

# 8

## ADMINISTRATION AND PROCEDURES

### 8.1 Applicability

- 8.1.1 The construction, reconstruction, extension, repair, renovation, or alteration of any building, structure, site, change of use, or land use is subject to review by the Zoning Administrator (ZA) as outlined in this section unless otherwise exempted.
- 8.1.2 The following do not require review, though the exemption from the review process shall not be deemed to grant authorization for any work to be done in violation of the provisions of applicable technical codes and any other laws or resolutions.
- a. Interior alterations or renovations that do not alter the footprint, height, or massing of a structure.
  - b. Exterior alterations or renovations that do not alter the footprint, height, or massing of a structure.
  - c. No permit is required for routine maintenance and minor repairs that do not require a building permit.
- 8.1.3 No permit may be issued for development activities until the ZA has approved the plan(s) as complying with all applicable provisions of these regulations.
- 8.1.4 Permits for any construction or landscaping in the public Right-of-Way shall be obtained from the City of Emporia or Lyon County Engineer's Office.

### 8.2 Review Process

- 8.2.1 *Project Consultation.* Before preparing an application for review, the applicant shall schedule a meeting with the ZA to discuss the review procedures and applicable standards for approval. This meeting is not intended as an approval meeting and will not guarantee the applicant an approval. It is intended to provide the applicant with an overview of the application requirements and identify issues or opportunities relating to compliance with the LC Zoning Regulations.
- 8.2.2 Application submittal
- a. All applications shall be sufficient for processing before the ZA is required to review the application. The ZA will notify the applicant whether the application is complete or whether additional information is required.
  - b. An application is sufficient for processing when it contains all of the information necessary to decide whether or not the development as proposed will comply with all of the requirements of the LC Zoning Regulations and when the applicable fee has been paid.
- 8.2.3 Application review
- a. Upon determining a complete application, the ZA will review and determine whether the application conforms to all applicable requirements of the zoning regulations.
  - b. Final action on an application will be based solely on findings as to compliance with all applicable provisions of the LC Zoning Regulations and other applicable technical

requirements.

- c. Where an application is denied, the reason for denial will be stated in writing, specifying the provisions of the LC Zoning Regulations or other applicable technical requirements that are not in compliance. A revised application may be submitted for further consideration.

8.2.4 *Period of Validity.* Any permit granted shall become null and void one hundred and eighty (180) days after the date on which it is issued unless within said period construction, building, moving, remodeling, or reconstruction of a structure is commenced, or a use is commenced. If the construction or work is abandoned or suspended for any one hundred and eighty (180) day period after such permit is issued, a new permit application shall be submitted.

### 8.3 Application Requirements

8.3.1 An application shall be prepared by or on behalf of the property owner(s) in accordance with this section and submitted to the ZA for processing, review, and approval. Each application shall include those of the following or that which is relevant to the application:

- a. One (1) or more maps identifying the project site on the Lyon County Regulating Plan.
- b. To demonstrate compliance with the LC Zoning Regulations, a tabular comparison of each applicable standard and the corresponding standards for the proposed project, including but not limited to:
  - 1. The applicable Parcel Type as prescribed in the Lyon County Regulating Plans
  - 2. The Building Standard specific to applicable Parcel Type
  - 3. The Landscape Standard specific to applicable Parcel Type
  - 4. All applicable Supplemental Regulations
- c. One (1) or more project plans of the project site drawn to scale accurately indicating each applicable proposed element of the project in compliance with the standards listed above, including as appropriate:
  - 1. Identifying information including the owner(s) of record, north arrow, date (including any revision dates), and scale.
  - 2. Location of all property lines, Rights-of-Way or easement affecting the property, and abutting streets.
  - 3. Existing natural features of the site including watercourses and applicable buffers, wetlands and applicable buffers, contours at no more than one (1')-foot intervals, floodplains, trees, other vegetation, etc.
  - 4. A plan indicating the location, types, and dimensions of all proposed grading, drainage, stormwater management, and erosion control, including proposed treatment of slopes in excess of ten (10%) percent to prevent soil erosion and excessive runoff.
  - 5. Location and dimensions of all existing and proposed buildings, structures, fences, walkways, driveways, off-street parking lanes, and other significant features; with distances from the front, side, and rear property lines to each proposed new building,

structure, and site improvements.

