STAFF REPORT

July 18, 2018

To: Southwest Consolidated Zoning Board
Fr: Diane Wicklund, AICP, Principal Planner
Re: Application No. SW-ADUP-3411(GA)

APPLICATION INFORMATION:

Applicant/Landowners: Stephanie and Ryan Hrabe
Application Type: Accessory Dwelling Unit Permit (ADU Permit)
Requested Action: ADU Permit for an Accessory Dwelling Unit that is (1) larger than allowed by the Regulations, and (2) on property less than 2 acres in size.

Site Address: 24997 W. 210th St.
Legal Description: Northeast Quarter of Section 17, Township 15, Range 23. Certificate of Survey.
Existing Land Use and Zoning Residential and RUR, Rural Zoning District
Existing Improvements: Single family home and one accessory structure (will be the ADU)

Site Size: 1.3 acres

Project Description: There is an existing approximately 3,300 sq. ft. residence (Principal Dwelling Unit) on the subject-property. In 2017, the landowner’s constructed a 912 sq. ft. (38x24 building footprint) detached accessory structure. The owner’s desire is to finish the space in this detached structure to create an ADU on the second floor. The structure is 22 feet tall. The owners have stated that their intent, if approved, is to use the ADU for a game room area and/or for a mother in law quarters or for immediate family to stay when they are visiting in the future. The owner’s will continue to live in the residence (Principal Dwelling Unit) on the property. The ADU will be located approximately 50 feet behind the existing house. See the attached applicant’s narrative, site plan and pictures of the ADU for details. NOTE: parcels under 10 acres in size are restricted on the size of detached accessory structures on the property. In this case, the 912 sq. ft. footprint is less than the maximum square footage allowed of 990 sq. ft. (for a garage or other accessory structure on 1.3 acres).

Reason for ADU Permit Application: A public hearing is necessary because the proposed ADU does not meet all of the performance standards that allow administrative approval by staff. The following standards are not met:

1) the ADU is proposed to have a livable area of 912 sq. ft., which exceeds the 900 sq. ft. livable area maximum allowed for administrative approval of an ADU; and
2) the subject property is 1.3 acres in size, which is under the 2 acre minimum allowed for administrative approval.

Owner-occupancy Requirement: Owner-occupancy of either the ADU or the Principal Dwelling Unit is a condition of approval of the ADU Permit. In reference to this application, the owner of the parcel will continue to occupy the Principal Dwelling Unit (the existing home) and, according to the applicant/owner, the ADU will not be occupied permanently (at this time) but rather, the ADU will be used for a game room area or for immediate family to stay when they are visiting in the future.

Note: See Appendix A of this staff report for general information regarding ADUs. See Appendix B for a list of the performance standards required for administrative approval.

Zoning and Subdivision History: The RUR District zoning was established as part of the county-wide rezoning in 1994. The subject property was created by a Certificate of Survey recorded on December 19, 1975 and is considered to be legal nonconforming with respect to the Zoning and Subdivision Regulations.
Aerial View of Surrounding Neighborhood (subject property outlined in blue). The red star indicates general location of ADU.

Picture of Surrounding Neighborhood (subject property outlined in yellow). The red star indicates general location of ADU.
PROJECT REVIEW

Infrastructure: Each ADU shall be considered with respect to the infrastructure services available and whether additional or improved infrastructure would be needed for the proposed ADU. The Minimum Infrastructure Requirements of Article 31 may be used as guidelines, but are not a requirement of ADU Permits. Services are provided to the parcel as follows:

Water: Potable water from a public water source is “required” in the Rural zoning district. For ADU applications, the minimum infrastructure requirements are “guidelines”, not requirements. Rural Water District 7 serves the existing home and the ADU by a 6-inch water line (along 210th St.).

Sewers: A wastewater system that complies with the Environmental Sanitary Code is required. A septic permit will be required as part of the ADU building permit process.

Public Safety: Fire Station Service Area is not required in the Rural zoning district. Police protection is provided by the Johnson County Sheriff's Office. Fire protection is provided by Johnson County Fire District No. 2 with a fire station located at 20500 W. 207th St., approximately 2.8 miles to the northeast.

