

# **BOARD OF ZONING APPEALS PROCEDURES AND APPLICATION**

**For**

**The UNINCORPORATED AREA OF  
JOHNSON COUNTY, KANSAS**

**A PRE-APPLICATION CONFERENCE IS REQUIRED PRIOR TO  
SUBMITTAL OF ANY APPLICATION**

**DEADLINE: All application materials shall be submitted at least 45  
days before a scheduled public hearing.**

**See Board of Zoning Appeals Public Hearing Schedule**

For more information contact:  
Johnson County Department of Planning, Development, and Codes  
111 S. Cherry Street, Suite 3500  
Olathe, Kansas 66061  
913-715-2201  
913-715-2222 Fax

## BOARD OF ZONING APPEALS (BZA) PROCEDURES

**APPLICANT RESPONSIBILITIES:** Omission of any of the following items may delay the review and processing of the application.

- A. A complete application form (Attachment A)
- B. Legal Description and common street address of the property.
- C. Payment of filing fee. Make checks payable to Johnson County Planning Department.(Attachment B).
- D. Letter of Authorization if not the legal owner of the property (Attachment C).
- E. A list of the owners of all properties within 1,000 feet of the subject property certified by a licensed abstractor, title company, or similarly qualified person.
- F. Ownership List and Legal Description Certification form (Attachment D)
- G. A map or plat showing the location and record owner of each property adjoining the property in question.
- H. Post a sign (supplied by the Planning Department) twenty (20) days before the scheduled Public Hearing. Complete Certification of Notification of Sign Posting form (Attachment E)
- I. A narrative statement of the grounds offered in support for the variance, or appeal including the necessary hardship that will be imposed upon the applicant if the regulations are literally enforced. (See F-2, a-e Attachment F)
- J. Applicant or applicant's representative **MUST** attend the Zoning Board Hearing.

**FOR ADDITIONAL INFORMATION PLEASE REFER TO THE *JOHNSON COUNTY ZONING AND SUBDIVISION REGULATIONS WHICH INCLUDES THE FOLLOWING ARTICLES APPLICABLE TO BZA APPLICATIONS:***

1. Article 2, Section 5, Board of Zoning Appeals (BZA)

**DEADLINE:** All application materials **MUST** be submitted at least 45 days before a scheduled hearing date.

### PLANNING DEPARTMENT PROCEDURES

**Public Hearing:** The Planning Department will schedule a hearing before the Board of Zoning Appeals (BZA), which is responsible for hearing an appeal or variance request.

**Posting of Sign:** The Planning Department will supply the applicant with a sign to be posted on the property 20 days prior to the date of public hearing.

**Newspaper Publication:** The Planning Department will publish the Legal Notice of the Public Hearing 15 days prior to the date of public hearing.

**Letter of Notification:** The Planning Department will mail notices of the public hearing, by certified mail, to all property owners within 1,000 feet (list provided by applicant) of the subject property at least 10 days prior to the Public Hearing. **(The applicant shall pay the certified mailing cost.)**

**Board of County Commissioners (BOCC):** The recommendation of the BZA shall be forwarded to the Board of County Commissioners within 10 days of the decision. The BOCC shall, within two weeks after receipt thereof, call for a public hearing before the BOCC for the purpose of review and reconsideration of such decision, or take no action. The public hearing before the BOCC shall be called and conducted by following the same notice and procedure requirements specified in Article 3 for public hearings on matters before the BZA.

**BOARD OF ZONING APPEALS APPLICATION**

Johnson County Planning Department  
111 S. Cherry Street, Suite 3500  
Olathe, Kansas 66061  
913-715-2201

Office Use Only

Application No. \_\_\_\_\_  
Township \_\_\_\_\_  
BZA Hearing Date \_\_\_\_\_  
ACTION \_\_\_\_\_ Date Received \_\_\_\_\_ Date Paid \_\_\_\_\_

**APPLICANT/AGENT INFORMATION**

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY/ST/ZIP \_\_\_\_\_  
PHONE \_\_\_\_\_  
FAX \_\_\_\_\_  
CONTACT \_\_\_\_\_