6. Location of existing and proposed utilities and facilities.
  7. A landscaping plan including pavement and hardscape elements including all screening of parking.
- d. Digital photographs of the subject and neighboring properties.
  - e. Color rendered elevations (drawing to scale of one (1) side of a structure) of all elevations of all proposed and modified buildings and any related buildings, including building height. Building elevations of each exterior wall and the façade shall indicate all architectural details to be used.
  - f. At least two (2) architectural wall cross-sections (one front wall and one side wall), illustrating the relief (e.g., projections and setbacks) of the other architectural features shown in the building elevations.
  - g. A plan for signs, including type, design, and dimensions of all existing and proposed signs.

## 8.4 Technical Review

For parcels in unincorporated Lyon County, this process is completed by the ZA.

8.4.1 *Applicability.* The Technical Review Process for site plans is required in the following instances:

- a. All new construction on Commercial and Industrial Parcel Types when such property is within one hundred (100') feet of a residential Parcel Type or is adjacent to a more restrictive Parcel Type.
- b. All new construction on Flex-Use, and Multi-Family Parcel Types.
- c. The construction of any new subdivision.
- d. All parcels types which have a new drive-up, drive-through, or exterior vehicular service or waiting area.
- e. All changes in use that employ the outdoor use of the lot to store materials or goods.
- f. No review will be required unless it is determined that the proposed construction or modification consists of a new use.

8.4.2 *Application Submittal.* Any proposed development which requires a Technical Review shall submit the digital site plan and building plans to the ZA before the next regularly scheduled meeting. The ZA will review the plan and make recommendations to the developer.

8.4.3 *Application Review.* The ZA will review the plan(s) according to the procedures and using the criteria established in this document. The planning and zoning office will notify the developer within five (5) days of the monthly meeting with questions, comments, and suggestions.

8.4.4 *Occupancy of Use.* (C, FL, IF, LI, and HI) No occupancy of new construction will be permitted until all conditions of the approval have been complied met. Provided that consideration will be given to seasons of the year and adverse weather conditions in requiring completion of landscaping plans, but further provided that such required landscaping shall be completed within six (6) months following occupancy under such consideration unless a longer period is granted.

8.4.5 *Change of Use.* Any change of use to another type of use will require a review.

## **8.5 Conditional Use Permit (CUP)**

8.5.1 The application, notice, public hearing, and action procedures outlined in the amendment procedures shall apply to all applications for Conditional Use Permits submitted after the effective date of these regulations.

8.5.2 When approving a conditional use permit, the Governing Body, shall specify the period for which the permit is valid or shall state that the term of the permit is not limited in time.

8.5.3 The Governing Body may revoke any Conditional Use Permit within their jurisdiction upon finding that:

- a. Necessary building permits have not been issued within twelve (12) months of approval of the conditional use permit.
- b. If no building permit is required for the use allowed under the conditional use permit. That the use so allowed has not been commenced within twelve (12) months of the conditional use permit' approval.

## **8.6 Classification of Unlisted Uses**

8.6.1 Uses not specifically listed in the Parcel Type use tables, the ZA shall have the authority to determine the appropriate Parcel Types, which allow the use based on the use's similarity to listed uses. Such determination shall be in the form of a written declaratory ruling, a copy of which shall be presented to the LCPAB at the next regularly scheduled meeting. Determinations of the ZA can be appealed to the LCPAB.

## **8.7 Existing Nonconformities**

8.7.1 Nonconforming lots of record

- a. *Definition.* An unimproved lot which is part of a recorded subdivision or a parcel of land, the deed to which was recorded with the Lyon County Register of Deeds prior to the original adoption of the LC Zoning Regulations and neither said lot nor parcel complies with the lot width or area requirements for any permitted use in the District in which it is located.
- b. The ZA shall issue a zoning certificate upon the request of the lot owner of record, for any nonconforming lot of record, provided that:
  1. Said lot shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when any zoning regulations would not have prohibited the creation of a lot of such size and width at such location; and
  2. Said lot has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the applicable zoning regulations have prohibited the creation of such lot;
  3. Said lot can meet all yard regulations for the applicable Parcel Type; and

