healthcare worker, housekeeper, childcare worker);
 - 3) Provide homeowners the opportunity to use their property to enhance or fulfill personal objectives by allowing more options for the use of accessory buildings (e.g., family game or media rooms with kitchens);
 - 4) Protect neighborhood stability, property values, and the single-family residential appearance of the neighborhood by ensuring that ADUs are well-designed and compatible with the neighborhood and constructed under the requirements of these Regulations; and
 - 5) Recognize that homeowners are likely to maintain an owner-occupied residence in a manner that upholds the single-family character of the property. Requiring owner occupancy is intended, therefore, to support and foster housing maintenance and neighborhood stability.

b. ADUs not intended to replace Duplex and other Multi-family districts and dwellings:

Allowing ADUs is not intended to replace duplex and other multi-family zoning districts and dwellings. An ADU is different than a duplex in that typically the two units that make up a duplex are attached to each other, are relatively equal in size and height, and one unit usually does not dominate the other. In contrast, an ADU may or may not be attached and, unless otherwise allowed by this section, is subordinate in size, location, and appearance to the Principal Dwelling Unit that it accompanies. Additionally, both duplex units may be rented while an ADU or its accompanying Principal Dwelling Unit shall be owner-occupied, unless otherwise allowed by this section.

c. Standards to regulate ADU appearance:

It is the intent of these regulations to establish performance and appearance standards that will allow ADUs to be placed in neighborhoods with a minimum impact on adjacent or nearby properties. Such performance and appearance standards are intended to ensure that, among other things, ADUs are unobtrusive and subordinate in size, location, and appearance to the

Principal Dwelling Unit (unless otherwise allowed by this section) and are compatible with adjacent properties and the neighborhood.

The appearance standards are intended to support and promote the design of ADUs by replicating or complimenting identifiable and desirable neighborhood development patterns so that ADUs will blend rather than contrast with the existing neighborhood character. For example, oftentimes neighborhoods exhibit identifiable patterns such as uniform setbacks from the street or similar architectural detailing (i.e., roof pitch, building materials, or colors). ADUs should be designed and located to compliment these patterns. Neighborhoods can exhibit patterns or lack of patterns with respect to numbers, sizes, placement, and design detailing of accessory buildings. For example, large parcels in rural areas tend to have more and larger accessory buildings (i.e. barns, stables, and metal utility buildings) that do not tend to mirror the design of the associated residence but have a more utilitarian form (i.e., metal siding and lower roof pitches) and do not tend to have uniform setbacks from the street (but, rather, often tend to cluster next to the residence); whereas, smaller parcels in suburban areas tend to have fewer and smaller accessory buildings (i.e. detached garages and tool sheds) that tend to mirror the design of the associated residence (i.e., similar colors, exterior materials, and roof pitch) and are more apt to be in line with a uniform setback from the street. In turn, ADUs that are designed and located to replicate these patterns will be more likely to blend and be compatible with the surrounding neighborhood.

2) Review Process and Performance Standards:

Administratively Reviewed Certificate:

ADUs may be allowed in all Rural, Planned Rural, Residential, and Planned Residential zoning districts on any lot, tract, or parcel where a single-family dwelling is allowed; subject, however, to the below referenced performance standards that shall be administratively reviewed and approved by the Zoning Administrator in accordance with Article 5, Section 6 of these regulations for the purposes of obtaining required Zoning Permit and Accessory Dwelling Unit Certificate (ADU Certificate) approval.

Publicly Reviewed Permit:

ADUs not administratively approved by the Zoning Administrator may be allowed in all Rural, Planned Rural, Residential, and Planned Residential zoning districts on any lot, tract, or parcel where a single-family dwelling is allowed if an Accessory Dwelling Unit Permit (ADU Permit) is approved by the Board of County Commissioners in accordance with Section 7(D)(3) of this Article.

Performance Standards:

a. Owner Occupancy Required:

- 1) The Property Owner shall occupy either the Principal Dwelling Unit or the ADU as their domicile, unless otherwise allowed by this section. The Property Owner shall submit proof

of such domicile to the Zoning Administrator as evidenced by voter registration or other such means accepted by the Zoning Administrator.

- 2) Notice: The Property Owner shall record against the subject property a written notice with the Johnson County Department of Records and Tax Administration. The notice shall alert future owners or lessors of the subject lot, tract, or parcel of the limitations of Section 7(D) of this Article and that the lawful existence of the ADU is predicated upon the occupancy of either the ADU or the Principal Dwelling Unit by the current Property Owner as their domicile.
- 3) Waiver: The Zoning Administrator may waive the owner-occupancy requirement of Section 7(D)(2)(a)(1) of this Article for Property Owner absences of less than one (1) year that meet one of the following qualifying conditions:
 - a) the Property Owner requires off-premises care or treatment;
 - b) the subject property enters probate or has a decedent's estate matter requiring additional time to resolve; or
 - c) the Property Owner experiences an unforeseen life change such as a change of employment or transfer.

The waiver is subject to renewal by the Zoning Administrator on an annual basis if the above qualifying conditions continue to be met. However, more than one annual renewal will be reviewed with greater scrutiny in order to uphold the intent of these regulations that ADUs shall be owner occupied.

- 4) Definitions: For purposes of this section: a) "Property Owner" means the deed holder and/or contract purchaser of the lot, tract, or parcel; b) "domicile" means the place where a person resides and has their true fixed permanent home, and to which place they have, whenever they are absent, the intention of returning, and from which they have no present intent of moving; and c) "owner occupancy" means that a Property Owner, as reflected in the deed records, makes his/her legal domicile at the site.
- b. **Size of Lot, Tract or Parcel:** An ADU shall be located on a lot, tract, or parcel no smaller than two (2) acres in size.
 - c. **Maximum Number:** There shall be no more than one ADU per lot, tract, or parcel.
 - d. **Method of Establishment:** An ADU may be established through one of the following methods, among others:
 - 1) converting floor area within the existing Main Building to an ADU;
 - 2) adding floor area to the existing Main Building that is dedicated to an ADU;
 - 3) constructing a new Main Building in which a portion of the floor area is dedicated to an ADU;

- 4) converting all or a portion of the floor area within an existing accessory structure to an ADU;
- 5) adding floor area to an existing accessory structure that is dedicated to an ADU; or
- 6) constructing a new accessory structure in which all or a portion of the floor area is dedicated to an ADU.