**OWNER INFORMATION**

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY/ST/ZIP \_\_\_\_\_  
PHONE \_\_\_\_\_  
FAX \_\_\_\_\_

**GENERAL INFORMATION**

Description of Appeal or Variance \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Present Zoning District \_\_\_\_\_  
Present Land Use \_\_\_\_\_

**PROPERTY INFORMATION**

Legal Description \_\_\_\_\_  
Parcel I.D. No \_\_\_\_\_  
Address of Property \_\_\_\_\_  
Site Size \_\_\_\_\_  
Present improvements or structures \_\_\_\_\_  
\_\_\_\_\_

I, the undersigned am the (*circle one*) (*owner*), (*duly authorized agent*), of the aforementioned property situated in the unincorporated portion of Johnson County, Kansas. By execution of my signature, I do hereby officially apply for an appeal or variance as indicated above.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**ATTACHMENT A**

# ZONING FEE SCHEDULE

## JOHNSON COUNTY, KANSAS

**Effective January 1, 2005**

<b>A. Rezoning Applications</b>	<b>Review Fee</b>
Rural or Residential Districts	\$300 0-5 acres \$350 5.1-10 acres \$400 10.1-20 acres \$450 20.1 > acres
Planned Retail Business Districts	\$600 0-5 acres \$750 5.1-15 acres \$900 15.1-25 acres \$1050 25.1-50 acres \$1200 >50 acres
Planned Employment Center Districts	\$600 0-5 acres \$750 5.1-15 acres \$900 15.1-25 acres \$1050 25.1-50 acres \$1200 >50 acres
<b>B. Conditional Use Permit Applications</b>	
<ul style="list-style-type: none"> <li>• <i>*Seventy-five dollars (\$75.00) for only keeping animals on less than 10 acres in accordance with Zoning and Subdivision Regulations;</i></li> <li>• <i>*Preschools and Day-Care Centers in a residence or in an accessory building to a residence;</i></li> <li>• <i>*Accessory buildings or structures larger than or accessory buildings in greater quantities than permitted by Article 18 of the Zoning and Subdivision Regulations;</i></li> <li>• <i>*Kennels.</i></li> </ul>	\$375 or \$75*
<b>C. Development Plan Applications</b>	
Preliminary	\$300 + \$7.50 a lot
Final	\$300
<b>D. Plat Applications</b>	
Preliminary	\$300 + \$7.50 a lot
Final	\$300
<b>E. Sign Permit</b>	\$75
<b>F. Tract/Lot Split or Lot Line Adjustments</b>	\$150
<b>G. Board of Zoning Appeals</b>	
Variance	\$150
Appeal	\$100
<b>H. Grading Plans</b>	\$225
<b>I. Flood Plain Development Permit Applications</b>	\$75
<b>J. Administrative Plan Review Applications</b>	\$150
<b>K. Public Works Fees</b>	
1. Storm Drainage Plans	\$200
2. Street Plans	\$200
<b>L. Airport Plan Review Applications</b>	\$50
<b>M. Nonconforming Use, Lot, or Structure Reviews</b>	\$100

**ATTACHMENT B**

**OWNER AUTHORIZATION**

I/WE \_\_\_\_\_, hereby referred to as the "Undersigned", being of lawful age, do hereby on this \_\_\_\_ day of \_\_\_\_\_, 200\_, make the following statements, to wit:

1. I/We the Undersigned, on the date first above written, am the lawful, owner(s) in fee simple absolute of the following described real property

See Exhibit A attached hereto and incorporated herein by reference.

2. I/We the undersigned, have previously authorized and hereby authorize \_\_\_\_\_ (Hereinafter referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the Planning Office of Johnson County, Kansas, \_\_\_\_\_ (common address) the subject real property, or portion thereof, and which authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process.