4. Said lot can meet minimum standards for sewage treatment as required by the county sanitation code.

#### 8.7.2 Nonconforming structures

- a. *Definition.* A nonconforming structure is an existing structure that does not comply with the lot coverage, height, or yard requirements That apply to new structures built on a particular Parcel Type.
- b. *Authority to continue.* Any structure devoted to a use permitted by its applicable Parcel Type, but located on a lot that does not comply with the applicable intensity of use regulations, and the applicable yard, and height regulations, may be continued, so long as it remains otherwise lawful. Any principal structure, which was (a) a conforming use when erected, (b) was erected prior to the effective date of these regulations, and (c) does not comply with applicable yard regulations, may be continued without the need of a variance.
- c. *Enlargement, repair, alterations.* Any nonconforming principal structure may be enlarged, maintained, repaired, or remodeled. However, no such enlargement, maintenance, repair, or remodeling shall either create any additional nonconformity or increase the degree of an existing nonconformity. Notwithstanding the above, a porch covered by a roof that extends into a front setback area may be enclosed but not in excess of the area covered by the existing roof.
- d. *Damage or destruction.* If any nonconforming structure is damaged or destroyed, by any means, to the extent of more than fifty (50%) percent of its fair market value, such structure shall not be restored unless it shall conform to the regulations for the applicable Parcel Type or unless such restoration is authorized as an exception by the LCPAB. When a structure is damaged to the extent of fifty (50%) percent or less of its fair market value, no repairs or restoration shall be made unless a zoning certificate is obtained. Substantial restoration shall be underway within one (1) year after the date of such partial destruction, and repair or restoration is diligently pursued to completion.
- e. *Moving.* No nonconforming structure shall be moved in whole or in part for any distance whatever, to any other location on the same lot or any other lot unless the entire structure shall conform to the applicable Parcel Type's regulations after being moved.

#### 8.7.3 Nonconforming uses

- a. *Definition.* A legal nonconforming use is an existing use of a structure or land that was legal when the use commenced but which does not comply with the use regulations applicable to new uses allowed by the applicable Parcel Type.
- b. *Authority to continue.* Any nonconforming use of a structure or any lawfully existing nonconforming land use that was lawful and in existence at the effective date of these regulations. Also, it does not involve a structure, or only involves a structure that is accessory to such use of land, may be continued. So long as otherwise lawful and so long as it is not specified to be terminated by these regulations.
- c. Ordinary repair and maintenance
  1. Normal maintenance and incidental repair, or replacement, installation, or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring, or plumbing, may be performed on any structure devoted in whole or in part to a nonconforming use.
  2. Nothing in these regulations shall be deemed to prevent the strengthening or restoring

to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition.

- d. *Extension.* A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity.
- e. *Enlargement.* No structure devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall conform to the regulations of the applicable Parcel Type.
- f. *Damage or destruction.* If any structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means, to the extent of more than fifty (50%) percent of its fair market value, such structure shall not be restored unless such structure and the use thereof shall conform to all regulations of the applicable Parcel Type or unless such restoration is authorized as an exception by the LCPAB. When such damage or destruction is fifty (50%) percent or less of fair market value, no repairs or restoration shall be made unless a zoning certificate is obtained. Substantial restoration shall be underway within one (1) year after the date of such partial destruction, and repair or restoration is diligently pursued to completion.
- g. *Moving.* No structure devoted in whole or in part to a nonconforming use and no nonconforming land use shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot. Unless the entire structure and the use thereof or the land use shall conform to all applicable Parcel Type regulations after being so moved. Manufactured housing may be replaced on an existing pad having utility hook-ups if such pad has not been vacant for the previous ninety (90) consecutive days.
- h. *Change in a non-conforming use.* Unless structural alterations are made which, will expand the area or change the existing structure's dimensions, any nonconforming use of a structure, or nonconforming structure, and premises, may change to another nonconforming use provided that the LCPAB either by general rule or by making findings in the specific case. The LCPAB shall find that the proposed nonconforming use is equally appropriate or more appropriate to the applicable Parcel Type than the existing nonconforming use. Once such use has changed, it may no longer be returned to the original use or any other less appropriate use.
- i. *Abandonment or discontinuance.* When a nonconforming use is discontinued or abandoned for twelve (12) consecutive months, such use shall not be reestablished or resumed. Any subsequent use or occupancy of such land or buildings shall comply with the applicable Parcel Type regulations.
- j. *Nonconforming accessory uses.* No conforming use, which is accessory to a primary nonconforming use, shall continue after such primary use shall cease or terminate.