Transportation: A 20-foot wide gravel road (minimum) is required in the Rural zoning district. Access to the site is provided by 210th Street. 210th St. is a two-lane, 16-foot wide gravel, local road and is maintained by Johnson County. 210th Street has existed since 1976 and serves this 10-lot subdivision that was created in 1975. The ADU will utilize the existing driveway entrance on to 210th Street. No new driveway entrances are proposed. Currently, the road serves 8 houses which generate approximately 80 vehicle trips per day (10 trips per home). With the addition of the traffic generated by the proposed ADU, the traffic on 210th Street will continue to be under 100 vehicle trips per day. A gravel road is considered for improvement when it reaches 400 vehicles per day.

Stormwater: According to the Public Works Department, since the structure has already been constructed, and there are no other improvements proposed with this ADU application, no additional stormwater requirements are necessary.

The ADU will be served by adequate infrastructure.

Golden Criteria Review
ADU Permits 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, as follows:

1. Is the ADU consistent with the zoning and uses of nearby properties? The zoning of surrounding parcels is RUR, Rural District. The surrounding uses are primarily residential with some agricultural uses. There is Planned Rural District zoning (one subdivision) about one-half mile to the southwest of the subject property. The RUR district allows one single-
family dwelling per parcel and accompanying accessory structures and uses -- which may include an accessory dwelling unit. In this situation, the accessory status of the ADU is obtained by controlling its size, (912 sq. ft. livable area in relationship to the Principal Dwelling Unit which has 3,300 sq. ft. of livable area), location (behind the house) and appearance/design (the ADU is residential in design and similar in design, style and color, to that of the Principal Dwelling Unit). The ADU will be accessed from the south side of the building (back of the property, non-street side) and its orientation to the south and west also make it subordinate to the Principal Dwelling Unit (existing residence). Furthermore, the proposed ADU meets the following principles stated in the purpose and intent section of the ADU requirements: provide homeowners the opportunity to use their property to enhance and fulfill personal objectives by allowing more options for the use of the accessory building (e.g. family game or media rooms with kitchens); 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 the Regulations; and recognize that homeowners are likely to maintain an owner-occupied residence in a manner that upholds the single-family character of the property.

Therefore, due to the ADU’s function as an accessory use as indicated above, the proposed ADU is consistent with the RUR district zoning of the subject parcel and the nearby parcels that are zoned RUR and the nearby residential character of this subdivision.

NOTE: The reasons stated in this report for recommending approval of the proposed ADU are particular to the unique conditions of the subject property and the application, and does not suggest or indicate that other ADU Permit requests, in the area, should automatically be approved and that those requests shall be reviewed case by case and on the specific conditions and attributes of the individual application.

2. Is the ADU compatible with the character of the neighborhood? This property is located in a subdivision created in 1975 of 10 lots served by a local, cul de sac street. The character of this subdivision (10 lots) is residential with houses constructed in the 1970’s up to the 2000’s. There are only two vacant lots remaining in this subdivision. There are four detached accessory structures in this neighborhood, which are approximately 609 sq. ft. (carport), 875 sq. ft., 4,400 sq. ft. (built in 1977), and 875 sq. ft. in size and appear to be metal buildings and utilitarian in design. In this area, the accessory structures are located to the side of the existing homes. The proposed ADU will be located behind the house and about 150 feet from the street. The ADU has a footprint of 912 sq. ft. and is residential in appearance and has metal siding and a metal roof. The ADU is compatible with the sizes of the other accessory structures along this street and its residential design and appearance will blend in with this neighborhood and be compatible with the character of this subdivision. The ADU is also similar in design and color relative to the Principal Dwelling Unit (existing residence).