Nothing herein shall be construed, however, to alleviate the necessity of first obtaining county approval of the ADU.

- e. **Detached ADUs:** The structure occupied by a Detached ADU shall be considered a type of accessory structure and shall be constructed in accordance with all County building codes and in accordance with all applicable requirements of these regulations, unless otherwise allowed or restricted by this section. An ADU, however, may occupy an existing accessory structure, in whole or in part, that has been determined by the Zoning Administrator to be a legal nonconforming structure with respect to building height, setbacks, or the like, as long as construction of the ADU does not extend or increase such nonconformity and as long as the ADU meets all other requirements of this section and these regulations.
- f. **Attached ADUs:** The structure occupied by an Attached ADU shall be considered to be part of the Main Building and shall be constructed in accordance with all County building codes and in accordance with all applicable requirements of these regulations, unless otherwise allowed or restricted by this section. An ADU, however, may occupy a Main Building that has been determined by the Zoning Administrator to be a legal nonconforming structure with respect to building height, setbacks, or the like, as long as construction of the ADU does not extend or increase such nonconformity and as long as the ADU meets all other requirements of this section and these regulations.
- g. **Maximum Size:**
 - 1) Attached ADUs: The Livable Area of an Attached ADU shall not exceed 50 percent of the Livable Area of the Principal Dwelling Unit prior to the establishment of the ADU.
 - 2) Detached ADUs:
 - a) The Livable Area of a Detached ADU shall not exceed 900 square feet.
 - b) Detached ADUs shall meet and count towards the size and number limitations regarding accessory buildings and structures as set forth in Article 18, Section 6 (B) and (C) of these regulations.
- h. **Height and Yard Requirements:**
 - 1) Detached ADUs: Detached ADUs are considered by these regulations to be a type of accessory building and, therefore, shall be constructed in accordance with the applicable accessory building height and yard requirements.
 - a) Detached ADUs shall not be located in the Front Yard.

- b) Detached ADUs shall be located a distance no greater than 200 feet from the Main Building.
- 2) Attached ADUs: Attached ADUs are considered by these regulations to be part of the Main Building, and, therefore, shall be constructed in accordance with the applicable main building height and yard requirements of the underlying zoning district.
- i. **Supplementary and Accessory Uses and Accessory Structures:**
 - 1) Supplementary and accessory uses and accessory structures are allowed on a lot, tract, or parcel containing an ADU if they are in accordance with the requirements of these regulations.
 - 2) It is the intent of these regulations that the addition of an ADU shall not significantly increase the levels and intensities of accessory and supplementary uses on the property and that the Property Owner shall control the distribution of these accessory and supplemental uses and structures to ensure that they are in compliance with the requirements of these regulations.
 - 3) The below referenced uses shall be allowed on a lot, tract, or parcel that also contains an ADU only in the following manner:
 - a) Home Occupations: Home occupations shall be allowed in the ADU or the Principal Dwelling Unit, or both, in accordance with Article 18, Section 5 of these regulations, provided that all home occupations located on the property shall jointly meet, and shall not jointly exceed, all restrictions and limitations as set forth in Section 5 of this Article.
 - b) Transient Uses: ADUs are intended for long-term use only. ADUs shall not be used as a Tourist Home including bed and breakfast purposes unless the ADU is authorized by the approval of an Accessory Dwelling Unit Permit (ADU Permit) in accordance with Section 7(D)(3) of this Article. Rental of an ADU for a period of less than 90 consecutive days is prohibited.
- j. **Parking and Driveway Requirements:**
 - 1) Parking Spaces: A minimum of one parking space shall be provided on the lot, tract, or parcel for an ADU. Principal Dwelling Unit parking shall be provided as required by the underlying zoning district.
 - 2) Driveway Entrances: The ADU shall utilize existing driveway entrances unless a driveway entrance is approved by the County Engineer. To the greatest extent feasible, existing driveways and parking areas shall be utilized.
 - 3) Fire Safety: All portions of a detached ADU shall be located a distance of no greater than 200 feet from a driveway that provides continuous access from the ADU to a driveway entrance approved by the County Engineer.

k. Appearance Standards:

- 1) The design of all ADUs shall uphold the single-family character of the property and the ADU shall be subordinate in size, location, and appearance to the Principal Dwelling Unit, unless otherwise allowed in this Section. The ADU shall be compatible in appearance with adjacent properties and the neighborhood.
- 2) When evaluating a proposed ADU, the appearance elements set forth in “a” thru “h”, below, should be considered by the Zoning Administrator, during review of an ADU Certificate application, to ensure that the ADU will be compatible with and have minimal, if any, impact on adjoining properties and the neighborhood’s character and to ensure that the other appearance standards set forth in Section 7(D)(2)(k)(1) of this Article have been met. The Appearance Elements shall be used as a non-exclusive indicator of whether the requirements of the Appearance Standards of this section have been satisfied. It is not intended that the Appearance Elements shall be utilized on a purely mathematical basis, by adding up the eight elements’ pros and cons. Rather, the significance of individual elements may vary when applied to different applications, and the Zoning Administrator shall conduct a weighing and balancing of the elements, and may assign more significant weight to some elements rather than to others, as deemed appropriate under the facts of each particular situation. Further, the Zoning Administrator may also utilize other factors deemed relevant, in addition to the Appearance Elements, to assist in such person’s review and determination.
 - a) Height and Bulk: What is the predominate height of homes and accessory buildings in the neighborhood (e.g., one or two stories)? How does the height of the ADU compare with the height of the Principal Dwelling Unit? Does the ADU have a larger bulk or greater height than the Principal Dwelling Unit?
 - b) Setbacks and Separation: Are homes set back the same distance from the street or are they staggered? Is there a typical or established house and lot pattern? Is there a typically wide or narrow space between homes?
 - c) Exterior Color and Materials: Is there one material or color that is predominantly used for homes in the neighborhood? How does the materials and colors of the ADU compare with the Principal Dwelling Unit. Do they match or harmonize? Are they contrasting?
 - d) Roofs: What do most of the roofs in the neighborhood look like (e.g., materials, color, or pitch)? How does the roof of the ADU compare with the roof of the Principal Dwelling Unit? What architectural details are found on the Principal Dwelling Unit (e.g., dormers, overhangs, and eaves)? Does the ADU have the same detailing?
 - e) Entryways: Is the entryway to the ADU oriented away from the main street? Is the ADU entryway on a different façade or building plane than the Principal Dwelling