#### 8.7.4 Exceptions as conforming uses

- a. *Status of existing exceptions.* Where a use exists at the time of the effective date of these regulations and is permitted by these regulations only as an exception in the applicable Parcel Type, such use shall not be deemed to be a nonconforming use. Still, it shall, without further action, be deemed a lawful conforming use in such Parcel Type. However, such use shall not expand or enlarge until the application is made to and approved by the LCPAB.
- b. *Status of future exceptions.* As provided in these regulations, any use for which an exception has been issued, shall not be deemed a nonconforming use, but shall, without further action, be deemed a lawful conforming use.

## 8.8 Amendment Procedures

### 8.8.1 Who may petition or apply

- a. Applications for revisions or changes in the zoning regulations that may result in Rezoning or Conditional-Use Permit issuance or Text Amendments may be made via petition by the property owner affected to the LCPAB.
- b. Applications for revisions or changes in the zoning regulations which may result in Rezoning or Conditional-Use Permit issuance or Text Amendments may also be made by the LCPAB or Governing Body.
- c. Applications for revisions or changes to general zoning regulations may be made by the LCPAB, or Governing Body provided such proposed amendments, revisions, or changes shall be submitted to the LCPAB for recommendation and report, and the final decision is made by the Governing Body.
- d. Any citizen may petition the LCPAB to take up for consideration a change or revision to general zoning regulations. The LCPAB shall consider all such requests.

### 8.8.2 Procedures for consideration of a request for amendments

- a. Applications
  1. All applications for revisions or changes to the zoning regulations shall be submitted in completed application forms before any meeting of the LCPAB.
  2. In cases where the proposed revisions or changes would only affect a specific property, the application shall be submitted to the LCPAB.
  3. The LCPAB may require additional data and information, including drawings, plans, and maps. A proposal will not be considered as submitted until all reasonable requirements for information and data are met.
  4. No application for an amendment to these regulations, with exception to Text Amendments, shall be accepted by the LCPAB if it has denied an application for the same amendment within the preceding twelve (12) months. The LCPAB may grant exceptions to this restriction for a good cause shown.
  5. The payment of the application fee, as established by the Schedule of Fees, shall be made at the time of submitting the application. In the case of an application by the LCPAB or Governing Body, no such fee shall be required.
  6. The LCPAB shall hold a public hearing thereon and shall cause a written summary to be made of the proceedings.
- b. Notices of public hearing
  1. Notice of such hearing detailing the proposed revision or change shall be published at least once in the official county newspapers at least twenty (20) days prior to the date of the hearing. Such notice shall fix the time and place for the hearing and contain a statement regarding the proposed revisions or changes.

2. If the application is not a general amendment, revision or change to the zoning regulations but is for a rezoning or Conditional Use Permit affecting a specific property, the property affected shall be designated by legal description and a general description sufficient to identify the property under consideration. In addition to such publication notice, written notice of such proposed revision or change shall be mailed at least twenty (20) days before the public hearing to all owners of record of the properties affected and all owners of record of lands located within at least two hundred (200') feet of the area proposed to be altered if the affected property is located within the City's corporate limits, or one thousand (1,000') feet if it is located within the county's jurisdiction. A certified list of such owners is required upon submission of the proposed revisions or changes. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the LCPAB or the Governing Body.
3. If a proposed revision or change would cause a Text Amendment to the zoning regulations, a notice of the public hearing shall not be required to be mailed to all affected persons; therefore, a certified list of owners shall not be required.