The proposed ADU and the existing Principal Dwelling Unit will blend in with the residential surroundings and is in keeping with the development pattern and setbacks on this street. The ADU is compatible with the character of the neighborhood/subdivision. Furthermore, the ADU is subordinate to the Principal Dwelling Unit in respect to location (behind the house), size (912 sq. ft. of livable area compared to the house at 3,300 sq. ft.) and appearance (the ADU is residential in design and is similar to the style, design and color of the Principal Dwelling Unit.
3. **Suitability of the property for uses to which it has been restricted?**
The subject property is approximately 1.3 acres in size and has one single-family home built in 2006. The property is zoned RUR, Rural District, which allows agricultural uses and (one house per 10 acre minimum) single family dwelling units. The property is legal, non-conforming in regard to its size. The proposed ADU is considered an accessory use, and accessory uses are allowed in the Rural zoning district. Therefore, the property is suitable for the residential and accessory uses to which it has been restricted.

4. **Extent of detrimental effects to nearby parcels should the ADU Permit be approved?**
The ADU will be setback from the street about 150 feet and meets the setback requirements. The main effect of the proposal on nearby parcels would be the increased activity associated with another household. The closest homes to the ADU are: about 133 feet to the east, 311 feet to the west, and 284 feet to the north (across the street). While the ADU is visible from the street and surrounding homes, due to its size, setback from the street, and residential design/appearance, it would have minimal, if any, detrimental effects to nearby parcels. In addition, the footprint of the ADU building is 912 sq. ft., and 22 feet tall, which is allowed by right, as a detached accessory structure (such as a barn or garage). Therefore, the bulk and height of the ADU building has no negative impact because the building size and height are allowed by right, and visually, the building has the appearance of a residential garage and not necessarily an ADU. Any new activity of the site arising from the proposal would be minimal, if any.

*Approval of the proposal would cause minimal, if any, detrimental effects to nearby parcels.*

5. **What is the length of time that the property has remained vacant as zoned?** The property is not vacant. The existing home (Principal Dwelling Unit) was constructed in 2006. Single family dwelling units and related accessory uses are allowed uses in the Rural zoning district. The accessory building (which is the ADU) was constructed in 2017 with no dwelling unit in it.

6. **Is there a relative gain to the public health, safety, and welfare as opposed to the hardship imposed upon the landowner by denying the request?** There are no public health, safety or welfare concerns associated with the proposed ADU. Therefore, there would be no relative gain to the public in denying the application. If the ADU permit is denied, the landowner would not be able to complete construction of the existing accessory building with the ADU.

7. **Is the use in keeping with the Comprehensive Plan?** The primary use of the property is residential and is in keeping with the Rural Comprehensive Plan. The ADU functions as an allowed accessory use to the primary use, and is in keeping with the Rural Comprehensive Plan.

This property is located in the Rural Traditional Policy Area of the Rural Comprehensive Plan (Plan). This Policy Area calls for very low residential density (one dwelling per 10 acres) and to maintain and support the area for continued farming and agricultural production. The subject property is 1.3 acres in size and is legal non-conforming in regard to its size.

8. **Other Issues to Consider:** Planning staff has reviewed the proposal and found it to be in compliance with the requirements of Article 18, Section 7(D)(3)(e)(2) and (3) of the Zoning Regulations, which are the ADU performance requirements and guidelines.
OTHER DEPARTMENT AND AGENCY COMMENTS

Public Works Department: Comments are stated in the report.

Environmental Department: A septic system permit for the ADU shall be required. A reinspection of the existing septic system was performed on April 14, 2017 when the accessory structure building permit was approved.

Building Codes Department: The ADU shall be constructed to meet the 2012 International Residential Code.

RECOMMENDATION

Planning staff recommends approval of an ADU Permit to allow an Accessory Dwelling Unit to be located on the same lot as a Principal Dwelling Unit, subject to the following stipulations:

1. Permitted Use: This permit allows an Accessory Dwelling Unit (a maximum of 912 sq. ft. of livable area), in conjunction with a Principal Dwelling Unit on a 1.3-acre parcel in accordance with the Development Plan and Elevations (attached hereto as Exhibit A).