Unit entryway? Is the ADU entryway smaller with less architectural detailing (e.g., porches, arches, columns, or overhangs) than the Principal Dwelling Unit entryway?

- f) **Accessory Buildings:** Where do most of the homes have their garages (e.g., attached, detached, or in the front, back, or side of the house)? Do lots typically have only one structure or several (e.g., sheds, garages, pools, or barns)? Are the accessory structures decorative or utilitarian (e.g., gazebo versus barn)? Does the design (e.g., color, exterior materials, and roof pitch) of the accessory structures typically match the design of the homes?
 - g) **Location and Orientation of Improvements:** Where is the best ADU location to minimize impacts, including privacy on adjoining properties (e.g., views from windows)? Are exterior doorways and outdoor living areas such as porches or balconies oriented toward the interior of the property? Are exterior improvements (e.g., patios, pools, and gazebos) associated with the ADU located to minimize impacts and maintain the privacy of neighboring residences?
 - h) **Landscaping and Screening:** Is landscaping, fencing, or a combination of both typically used to define lot lines and separate homes? Are front yards well-landscaped or is the most prominent feature a paved parking area? Is there heavy or light vegetation in the back yard areas (e.g., trees or hedges)? Is the ADU screened with fencing, landscaping, open space separation, or other buildings or structures in a manner that maintains the privacy of adjacent parcels and reduces visual impacts on neighboring parcels?
- i. Variances and Existing Conditional Use Permits:**
- 1) If the construction of the Main Building or ADU requires or required approval of a variance from the height, yard, or the like, requirements of these regulations, then an ADU shall only be allowed if authorized by the approval of an Accessory Dwelling Unit Permit (ADU Permit) as provided in Section 7(D)(3) of this Article.
 - 2) If there is a conditional use permit (CUP) in effect that includes the subject property, then an ADU shall only be allowed if authorized by the approval of an Accessory Dwelling Unit Permit (ADU Permit) as provided in Section 7(D)(3) of this Article.
- m. Other Regulations and Codes:** The ADU and all modifications to the Main Building shall be constructed in accordance with any and all applicable governmental codes and regulations, including but not limited to the County environmental, building, and fire codes.
- n. Enforcement and Revocation:** Failure to comply with the requirements of Section 7(D)(2) of this Article shall be a violation of these regulations and shall be subject to enforcement per Article 6 of these regulations.

In addition to other remedies provided by these regulations, including those of Article 6 of these regulations, any ADU Certificate allowing an ADU may be revoked at any time by the Board if

the applicant is notified in writing and granted a hearing as provided in this Section, when there has been a determination by the Zoning Administrator that:

- 1) The applicant has made material misrepresentations or false statements of fact in the application, or
- 2) The provisions or conditions of this Article or these regulations have been violated, or
- 3) The standards of performance, conditions placed on the use as part of the permit approval process are not being met, or the use is not complying with any other County regulations applicable to the operation of such uses.

Prior to revocation of an ADU Certificate, a written notice that a violation has occurred shall be mailed to the permit holder. That notice shall afford the permit holder a specified time period to abate the violation and shall further grant the permit holder a hearing before the Board.

3) **Accessory Dwelling Unit Permit:**

In the event an applicant desires to deviate from the performance standards of Section 7(D)(2) of this Article, or if an ADU Certificate application was submitted and denied pursuant to the procedure set forth in Article 5, Section 6 of these regulations, then an applicant may submit an application for an Accessory Dwelling Unit Permit (hereinafter "ADU Permit").

a. **Purpose of ADU Permit:**

Section 7 of this Article provides criteria and procedures for ADUs which may be properly allowed upon consideration in each case of, among other things, the impact of the ADU upon neighboring land and the community.

ADUs may produce unique and special impacts because of their location, design, life span, size, traffic circulation, and similar such characteristics which impact on available or provided public facilities so that each such ADU not meeting the performance standards of Section 7(D)(2) of this Article must be considered and evaluated individually.

The Board shall decide whether each ADU proposed shall be granted an ADU Permit subject to the general and specific standards contained in this Section including the purposes and intents as set forth in Section 7(D)(1) of this Article and subject to such conditions and/or restrictions as are reasonable and appropriate to protect the character of the area and ensure the compatibility of the neighborhood in which it is located. The Board may deny requests which fail to satisfy standards and requirements and purposes and intents contained herein or which are not in harmony with the purposes and interest of these regulations or the health, safety, and general welfare of the County.

b. **General Provisions:**

ADU Permits may be approved only if found to be in the interest of the public health, safety, and general welfare of the community.

As a condition of approval of an ADU Permit, the Board may place such reasonable conditions and restrictions relative to the proposed ADU which address, among other things, the establishment, construction, and maintenance of the ADU as is deemed necessary for the protection of the public interest and to secure compliance with the standards and conditions and purposes and intents contained within this Article, other County regulations, and state and federal requirements.

Unless allowed by an approved ADU Certificate per Article 5, Section 6 of these regulations, no ADU shall be constructed or put to use until and unless an ADU Permit application has been submitted and an ADU Permit has been formally approved by the Board as required by Article 4 of these regulations.