### 8.8.3 Action by the LCPAB and the Governing Body

#### a. Rezoning and Conditional-Use Permits

1. The LCPAB shall hold a public hearing for proposed revisions or changes that would affect specific properties under their respective jurisdiction. This public hearing shall be held at the place and time so stated within the legal notice.
2. At the conclusion of the public hearing, the LCPAB shall take action on the amendment request by preparing a recommendation to approve, approve with conditions as authorized by these regulations, or disapprove the application by a majority of its members present and voting at the hearing. The Governing Body shall not consider a recommendation of the LCPAB until its next regular meeting after the lapse of the fourteen (14) day protest period.
3. The LCPAB shall make a written recommendation approving or disapproving the submitted proposal to its Governing Body within forty-five (45) days of the date set for hearing in the published notice.
4. Upon receipt of the recommendation of the LCPAB, the Governing Body may:
  - (a) Approve such recommendation by the adoption of the same by resolution in the County;
  - (b) override its LCPAB's recommendations by a four-fifths (4/5) majority vote of the membership of the Governing Body; or
  - (c) may return the same to its LCPAB for further consideration, together with a statement specifying the basis for the Governing Body's failure to approve or disapprove.
5. If the Governing Body returns a recommendation made by the LCPAB, the LCPAB, after considering the same, may resubmit its original recommendations giving the reasons, therefore, or submit new and amended recommendations. Upon receiving such recommendations, the Governing Body, by a simple majority thereof, may: adopt; may revise or amend and adopt such recommendations by resolution; may disapprove the



recommendation, or the Governing Body need take no further action thereon.

6. If the LCPAB fails to deliver its recommendations to the Governing Body following the LCPAB's next regular meeting after receiving the Governing Body's report. The Governing Body shall consider such a course of inaction on the part of the LCPAB as a resubmission of the original recommendations and proceed accordingly.
  7. The proposed amendments shall become effective upon publication of the respective adopting resolution.
  8. Factors LCPAB and Governing Body are to consider in cases of rezoning or Conditional Use Permit (CUP) are:
    - (a) The character of the neighborhood;
    - (b) the zoning and uses of properties nearby;
    - (c) the suitability of the subject property for the uses to which it has been restricted;
    - (d) the extent to which removal of the restrictions will detrimentally affect nearby property;
    - (e) the length of time the subject property has remained vacant as zoned;
    - (f) the relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual landowner;
    - (g) the recommendations of a permanent or professional planning staff; and
    - (h) the conformance of the requested change to the County's comprehensive plan; and
    - (i) such other factors deemed relevant by the LCPAB or Governing Body.
- b. Text Amendments
1. The LCPAB shall hold a public hearing for proposed text amendments to the zoning regulations and the Emporia/Lyon County Joint Comprehensive Plan that would take effect in Lyon County. This public hearing shall be held at the place and time so stated within the legal notice.
  2. After the conclusion of the public hearing, the LCPAB shall take action on the amendment request by preparing recommendations to approve, approve with conditions as authorized by these regulations, or disapprove the application by a majority of their members present and voting at the hearing.
  3. The Governing Body shall vote on the enactment of such amendment within thirty (30) days after the conclusion of its last public hearing on the proposed amendment.

8.8.4 *Protest Petition.* Regardless whether a LCPAB recommends to approve or disapprove a proposed rezoning or conditional use permit or "fails to recommend" if a protest against such rezoning or conditional use permit is filed in the office of the county clerk within fourteen (14) days after the date of the conclusion of the public hearing held pursuant to such publication notice, duly signed and acknowledged by the owners

of twenty (20%) percent or more of any real property subject to the rezoning or conditional use permit or by the owners of twenty (20%) percent of the total area, except public streets and ways, located within the notification area described in 8.9.4.a.3, the resolution adopting such rezoning or conditional use permit shall not be passed except by a favorable vote of at least four-fifths (4/5) of all of the members of the board of county commissioners. Immediately upon receiving the filing of such a protest petition, the Clerk shall notify the ZA of such a petition.