2. Location: The ADU structure is already constructed and shall remain in its current location shown on the site plan.

3. Owner Occupancy:
   a. The Property Owner shall occupy either the Principal Dwelling Unit or the ADU as their domicile.
   b. The occupancy required in 3(a) is a continuing condition for purposes of this ADU Permit.
   c. The Property Owner shall submit proof of such domicile as evidenced by voter registration or other such means as accepted by the Zoning Administrator.
   d. The second dwelling on-site shall not be occupied until Nos. 3(a),(b) and (c), above, have been complied with.

4. Notice: The Property Owner shall record against the subject property a written notice with the Johnson County Department of Records and Tax Administration prior to issuance of the building permit for the new ADU. The notice shall be written in a manner to alert future owners or lessors of the subject lot, tract, or parcel of the limitations of these stipulations and shall include the requirement 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.

5. Accessory and Supplementary Uses:
   a. Supplementary and accessory uses and accessory structures are allowed on the subject parcel if they are in accordance with the requirements of the County Zoning and Subdivision Regulations.
   b. In light of No. 5(a), above, it is the intent of this stipulation that the addition of the ADU shall not significantly increase the levels and intensities of accessory and supplementary uses on the subject 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.

c. 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 Article 18, Section 5 of the Zoning Regulations.

d. Transient Uses: The ADU is intended for long-term occupancy only. The ADU shall not be used as a Tourist Home including bed and breakfast purposes unless the ADU Permit is amended to allow the use.

6. Repairs, Remodeling, Additions, and Other Alterations:

a. In general, any proposed repairs, remodeling, additions, or other alterations of the Principal Dwelling Unit and/or the ADU shall maintain the accessory relationship of the ADU to the Principal Dwelling Unit.

b. The Principal Dwelling Unit may be repaired and remodeled and the Livable Area may be increased. However, alterations to the Principal Dwelling Unit that result in another Dwelling Unit shall not be allowed.

c. The ADU may be repaired and remodeled. However, alterations to the ADU that result in greater Livable Area or another Dwelling Unit shall require an amendment to the ADU Permit.

d. There shall be no more than one ADU established on the subject parcel.

7. Continuing Compliance: There is a continuing obligation that the requirements of Article 18, Sections 7(D)(3)(e)(2) and (3) of the Zoning Regulations shall be complied with for the life of the ADU Permit. Article 18, Sections 7(D)(3)(e)(2) and (3) are listed in these stipulations, as follows:

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.

8. Other Regulations: The ADU shall be constructed in accordance with any and all applicable governmental codes and regulations, including but not limited to the County environmental, building, fire codes and erosion and sediment control standards. A septic permit will be required as part of the building permit in order to add lateral lines to the existing lateral field in order to accommodate an additional bedroom.

9. Definitions: For the purposes of these stipulations, “Property Owner”, “Domicile”, and “Owner Occupancy” shall be defined by Article 18, Section 7(D)(2)(a), and are listed in these stipulations, as follows:

“Property Owner” means the deed holder and/or contract purchaser of the lot, tract, or parcel.

“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.

“Owner Occupancy” means that a Property Owner, as reflected in the deed records, makes his/her legal domicile at the site.
“Dwelling Unit”, “Accessory Dwelling Unit”, “Principal Dwelling Unit”, “Livable Area” shall be defined by Article 2, Section 3 of the Zoning Regulations, and are listed in these stipulations, as follows:

"Dwelling Unit"
One or more rooms, designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of one family maintaining a household.

“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 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.

“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.

10. Term: This ADU permit has an unlimited term of years, but may be subject to termination and revocation for failure to comply with the terms and provisions of the ADU permit, and the applicable requirements of the Johnson County Zoning and Subdivision Regulations.

Notes: Any of the performance standards used to determine eligibility for administrative approval of an ADU as set forth in Article 18, Section 7(D)(2)(a) of the Zoning Regulations may be required
as a condition of approval of the ADU Permit. Planning staff has included the relevant standards in the recommended stipulations. (See Appendix B for a list of the performance standards.)