ADUs allowed by an ADU Permit must abide by all of the conditions of the approval of such ADU Permit. Failure to comply with the requirements of the ADU Permit shall cause the ADU Permit to come under the revocation provisions of Section 7(D)(3)(f) of this Article.

c. Application Requirements:

- 1) **Development Plan:** A site plan that includes all of the items listed in Sections 3 and 6 of Article 15 and which complies with the development plan requirements of Articles 11 and 15 must be submitted as part of an ADU Permit application. This includes Section 3(J) of Article 15 which requires that “preliminary sketches of building elevations depicting the general style, size and exterior construction materials of the buildings proposed in sufficient detail to exhibit the relative compatibility of the proposed development with the character of the neighborhood.”

The development plan must indicate how the proposed use would satisfy the screening, setback, and other such ADU performance and development standards and zoning regulations as specified for the particular ADU.

- 2) **Written Narrative Description:** A written narrative description of the proposed ADU must be submitted by the applicant. If the nature of compliance is not explicitly clear from the information indicated on the development plan, the narrative description shall address how the proposed ADU would satisfy the performance and development standards, purposes and intents, and zoning regulations as applies to the particular ADU. The narrative description shall also address how the proposed ADU shall meet and comply with the Issuance of ADU Permits in Section 7(D)(3)(e) of this Article. The narrative description shall also describe the reasons which appear to make the site in question appropriate for the proposed ADU, the steps to be taken to cause the use to be compatible with other parcels of real property near the site in question, and other such reasonable information about the proposed use that would be necessary or helpful for the impacts of the proposed use to be fully evaluated and considered.

- 3) Application Requirements and Processing Procedures: ADU Permit applications shall comply with the application requirements and procedures as provided in Article 4 of these regulations. All applicants are encouraged to schedule and hold a pre-application conference with the Zoning Administrator or his or her designee as a first step toward filing and application for an ADU Permit. Arrangements for this conference shall be made by contacting the Planning Office.

d. General Development and Performance Standards:

- 1) An ADU Permit may be approved for an unlimited term of years, but shall be subject to termination and revocation for failure to comply with the terms and provisions of the ADU Permit, and the requirements of these regulations, as more fully set forth herein.
- 2) The owner-occupancy requirements of Section 7(D)(2)(a) of this Article shall be met, and any or all of the other performance standards within Section 7(D)(2) of this Article may be required as conditions of approval of the ADU Permit.
- 3) In General: The ADU Permit shall operate in accordance with a) the appropriate performance standards contained in this Article and in Article 11 of these regulations, b) the development plan review considerations in Article 15 of these regulations, and c) the Final Development Plan, the Statement of Intent and the description(s) of the use in the record(s) of the ADU Permit application review and consideration proceedings. These performance standards are minimum requirements. However, the Board may add, should the occasion require, more restrictive but reasonable requirements as conditions on the ADU Permit to govern the ADU.
- 4) Lot Area, Lot Dimension and Yard Requirements: The ADU shall abide by the lot area, lot dimension, yard requirements, and the like of the particular zoning district in which the ADU is located, unless a variance or rule exception is approved as provided in these regulations. However, the Board may add more restrictive requirements by imposing reasonable conditions on the ADU as needed to assure compatibility with the surrounding properties.

Rule Exception: The applicant may request a Rule Exception from the lot area, lot dimension, yard requirements, and the like of a particular zoning district in which the ADU is located. A Rule Exception may be requested in writing on forms provided by the Planning Office or by letter if all information required on such forms is provided within the letter. Requests for Rule Exceptions may be submitted with the ADU Permit application, or may be submitted during the course of consideration of the application. Requests for Rule Exceptions shall be considered by the Zoning Board and a report on the Zoning Board's recommendations or failure to recommend thereon, shall be provided to the Board of County Commissioners, who shall make the final decision thereon.

Rule Exceptions shall not be recommended for approval by the Zoning Board nor

approved by the Board of County Commissioners unless they find that such approval shall be compatible with the surrounding neighborhood and shall not be contrary to the public interest or unnecessarily burden the County, and shall not annul the intent and purpose of these regulations.

e. Issuance of ADU Permits

- 1) The proposed ADU Permit shall be reviewed using established land use criteria such as, but not limited to, that suggested by the Kansas Supreme Court in the case of Golden v. Overland Park, Kansas.
- 2) The Zoning Board shall not recommend that an ADU Permit be granted unless, based upon the evidence presented to it in each specific case, it has considered the following:
 - a) That the granting of any ADU Permit is in harmony with the general purpose and intent of these regulations, and will not be injurious or detrimental to the public health, safety, and general welfare.
 - b) That the granting of the PERMIT will not:
 - i) Impair an adequate supply of light and air to adjacent property;
 - ii) Unduly increase hazards from fire or other dangers;
 - iii) Unduly increase traffic on streets or highways beyond their capacity;
 - iv) Unduly increase the potential for flood damages to adjacent property or lead to additional public expense for flood protection, rescue or relief;
 - v) Otherwise unduly impair the public health, safety, comfort, morals or general welfare of the inhabitants of the County, or otherwise create a nuisance or nuisance-like situation; or
 - vi) Pollute the air, land or water.
- 3) That the ADU:
 - a) Will be designed, constructed, operated, buffered, screened, and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not be incompatible with the character of the area.
 - b) Will be compatible with and not be hazardous or unduly disturbing to existing or planned future neighboring uses and zoning.
 - c) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and wastewater disposal; or that the persons or agencies responsible for the establishment of the proposed use shall agree to adequately provide any such

essential facilities and services. With respect to this standard, the minimum infrastructure requirements in Article 31 of these regulations shall be guidelines for interpretation of the minimum infrastructure needed for each ADU.

Each ADU shall be considered with respect to the infrastructure available and whether additional or improved infrastructure would be needed for the proposed ADU. If additional or improved infrastructure would be needed, an ADU Permit may be approved if the applicant shall comply with Article 31, Section 2, (C) (1) and (2).