## **8.9 The Boards of Zoning Appeals (LCPAB)**

- 8.9.1 *Authorization.* The Lyon County Planning and Appeals Board (LCPAB) was established by resolution and in accordance with the provisions of K.S.A. 12-759 and amendments thereto.
- 8.9.2 *Membership.* Shall be as provided in the LYON COUNTY PLANNING AND APPEALS BOARD BYLAWS, LYON COUNTY, KANSAS (LCPAB).
- 8.9.3 *Jurisdiction.* Appeals, exceptions, and variances for parcels located within the jurisdiction of Lyon County shall be taken to the LCPAB.
- 8.9.4 *Appeals.* The LCPAB shall have the power to hear and decide appeals where it is alleged that the ZA has made an error in any order, requirement, decision, or determination in the enforcement of these Zoning Regulations. Appeals may be made by the person aggrieved or by any officer, department, or bureau of the governmental agency or body affected by any ZA's decision.
- a. Application procedure
1. An application for an appeal shall be filed within forty-five (45) days after the ZA has made a determination.
  2. Applications to the LCPAB shall be made in writing on forms provided by the ZA, and filed with said office, all supporting data. Said application shall specify the grounds for such appeal and shall be completed in its entirety. The ZA shall determine whether the filed application is complete.
    - (a) A legal description may be required for submission as part of an application to be certified by a Professional Surveyor, licensed in the State of Kansas.
    - (b) A submittal of a copy of the order, requirement, decision, or determination of the ZA, which the applicant believes to be in error, may be required.
    - (c) A clear and accurate written description may be required of the proposed use, work, or action in which the appeal is involved, and a statement justifying the appellant's position.
    - (d) Where necessary, the submittal of a plot plan, drawn to scale, in duplicate showing existing and proposed plans for the area in question, may be required.
  3. An application may require that it be accompanied by an ownership list, certified by a licensed abstractor or licensed title insurance agency, listing the legal description and the names and addresses of the owners of all property located within one thousand (1,000') feet of the boundaries of the property included in the application. When the property that is the subject of the application is adjacent to the City Limits the applicant shall provide such an ownership list for the property within two hundred (200') feet of the boundaries of the property included in the application.

- b. *Stay of proceedings.* An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the ZA certifies to the LCPAB after the notice of appeal shall have been filed by reason of facts stated in the certificate, a stay would, in the opinion of the ZA, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the LCPAB, or by a court of record on application or notice to the ZA on good cause shown.

8.9.5 *Variances.* The LCPAB shall have the power to authorize in specific cases a variance from the specific terms of these regulations, which will not be contrary to the public interest. Where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done. No use variances may be requested.

- a. Variances from these Zoning Regulations may be granted only in the following instances:
  - 1. To vary from the applicable lot area, lot width, and lot depth requirements.
  - 2. To vary the applicable bulk regulations, including maximum height, lot coverage, and minimum yard requirements.
  - 3. To vary from the applicable off-street parking and loading requirements.
  - 4. To vary from sign height and size requirements.
  - 5. To vary from the floodplain management requirements of the Floodplain Management Resolution for Lyon County, Kansas.
  - 6. The reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.
- b. The applicant shall show that his or her property was acquired in good faith and whereby reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the Zoning Regulations, or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the Zoning Regulations prohibit the use of his or her property in the manner similar to that of other property of its Parcel Type.
- c. A request for a variance may be granted upon a finding of the LCPAB that all of the following conditions have been met. The LCPAB shall make a determination on each condition, and the finding shall be entered in the record:
  - 1. The variance requested arises from a condition that is unique to the property in question and is not ordinarily found in the same Parcel Type, and is not created by the property owner or applicant's actions.
  - 2. The granting of the permit for the variance will not adversely affect the adjacent property owners or residents' rights.
  - 3. The strict application of the Zoning Regulations' provisions of which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
  - 4. The variance desired will not adversely affect the public health, safety, morals, order,

convenience, prosperity or general welfare.

5. The granting of the variance desired will not be opposed to the general spirit and intent of these Zoning Regulations.

d. Application procedure

1. Applications to the LCPAB shall be made in writing on forms provided by the ZA. Said application shall be completed in its entirety and filed with the office of the ZA with all supporting data. The ZA shall determine whether the filed application is complete.
  - (a) A legal description may be required for submission as part of an application to be certified by a registered surveyor.
  - (b) It may be required that the applicant submit a statement, in writing, justifying the variance requested, indicating specifically the enforcement provisions of the zoning regulations from which the variance is requested, and outlining in detail the manner in which it is believed that this application will meet each of the five (5) conditions set out in item 8.9.5.c.
  - (c) It may be required that applicant submit a sketch, in duplicate, drawn to scale and showing the lot or lots included in the application; the structure existing thereon; and the structures contemplated necessitating the variance requested. All appropriate dimensions and any other information which would be helpful to the board in consideration of the application should be included.
2. It may be required the applications shall be accompanied by an ownership list, certified by a licensed abstractor or licensed title insurance agency, listing the legal description and the names and addresses of the owners of all property located within two hundred (200') feet of the boundaries of the property included in the application. When the property that is the subject of the application is adjacent to or outside the City Limits the applicant shall provide such an ownership list for the property within one thousand (1,000') feet of the boundaries of the property included in the application.
3. An application shall be accompanied by the filing fee required by a Schedule of Fees. A separate filing fee shall be required for each application.