3. I/We the Undersigned, hereby agree to protect, defend, indemnify and hold the Board of County Commissioners of Johnson County, Kansas, its officers employees and agents (hereinafter collectively referred to as the "County"), free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities, whether false, fraudulent, meritless or meritorious, of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character (hereinafter "claims"), in connection with, relating to, or arising directly or indirectly out of this authorization and the actions taken by the Applicant and the County in reliance thereof. I, the Undersigned, hereby further agree to investigate, handle, respond to, provide defense for and defend any such claims at my sole expense and agree to bear all other costs at my sole expense and agree to bear all other costs and expenses related thereto, even if such claims are groundless, false or fraudulent.

4. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

IN WITNESS THEREOF, I, the Undersigned, have set my hand below.

STATE OF KANSAS  
COUNTY OF JOHNSON

The foregoing instrument was acknowledge before me on this \_\_\_day of \_\_\_\_\_, 200\_,  
by \_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_  
Notary Public

**ATTACHMENT C**

**List of Owners of Record within 1,000 feet  
and  
Legal Description Certification**

As described in the Applicant Responsibilities section of this Application Procedures packet, applicants are responsible for submitting the names and mailing addresses of all the owners of real property within 1,000 ft. of the property on which the application is being made. The list shall be prepared by a licensed abstractor, title company, or similarly qualified person. The list shall be certified that it is consistent with the owners of record according to the Register of Deeds. All owner names and addresses shall be provided for all property owners for properties with multiple ownership.

As noted above this list is to be CERTIFIED by the abstractor, title company or other qualified person that a search has been conducted of the records on file with the JOHNSON COUNTY REGISTER OF DEEDS' OFFICE. The list is not acceptable if prepared from real estate, county clerk or other record sources. The list is not complete if all owners of multiple ownership parcels have not been identified and fully disclosed with names and addresses provided.

Attached to the list shall be a cover letter that certifies that the list is consistent with the Register of Deeds records. The cover letter shall also certify that the legal description of the property owned (or under authorization) by the applicant/agent/owner is the property for which the 1,000 ft. radius list is prepared, per Register of Deeds records, and FURTHER that the legal description has been checked and is accurate with respect to the property for which the application is proposed.

Any questions about these procedures should be directed to the Johnson County Planning, Development, and Codes Department, telephone 913-715-2201 or fax 715-2222.

THE FOLLOWING IS TO BE COMPLETED AND SUBMITTED BY THE APPLICANT.

I certify that I have read, understand and have provided the above information to the abstractor, Title Company or other similarly qualified person preparing my 1,000-foot radius ownership list.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

**ATTACHMENT D**

**SIGN POSTING PROCEDURES AND CERTIFICATION**

Each applicant is required to post one or more notification sign(s) on the property. The applicant is responsible for obtaining the sign(s) from the Johnson County Planning Department and for posting and maintaining the sign(s) as prescribed below:

1. The sign(s) shall be placed on the property at least twenty (20) days before the scheduled public hearing date;
2. If the Township Zoning Board or Board of Zoning Appeals public hearing is continued, delayed, or postponed, the sign(s) shall be replaced or amended to accurately describe the new date, place, and time for the public hearing;
3. If the property has more than one (1) abutting street, a sign shall be placed facing all streets;
4. If the property under consideration does not have any abutting street, consult with the Planning Department staff regarding the appropriate location for the sign(s);
5. The sign(s) shall be firmly affixed on the property in a place visible from the adjoining streets;
  - a. The bottom of the sign(s) shall be a minimum of two (2) feet above the ground;
  - b. The sign(s) shall be placed within five (5) feet of the public right-of-way; and
  - c. The sign(s) shall be positioned to have no visual obstructions and to be readily seen by passersby;
6. The status of the sign(s) should be checked frequently and fallen or destroyed sign(s) shall be immediately replaced; new sign(s) are available from the Planning Department if needed; and
7. The sign(s) shall be posted and maintained throughout the approval process and then removed by the applicant within ten (10) days after final action on the application by the Board of County Commissioners.

Prior to the public hearing, the applicant is required to certify that the sign(s) have been posted and maintained as required. Applicants are encouraged, but not required, to submit photographs showing the posted sign(s) as viewed from the abutting street(s). Failure to comply with these requirements may cause the public hearing to be continued to a later date.