- d) Will not create excessive additional requirements at public cost for public facilities and services.
- e) Will have vehicular approaches to the property which are so designed and would be provided to prevent an interference with traffic on surrounding public arterial streets.
- f) Will not result in the destruction, loss, or damage of a natural, scenic, aesthetic or historic feature of major importance.
- g) Will comply with the lot, yard, and open space; sign; and off-street parking and loading space requirements of these regulations unless otherwise specifically granted.

f. Revocation of ADU Permits:

In addition to other remedies provided by these regulations, including those of Article 6 of these regulations, any ADU Permit allowing an ADU may be revoked at any time by the Board if the applicant is notified in writing and granted a hearing as provided in this Section, when there has been a determination by the Zoning Administrator that:

- 1) The applicant has made material misrepresentations or false statements of fact in the application, or
- 2) The provisions or conditions of this Article or these regulations have been violated, or
- 3) The standards of performance, conditions placed on the use as part of the permit approval process are not being met, or the use is not complying with any other County regulations applicable to the operation of such uses.

Prior to revocation of an ADU Permit, a written notice that a violation has occurred shall be mailed to the permit holder. That notice shall afford the permit holder a specified time period to abate the violation and shall further grant the permit holder a hearing before the Board.

Article 5: Permits

Section 6: ADMINISTRATIVE APPROVAL OF ZONING PERMITS AND CERTIFICATES FOR ACCESSORY DWELLING UNITS:

- A. Before a building permit is issued to allow the construction of an Accessory Dwelling Unit (ADU) in accordance with the requirements of Article 18, Section 7 (D) of these regulations, the applicant shall submit an application for an Accessory Dwelling Unit Certificate (hereinafter “ADU Certificate”) which shall include a Development Plan in accordance with the requirements of Article 15, Sections 3 and 6 of these regulations, to be administratively reviewed by the Zoning Administrator.
1. Terms of Approval: Approval is subject to compliance with the intent and requirements of Article 18, Sections 7(D)(1) and (2) of these regulations. Furthermore, the Zoning Administrator shall use these sections of the regulations and the Development Plan review considerations contained in Article 15, Section 11 to review the application. The Zoning Administrator shall approve or deny the application. Therefore, BOCC approval shall not be required for application approval under this provision. Approval may be made subject to conditions.
 2. If the Zoning Administrator approves the application, the Zoning Administrator shall issue a Zoning Permit if the actual site development conforms with the requirements of the approved Development Plan for the particular property.
 3. If the Zoning Administrator denies the application, then the applicant may appeal the decision of the Zoning Administrator in accordance with the provisions of Article 3, Section 5 of these regulations.
 4. If the application is deemed by the Zoning Administrator to not meet the Terms of Approval of Section 6(A)(1) of this Article, and if the applicant does not appeal the Zoning Administrator’s decision, then the applicant may submit an application for an Accessory Dwelling Unit Permit which shall be reviewed by the applicable Zoning Board and the Board of County Commissioners in accordance with the requirements of Article 18, Section 7(D)(3) of these regulations.

Article 2: DEFINITIONS

Section 3: DEFINITIONS OF BASIC TERMS:

“Building, Main”

See “Building, Principal”.

“Building, Principal”

Any building where the main, primary, or principal use is conducted on the lot, tract, or parcel on which it is located. For residentially zoned lots, such a building would be a dwelling. The phrases “Principal Building” and “Main Building” shall be considered to be interchangeable.

“Dwelling, Accessory”

The phrases “Accessory Dwelling Unit” and “Accessory Dwelling” shall be considered to be interchangeable.

“Dwelling Unit, Principal”

When the principal use conducted on a lot, tract, or parcel is a single-family dwelling unit, then the principal use shall also be known as the principal dwelling unit. The principal dwelling unit is located within the Main Building.

In the case of a lot, tract, or parcel containing only one dwelling unit, the dwelling unit is the principal dwelling unit.

In the case of a lot, tract, or parcel containing a principal dwelling unit and an accessory dwelling unit, the principal dwelling unit is the larger of the dwelling units.

“Dwelling Unit, Accessory”

A dwelling unit that is accessory and secondary to the principal dwelling unit and under the same ownership in all respects. The phrases “Accessory Dwelling Unit” and “Accessory Dwelling” shall be considered to be interchangeable. The following types of accessory dwelling units are referred to in these regulations:

1. “Attached Accessory Dwelling Unit”

An accessory dwelling unit within a portion of or connected to the Main Building. An accessory dwelling unit shall be considered to be attached to the Main Building: a) if it has a wall in common with the Main building or if it is connected to the Main Building by way of a Livable Area and b) if it meets the requirements of Article 18, Section 2(B) of these regulations.

2. “Detached Accessory Dwelling Unit”

A dwelling unit standing apart and detached from the Main Building and located on the same lot, tract, or parcel.

“Dwelling, One-Family or Single-Family”

A building with one dwelling unit arranged, intended, or designed for occupancy by one family, and which may include an Attached Accessory Dwelling Unit, and including Residential Design Manufactured Homes and including Group Homes Type One.

“Guest House”

Dwelling without a kitchen providing residential accommodations for temporary or occasional guests:

1. in a detached accessory building located on the same premises as a Main Building,
2. primarily for use by temporary or occasional guests of the occupants of the premises,



3. without kitchen facilities,
4. without separate utilities, and
5. not rented or otherwise used as a separate dwelling.

“Livable Area”

A space within a dwelling unit that is heated, has a ceiling height of at least seven feet, and has finished walls, floors, and ceilings. Walls and ceilings shall be deemed finished if they are covered with plaster, wallboard, wood paneling, or similar material. Floors shall be deemed finished only if they are covered with carpeting, tile, linoleum, finished wood, decorative concrete, or similar material. This definition includes hallways, closets, dormers, laundry room facilities, stairs, and storage rooms if they are a functional part of the living area and not part of an unfinished area such as an unfinished attic or unfinished basement. In rooms with sloped ceilings (e.g., finished attics) livable area is considered that portion of the room with a ceiling height of at least five feet.