8.9.6

*Exceptions.* The LCPAB shall have the power to grant exceptions to the provisions of these zoning regulations when an exception is expressly authorized in a particular Zoning District(s). In no event shall exceptions to the zoning regulations' provisions be granted where the exception contemplated is not specifically listed in the zoning regulations. The LCPAB shall not grant an exception when the conditions established by this section are not found to be present.

- a. The LCPAB shall not grant an exception unless it shall, in each specific case, make specific written findings of fact directly based upon the particular evidence presented to it that support conclusions that:
  1. The proposed exception complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations, and use limitations.
  2. The proposed exception at the specified location will contribute to and promote the welfare or convenience of the public.
  3. The proposed exception will not cause substantial injury to the value of other

property in the neighborhood in which it is located.

4. The location and size of the exception, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the exception will not dominate the immediate neighborhood so as to prevent the development and use of neighboring property in accordance with the applicable Zoning District regulations. In determining whether the exception will so dominate the immediate neighborhood, consideration shall be given to:
    - (a) The location, nature, and height of buildings, structures, walls, and fences on the site.
    - (b) The nature and extent of landscaping and screening on the site.
  5. Off-street parking and loading areas will be provided in accordance with the standards outlined in these regulations, and such areas will be screened from adjoining residential uses and located to protect such residential uses from any injurious effect.
  6. Adequate utility, drainage, and other such necessary facilities have been or will be provided.
  7. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
- b. In granting an exception, the board may impose such conditions, safeguards, and restrictions upon the premises benefited by the exception as may be necessary to reduce or minimize any potentially injurious effect of such exception upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations.

#### 8.9.7

*Decision procedure.* The LCPAB shall adopt rules of procedure as necessary and proper to govern their proceedings, including establishing a quorum and voting requirements; such rules shall not be in conflict with other laws, regulations, or resolutions. A majority of the LCPAB shall constitute a quorum for the transaction of business. A concurring vote of a majority of its entire membership shall be necessary to reverse any order, requirements, decision, or determination of the ZA, to decide in favor of the applicant upon any matter required to pass under these regulations or to affect any variation in such regulations.

- a. *Hearing and Notice.* The LCPAB shall select a reasonable time and place for the hearing of an appeal, exception, or variance. Public notice of the time, place, date, and subject of such hearing shall be published once in an official newspaper at least twenty (20) days prior to the date of the hearing. A copy of such notice shall be mailed to each party making the appeal or request for variance or exception, each person on the ownership list, and to the LCPAB twenty (20) days prior to the date of the hearing. Any interested party may appear and be heard at the hearing in person, by agent, or by attorney.
- b. *Appeals decision.* The LCPAB, with the necessary quorum and votes, may affirm or reverse, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the ZA, and may issue or direct the issuance of a permit.
- c. *Variance decision.* In granting a variance from these Zoning Regulations' provisions, the LCPAB shall impose such restrictions, terms, time limitations, landscaping, screening, bond, and other appropriate safeguards as needed to protect adjoining property and to carry out the general

purpose and intent of these Zoning Regulations. The LCPAB shall render a written decision on an application for a variance, without unreasonable delay after the hearing's close, The decision shall be made within forty-five (45) days from the close of the hearing.

- d. *Records.* The ZA shall maintain complete records of all actions of the LCPAB with respect to an application for appeals and variances and keep the Governing Body informed.
- e. *Period of validity*
  - 1. For parcels located within Lyon County jurisdiction, no appeal or variance granted by the LCPAB shall be valid for a period of longer than one hundred and eighty (180) days from the date on which the LCPAB grants the appeal or variance unless within such one hundred eighty (180)-day period, a zoning permit is obtained and the construction, moving, or remodeling of a structure is started. The LCPAB may grant additional extensions not exceeding one hundred and eighty (180) days each, upon written application, without notice or hearing.

8.9.8 *Appeals from Board decisions.* In exercising their powers, the LCPAB, in conformity with the provisions of these regulations, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, and to that end shall have all the powers of the officer from whom the appeal is taken; may attach appropriate conditions and may issue or direct the issuance of a permit. Any person, official or governmental agency dissatisfied with any order or determination of the LCPAB may bring an action in the District Court of Lyon County, Kansas, to determine the reasonableness of any such order or determination within thirty (30) days of the rendering of the order or determination by the LCPAB.