Reasons for Recommendation of Approval:

1. The ADU or the Principal Dwelling Unit will be owner occupied.
2. The proposed ADU Permit is consistent with the RUR, Rural district zoning of surrounding parcels and the residential uses nearby. The ADU functions as an accessory to the Principal Dwelling Unit (the existing residence on the subject property).
3. The proposal is in keeping with the residential character of the neighborhood/subdivision. The Principal Dwelling Unit and the proposed ADU have an overall visual effect that will blend in with the residential uses and development pattern in this neighborhood/subdivision. Furthermore, the ADU building is compatible with the other existing accessory structures along this street and is subordinate to the Principal Dwelling Unit in regard to size, location and design/appearance.
4. Approval of the ADU Permit would have minimal, if any, detrimental effects to nearby parcels due to its size, location, its setback from the street, and its residential design and appearance.
5. There would be no gain to the public health, safety and welfare if the ADU Permit were denied.
6. The primary use of the parcel, which is residential, is in keeping with the Rural Comprehensive Plan. The proposed ADU functions as an accessory use and is subordinate to the Principal Dwelling Unit in regard to size, location and design/appearance.
7. The ADU Permit satisfies the findings required for issuance of an ADU Permit as set forth in Article 18, Section 7(D)(3)(e)(2) and (3) of the Zoning Regulations.

Enclosures: Applicant’s Written Narrative & Picture of the Principal Dwelling Unit Site/Development Plan and Elevation Drawings (Exhibit A) Appendix A: General Information Regarding Accessory Dwelling Units Appendix B: Performance Standards for Administrative Approval of an Accessory Dwelling Unit
APPENDIX A:

GENERAL INFORMATION REGARDING ACCESSORY DWELLING UNITS

The Zoning Regulations were amended on March 7, 2013 to allow an Accessory Dwelling Unit (ADU) in association with a Principal Dwelling Unit on the same lot or parcel in the rural and residential zoning districts of unincorporated Johnson County.

Definitions

- An ADU is defined as a dwelling unit that is accessory and secondary to the principal dwelling unit and under the same ownership in all respects.
- The Principal Dwelling Unit is defined to be the larger of the two dwellings.

Purpose and Intent

The general purpose and intent of allowing Accessory Dwelling Units (ADU) in the unincorporated portion of the County is to:

- Allow life-style choices in single-family neighborhoods that respond to changing demographics and economic conditions;
- 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);
- 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);
- 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
- 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.

ADUs are not Duplexes

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.
Administrative Approval v. ADU Permit
If a proposed ADU meets the performance standards set forth in Article 18, Section 7(D)(2)(a), of the Zoning Regulations then the ADU may be administratively (Planning staff) approved. These performance standards have been chosen so that the proposed ADU will fit the character of the neighborhood and will have few impacts on the surrounding neighbors. If the proposed ADU does not meet the performance standards, then an applicant may submit an application for an Accessory Dwelling Unit Permit (ADU Permit) which requires a public hearing, a recommendation by the Zoning Board, and a final decision by the Board of County Commissioners.

Owner-occupancy Requirement
Owner-occupancy of either the ADU or the Principal Dwelling Unit is a condition of both administrative approval of the ADU and approval of the ADU Permit.

ADU Permit Review Requirements:
ADU Permits 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 (which is also used to review rezoning and conditional use applications).

The ADU Permit shall be reviewed to ensure that granting the ADU Permit is in harmony with the general purpose and intent of the Regulations. More specifically, it is the intent of the Regulations that an ADU functions as an accessory to the Principal Dwelling Unit and that the ADU is subordinate in size, location, and appearance to the Principal Dwelling Unit that it accompanies.

Lastly, a finding shall be made that granting the ADU Permit will not impact surrounding parcels and the public in general regarding a variety of issues.
APPENDIX B:

PERFORMANCE STANDARDS
FOR
ADMINISTRATIVE APPROVAL OF AN
ACCESSORY DWELLING UNIT

NOTE: The following material applies to administratively approved ADUs but can also be used for ADU Permits.

Administrative Review:
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.

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 facade 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.