ARTICLE 17: SUPPLEMENTARY HEIGHT, AREA AND BULK
Section 6: MULTIPLE BUILDINGS ON SINGLE LOTS

- A. Except for an Accessory Dwelling Unit as allowed in Article 18, Section 7(D) of these regulations and except as provided below in subsection B, more than one (1) main structure or building (e.g., dwelling unit in the multifamily zoning district) may be located on a lot, tract, or parcel only in those situations where a lot, tract, or parcel is zoned for a multiple family, planned retail business, or planned employment center use, but such structures and buildings shall be on a lot, tract, or parcel which has front, side and rear yards as required for the zoning district in which the lot, tract, or parcel is located. Where such multiple structures or buildings would be under separate ownership, permanent rights of access shall be provided to all ownerships which do not abut or have the right of access to an approved street and such access ways and the improvements therein shall be clearly shown on the approved development plans.

ARTICLE 4. APPLICATION PROCEDURES FOR REZONING, CONDITIONAL USE PERMITS, ACCESSORY DWELLING UNIT PERMITS, DEVELOPMENT PLAN APPROVALS OR SUBDIVISION APPROVALS, AND AMENDMENTS TO THE ZONING OR SUBDIVISION REGULATIONS

Section 1. WHO MAY PETITION OR APPLY:

- A. A proposal for a Rezoning, Conditional Use Permit, Accessory Dwelling Unit Permit, Development Plan, or Subdivision approval may be initiated by the Board, the Planning Commission, any Zoning Board, the owner of property affected, or upon application of the following persons:

1. The lessee or the holder of an option to lease; or
2. The holder of an option to purchase or real estate contract to buy; or
3. An agent acting for and on behalf of the owner of the property affected.

However, all applicants referenced above in Section 1, (A)(1-3) shall, at the time of making application, provide written evidence satisfactory to the Board, that the applicants have the authority and consent of the owner to make such an application regarding the subject real property. All applicants, at the time of making application, shall enter upon the application the name, correct mailing address and phone number of the owner(s). For purposes of making an application only, the word "owner(s)" shall include all those individuals that may have a beneficial interest or ownership in the subject real property.

- B. Applications for amendments, revisions or changes to the Zoning Map or Zoning or Subdivision Regulations may also be made by the Board, an owner or person as provided in Section 1, (A)(1-3), the Planning Commission or any Zoning Board upon their own motion for final determination by the Board.
- C. Proposals initiated by the Board shall first be submitted to the Planning Commission or the appropriate Zoning Board as applicable for a recommendation as provided herein.

Section 2. PROCEDURES FOR CONSIDERATION OF A REQUEST FOR A REZONING, CONDITIONAL USE PERMIT, ACCESSORY DWELLING UNIT PERMIT, DEVELOPMENT PLAN APPROVAL, SUBDIVISION PLAT APPROVAL, OR AMENDMENT TO THE REGULATIONS:

- A. Application Procedure:
1. All applications or requests shall be made to the Zoning Administrator on forms provided by the Planning Office.
 2. All applicants are encouraged to schedule and hold a pre-application conference with the Zoning Administrator or his or her designee as a first step toward filing an application for a Rezoning, Conditional Use Permit, Accessory Dwelling Unit Permit, Preliminary Development Plan, or Preliminary Plat. Arrangements for this conference shall be made by contacting the Planning Office.
 3. The applicant for a proposed Rezoning, Conditional Use Permit, Accessory Dwelling Unit Permit, Preliminary Development Plan, or Preliminary Plat shall provide the Planning Office with a list of the names and addresses of the owners of record of all property within 1,000 feet of the property in question. Such list shall have been originated by a licensed abstractor, title company or similarly qualified person whose services have been secured by the applicant and said list shall be compiled from the official records of the County Register of Deeds and not just the apparent owners as evidenced in the real estate tax records.

4. Upon receipt of such an application and the payment of the appropriate fee as established by resolution of the Board, the Zoning Administrator shall note thereon the date of filing and make a permanent record thereof.
5. All applications shall be set down for hearing not later than sixty (60) days after receipt of a completed application. Determination that an application is complete shall be made by the Zoning Administrator who shall make such determination within twenty (20) days after the application is filed. The Zoning Administrator shall provide written notice of the reason(s) that the application was found to be incomplete, and the written notice shall suggest changes the applicant could make to complete the application.
6. Whenever an application for a Rezoning, Conditional Use Permit, Accessory Dwelling Unit Permit, Development Plan, or Subdivision Plat is pending, the subject real property shall not be cleared of trees or ground cover vegetation or graded without prior written approval by the Zoning Administrator.

B. Hearing and Notice Requirements:

1. All proposed Rezonings, Conditional Use Permits, Accessory Dwelling Unit Permits, Development Plans or Subdivision Plats regarding specific tracts of real property shall be submitted to the appropriate Zoning Board for recommendation.

All proposed amendments, revisions, or changes to the Zoning or Subdivision Regulations or to the Zoning Map, other than those changes resulting from rezoning application(s) regarding specific tracts of real property, shall be submitted to the Planning Commission for recommendation.

2. Prior to a Zoning Board making a recommendation on a proposed Rezoning, Conditional Use Permit, Accessory Dwelling Unit Permit, Preliminary Development Plan, or Preliminary Plat regarding specific tracts of real property, the Zoning Board shall hold a public hearing thereon and a proper record shall be made of the proceedings.

Prior to the Planning Commission making a recommendation on a proposed amendment, revision, or change to the Zoning or Subdivision Regulations or to the Zoning Map, other than those changes resulting from rezoning application(s) regarding specific tracts of real property, the Planning Commission shall hold a public hearing thereon and a proper record shall be made of the proceedings.

Notice of such public hearings shall be published once in the official County newspaper at least twenty (20) days prior to the date fixed for the hearing.