**THE FOLLOWING CERTIFICATION IS TO BE COMPLETED AND SUBMITTED TO THE PLANNING DEPARTMENT PRIOR TO THE OPENING OF THE PUBLIC HEARING.**

I, \_\_\_\_\_ (printed name) hereby state that I have received a copy of the Sign Posting Procedures and that the required sign(s) have been posted and maintained as prescribed in the Sign Posting Procedures.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Application No. \_\_\_\_\_

**ATTACHMENT E**

## **BOARD OF ZONING APPEALS (BZA):**

- A. Establishment: The BZA for the unincorporated area of Johnson County is hereby established under the authority of K.S.A. 19-2962.
- B. Membership: The BZA shall consist of seven members who shall be appointed by the Board. All members shall be residents of the unincorporated area of the County and each township, where possible, shall be represented on the BZA, by the appointment of at least one resident of each township. None of the members appointed shall hold any other elected or appointed office or position in the County government, except that one member shall be a member of the Planning Commission.
- C. General Provisions: The BZA shall be subject to the General Provisions in Section 7 of this Article.
- D. BZA Procedure: The BZA shall conduct hearings and make decisions in accordance with the following requirements:
  - 1. Public Hearings: The BZA shall hold a public hearing on any appeal or other matter referred to the BZA.
  - 2. Public Notice: Notice of the time, place, date and subject of the public hearing shall be published at least one time in the official county newspaper at least 15 days prior to the hearing. The notice shall also be mailed to each of the parties of interest and shall be provided to the Board. The notice shall contain the street address or location of the property involved and a brief description of the nature of the appeal. Failure to receive individual notice shall not invalidate any subsequent action taken by the BZA.
  - 3. Notices: Notices of the appeal or an application for a variance shall also be sent as a courtesy to the members of the Zoning Board having jurisdiction for the territory in which the property in question is located. Failure to receive the notice shall not affect any subsequent action taken thereon by the BZA.
  - 4. Representation: At the hearing, any party may appear in person or by an agent or attorney.
  - 5. Record of Proceedings: The BZA shall cause a proper record to be kept of its proceedings. The record shall include:
    - a. The description of evidence presented.
    - b. The findings of fact by the BZA.
    - c. The decision of the BZA.
    - d. The vote of each member upon each question, or if absent and failing to vote, indicating such fact.
    - e. The BZA examinations and official actions. All of BZA's minutes and other records shall be filed in the Johnson County Planning Office and shall be a public record.
  - 6. Additional Rules of Business: The BZA shall adopt by resolution, and with the approval of the Board, other rules for the transaction of its business.

7. Fees: A filing fee shall be paid at the time any appeal or application for a variance is filed. Filing fees shall be in the amount established by resolution of the Board. No fee shall be charged for an appeal or application filed by any officer, department or board of the County.

E. Commencement of Proceedings Before the BZA:

1. Appeals:

- a. Appellant: Appeals to the BZA may be taken by any person aggrieved, or by any officer, department head or bureau of the county or any government agency or body affected by any decision of the Zoning Administrator who alleges there is an error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of any regulations adopted pursuant to the zoning authority of the County, or by any officer, department, board or bureau of the County, or any governmental agency or body affected by any decision of the Zoning Administrator in the enforcement of any regulations adopted pursuant to the statutory zoning authority granted to the County. Such appeal shall be filed with the secretary of the BZA within thirty (30) days from the date of the decision by the Zoning Administrator, and such appeal shall specify in writing the grounds for appeal of the officer's decision. The officer from whom the appeal is taken, when notified by the BZA or its secretary, shall transmit to the BZA all the papers constituting the record upon which the action appealed from was taken, within the time period established by the rules of the BZA.
- b. Effect of Appeal: An appeal to the BZA shall act as a stay regarding all proceedings in furtherance of the action appealed from, including, an applicant's ability to proceed with development or other such activities under a building permit, if the issuance of the permit is the subject of the appeal.
- c. Notwithstanding any other term or provision contained within these regulations to the contrary, if any, the BZA shall not have any authority over nor review any matter related to a citation, a prosecution or enforcement action commenced in court by a county code enforcement officer or other authorized law enforcement official, regarding any alleged violation of these regulations or any code or standard adopted by said regulations, and all such actions shall be heard and reviewed by an appropriate court of competent jurisdiction, as more fully set forth in Article 6 of these regulations.

2. Variances: Any person who would qualify as an applicant as provided in Article 4, Section 1, of these regulations may apply to the BZA for a variance by filing an application with the secretary of the BZA. The application shall include at least the following:

- a. The name, address and phone numbers of each applicant.
- b. The names, addresses and phone numbers of the owner of the property in question and of the applicable architect, professional engineer and contractor, if any.
- c. 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.

- d. A map or plat showing the location and record owner of each property opposite or abutting the property in question.
- e. A map or plot plan, drawn to scale, of the property in question.
- f. A narrative statement of the grounds offered as support for the variance, including the necessary hardship that will be imposed upon the applicant if the regulations are literally enforced.

F. Authority: The BZA shall have the authority to:

1. Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of any regulations adopted pursuant to the zoning authority of the County. The BZA, in conformity with the provisions of applicable law, 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 administrative official from whom the appeal is taken.
2. Recommend in specific cases a variance from the specific terms of these zoning regulations which will not be contrary to the public interest where, due to special conditions, a literal enforcement of the provisions of the regulations will, in an individual case, result in unnecessary hardship for the applicant and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. The Board of Zoning Appeals shall not have the power to act upon variances regarding uses permitted within zoning districts. The Board of Zoning Appeals shall be limited to granting variances on matters including, among others, building height, setbacks, lot size and lot dimensions, as provided by the zoning regulations. A request for a variance may be granted to an applicant upon a finding by the BZA that all of the following conditions have been met:
  - a. The variance requested arises from such condition which is unique and which is not ordinarily found in the same zoning classification, and is created by the zoning regulations and not created by an action or actions of the property owner or applicant;
  - b. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
  - c. The strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
  - d. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
  - e. Granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.
3. In acting upon a variance, the BZA may recommend appropriate reasonable conditions and safeguards which relate to the actual implementation of the variance allowed and which may include, but not be limited to, planting screens, fencing, construction commencement and completion dates, lighting, road access restrictions, and parking requirements which are

reasonably related to the variance upon a finding that they are necessary to fulfill the purpose and intent of the zoning regulations.

- G. **Written Decisions:** The BZA shall render its decision in writing within ten (10) days of the conclusion of the hearing. Decisions shall be filed in the Planning Office and shall be a public record.
  
- H. **Consideration by the Board:** Any decision of the BZA which is contrary to the existing zoning regulations shall not be effective until approved by the Board. Such decision and the record thereon shall be submitted to the Board within two weeks of such decision. The Board shall, within two weeks after receipt thereof, approve the decision of the BZA or shall call for a public hearing before the Board for the purpose of reviewing and reconsidering such decision. The failure of the Board to act within the two-week period shall constitute approval of the decision of BZA. The public hearing before the Board shall be called and conducted by following the same notice and procedure requirements specified in this Article for public hearings on matters before the BZA. The failure by parties in interest to receive individual notice shall not invalidate any subsequent action taken. At such hearing any party may appear in person or by agent or by attorney. The Board, in reconsidering a decision of the BZA shall cause a proper record to be kept of its proceedings, showing the description of evidence presented, the findings of fact by the Board, the decision of the Board, and the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the Planning Office and shall be a public record. In reconsidering a decision of the BZA, the Board, after conducting the public hearing specified herein and within a reasonable time, shall approve, modify and approve, or overturn the decision of the BZA.
  
- I. **Dissatisfaction with the Determination:** Any person, official or governmental agency dissatisfied with any order or determination of the Board of Zoning Appeals or the Board of County Commissioners may bring an action in the Johnson County District Court to determine the reasonableness of any such order or determination.

**ATTACHMENT F**