3. The published notice shall state the date, time, and place of the hearing and shall contain a statement regarding the proposed change in regulations or the zoning classification or zoning district boundaries of the property. In all cases other than amendments to the regulations, the notice shall

contain the legal description and street address or general street location of the property, and its present and proposed zoning classification.

4. In addition to notice by publication, written notice of proposed Rezoning, Conditional Use Permits, Accessory Dwelling Unit Permits, Preliminary Development Plans, or Preliminary Plats shall be mailed at least ten (10) days prior to the hearing to all owners of record of lands located within 1,000 feet of the property as indicated on the certified list of such owners provided with the application.
 - a. The written notice shall:
 - 1). State that interested parties shall have an opportunity to be heard at the public hearing.
 - 2). Be given by certified mail, return receipt requested, and shall be in the form of a letter explaining the proposed change.
 - b. Failure to receive mailed notice shall not invalidate any subsequent action taken.
5. Exceptions: In the case of an application to amend, revise or change the Zoning or Subdivision Regulations or the Zoning Map, other than those changes resulting from rezoning application(s) regarding specific tracts of real property, the above stated requirements shall be followed except that notice of the public hearing shall not be required to be individually mailed to all potentially affected persons. Therefore a certified list of owners shall not be required. General notice, however, shall be given by publication in the official County newspaper at least 20 days prior to the date fixed for the hearing.
6. Any such hearing may be continued for good cause at the request of the applicant or in the discretion of the Planning Commission or Zoning Board.

C. Action by the Planning Commission or Zoning Boards:

1. After the public hearing, the Planning Commission or the appropriate Zoning Board shall adopt its recommendations and submit the same, together with a record of the hearing thereon, to the Board of County Commissioners. In the event of a "failure to recommend," the application, together with a record of the hearing thereon, also shall be submitted to the Board of County Commissioners.
2. For Planning Commission actions on amendments, revisions or changes to the Zoning Map or to the Zoning or Subdivision Regulations or for Zoning Board actions on Conditional Use Permit, Accessory Dwelling Unit Permit, Development Plan, or Subdivision Plat applications or Zoning Map amendments, revisions or changes which may result from rezoning applications, a vote either for or against the proposal by a majority of the members present shall constitute a recommendation of approval or disapproval. However, a vote either for or against a proposal by less than a majority of the members present shall constitute a "failure to recommend."

D. Action by the Board of County Commissioners:

1. After receipt of the recommendation of the Planning Commission or Zoning Board, the Board shall consider the Amendment, Rezoning, Conditional Use Permit, Accessory Dwelling Unit Permit, Development Plan, or Subdivision Plat application and, notwithstanding the recommendation of the Planning Commission or Zoning Board may:
 - a. Adopt the recommendation, in whole or in part,
 - 1). By resolution in the case of Amendments, Conditional Use Permits, Accessory Dwelling Unit Permits, Rezonings, or Development Plans, ordering that the resolution be recorded with the office of the County Clerk and providing that the action shall become effective upon such recording, or
 - 2). By motion in the case of Subdivision Plats, and authorize the Board Chairperson to endorse the plat to acknowledge the acceptance of the dedication of public ways and easements, or
 - b. Disagree with the recommendation and return the application to the Planning Commission, or Airport Zoning Commission, or Zoning Board for further consideration along with a statement specifying the reasons for disagreeing, or providing suggested modifications.
 - c. Take no further action thereon, as it deems appropriate.
2. If the Planning Commission or Zoning Board submits a "failure to recommend" to the Board, the Board may take such action as it deems appropriate.
3. If the Board returns the proposed Amendment to the Planning Commission or Rezoning or Conditional Use Permit, Accessory Dwelling Unit Permit, Development Plan or Subdivision Plat to the Zoning Board for further consideration, the Planning Commission shall reconsider the proposed Amendment, or the Zoning Board shall reconsider the proposed Rezoning, Conditional Use Permit, Accessory Dwelling Unit Permit, Development Plan, or Subdivision Plat, as returned and, within 30 days of receipt thereof, or within such lesser or greater time period set by the Board, shall either:
 - a. Submit a new recommendation to the Board; or
 - b. Resubmit the original recommendation.

No additional public hearing shall be required unless so directed by the Board.

4. If the Planning Commission or Zoning Board fails to deliver its recommendation to the Board within the prescribed time period, the Board shall consider such inaction on the part of the Planning Commission or Zoning Board as a resubmission of its original recommendation.
5. The Board, after receipt of a new or the original recommendation on the Amendment, Extension or Addition previously returned to the Planning Commission or Rezoning, Conditional Use Permit, Accessory Dwelling Unit Permit, Development Plan, or Subdivision Plat previously returned to the Zoning Board, shall reconsider such matter and thereafter, by resolution for Rezoning, Conditional Use Permits, Accessory Dwelling Unit Permits or Development Plans or by motions for Subdivision Plats, may adopt, in whole or in part, or may revise or amend and adopt all such matters, or may take no further action thereon, as it deems appropriate.
6. If the Board initiated the application, it need not return the application to the Planning Commission or Zoning Board, but may take such action as it deems appropriate after receiving the original recommendation from the Planning Commission or Zoning Board.

E. Recording of Official Actions:

1. If a Rezoning affects the boundaries of any zone or district, the resolution of the Board shall describe the change or boundaries as amended, and the Zoning Map shall be changed to reflect such amendment and shall be reincorporated as amended.
2. The resolution of the Board shall describe the boundaries of the property for which any Conditional Use Permit, Accessory Dwelling Unit Permit or Development Plan is approved or denied.
3. All Rezoning, Conditional Use Permits, Accessory Dwelling Unit Permits, Development Plans, or Variances shall become effective upon adoption by the Board.

F. Protest Petitions:

1. Regardless of whether a Zoning Board recommends approval, disapproval, or “fails to recommend” regarding an application for a Rezoning including Preliminary Development Plans for Planned Zoning Districts, Conditional Use Permit, or Accessory Dwelling Unit Permit, if a protest petition is filed as provided for herein, the resolution adopting such Rezoning, Preliminary Development Plan, Conditional Use Permit, or Accessory Dwelling Unit Permit, shall not be passed except by a favorable vote of at least 4/5 of all of the members of the Board of County Commissioners. A protest petition must be filed in the office of the Johnson County Clerk within 14 days after the date of the conclusion of the public hearing held pursuant to the publication notice. As such, in the event a public hearing held pursuant to publication notice is continued by a Zoning Board to a future date, the 14 day period will not begin to run until the conclusion of the continued hearing. However, should the Board return an application to a Zoning Board for reconsideration, a protest petition will

not be accepted nor will it be valid if filed with the County Clerk following the reconsideration by the Zoning Board.

2. To be valid, the protest petition shall be, among other things, duly signed and acknowledged by the owners of 20% or more of any real property subject to the Rezoning, Conditional Use Permit, Accessory Dwelling Unit Permit, or Preliminary Development Plans for Planned Zoning Districts, or by the owners of 20% or more of the total area, except public streets and ways, located within 1,000 feet of the boundaries of the property subject to the Rezoning, Conditional Use Permit, Accessory Dwelling Unit Permit, or Preliminary Development Plan.
3. Protest Petitions must be signed and acknowledged by each and every owner(s) of property protesting a given action. The word "owner(s)" for purposes of protest petitions shall include all those individuals that may have ownership in the subject real property or property within 1,000 feet as provided in Section 2, (F)(2) of this Article. If the property is owned by joint tenancy, all such owners must sign the petition by their own hand to be valid, unless the petition itself clearly indicates that one tenant has the legal authority to sign for and on behalf of the other. In the event a corporation, partnership or other organization meets the requirements to protest an action and desires to sign a petition, the following must appear on the petition for such an organization to be counted with the petition:
 - a. The proper name in which title to their property is held; and
 - b. The address of their property; and
 - c. The name of the individual signing on behalf of the corporation, partnership or other organization; and
 - d. Some indication of capacity or authorization of the individuals to sign on behalf of the corporation, partnership or organization.

Finally, the signature of each owner(s) signing the petition must be properly notarized.

Section 3. FEES:

A filing fee shall be paid at the time of application for a Rezoning, Conditional Use Permit, Accessory Dwelling Unit Permit, Preliminary Development Plan, Preliminary Plat, or Amendment. Filing fees shall be in the amount established by resolution of the Board. No fee shall be charged if the request is from a Zoning Board, the Planning Commission, or the Board.



Section 4. POSTING OF A SIGN:

Each applicant for a Rezoning, a Conditional Use Permit, Accessory Dwelling Unit Permit, Preliminary Development Plan, or Preliminary Plat shall place at least one sign upon the lot, tract or parcel of land at least twenty (20) days before the scheduled first date for the public hearing on the application. The applicant shall maintain the sign for at least the 15 days immediately preceding the date on which the public hearing is initially opened. If the public hearing is continued by the Zoning Board, the sign shall be amended or replaced to accurately describe the date, place, and time scheduled for the continued hearing. The sign shall be furnished by the Zoning Administrator to the applicant and the applicant shall firmly affix and attach each sign on the property in a place visible from adjoining streets as hereinafter set forth. Prior to the public hearing on the application, the applicant shall file an affidavit with the Johnson County Planning Office verifying that the sign has been maintained and posted as required by these regulations. Failure to submit the affidavit prior to the public hearing may result in a continuance of the hearing.

The sign(s) shall generally read as follows and shall contain at least the following information:

(REZONING, CONDITIONAL USE PERMIT, ACCESSORY DWELLING UNIT PERMIT, DEVELOPMENT PLAN APPROVAL, PRELIMINARY PLAT APPROVAL) PENDING

Application Number _____

From: (zoning district) To: (zoning district)
or for (use, number of lots, building area, etc.)
PUBLIC HEARING AT (time or location) BEFORE THE
_____ ZONING BOARD
ON (date) at (time or location)
BOARD OF COUNTY COMMISSIONERS, JOHNSON COUNTY, KS.

The sign(s) shall be removed by the applicant within ten (10) days after final action on the application. The bottom of the sign(s) shall be a minimum of two (2) feet above the ground line. The sign(s) shall be placed within five (5) feet of the street right-of-way line, in a position on the lot, tract or parcel of land as to have no visual obstructions thereto and to be readily seen by passersby. If the lot, tract or parcel of land has more than one (1) street abutting thereto, signs shall be placed facing all streets. Failure to comply with this requirement shall not deprive the Zoning Board of its jurisdiction or affect any decision, but may be due cause for the Zoning Board to refuse to hear the application or to adjourn the hearing or to require further notice.



Section 5. HEARING CONTINUANCES:

Any hearing may, for good cause shown, at the request of the Applicant, or in the discretion of the Zoning Board, be continued.

Section 6. LIMITATIONS ON REAPPLICATION:

Whenever an application requesting an Amendment, Rezoning or Conditional Use Permit, Accessory Dwelling Unit Permit, Development Plan or Preliminary Plat has been denied by the Board, the application or one substantially similar, shall not be reconsidered sooner than one (1) year after the previous denial. Determinations of whether an application is substantially similar shall be made by the Zoning Administrator.

**ARTICLE 6.
ENFORCEMENT, VIOLATIONS AND PENALTIES**

Section 1. PROHIBITED ACTS AND CONDUCT:

From and after the effective date of these regulations, no person shall violate any of the provisions of these regulations, or fail to comply with any of its requirements, including, but not limited to, any conditions or terms established in connection with grants of variances, conditional use permits, accessory dwelling unit permits, accessory dwelling unit certificates, or administrative development plans, nor use their property, building or structure in any way except as permitted and in the manner provided by these regulations, and any act, conduct or use which fails to comply with the provisions of these regulations and any codes, rules or standards adopted as a part of these regulations, shall be and hereby is declared to be unlawful as a violation of the Zoning and Subdivision Regulations of Johnson County, Kansas.