



Building & Zoning Department
215 S. Broadway, Louisburg, KS 66053
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ARTICLE 15

VARIANCE PROCEDURE

When an applicant feels that the strict application of the requirements of the zoning regulations would create an undue hardship, he or she may request a variance from the Board of Zoning Appeals. The Board of Zoning Appeals must base its decision, to as great a degree as possible, on factual evidence and not the personal opinion of the applicant, neighbors, or others. The request for a variance should be based on a conflict between the restrictions on the development of the property due to the Zoning Regulations and the restrictions on the development of the property due to its physical characteristics. A variance should be issued only to the specific restrictions on physical construction and not to the list of permissible land uses within a given zone.

In order to request a variance from the Board of Zoning Appeals:

1. The applicant shall first meet with the Codes Administrator, and all applicable city staff members and city consultants to receive a complete explanation of the zoning requirement in question, the variance procedure, and an application form.
2. The applicant shall submit a completed application form and pay the appropriate application fee and deposit. As a part of the application, a sketch map shall be submitted showing proposed and existing structures and uses on the property for which the variance is being requested and on immediately adjacent properties.

The deposit shall be used to cover expenses incurred by the city in the processing and review of the application. If the city's processing and review costs exceed the amount of the initial deposit, the applicant shall be required to pay the additional amount. An application shall not be processed unless it has been fully completed, the application fee and deposit paid, and all required information submitted.

3. Upon submittal of a completed application form and attachments and payment of the appropriate application fee and deposit, the Codes Administrator shall schedule a regular meeting of the Board of Zoning Appeals. Twenty (20) days prior to the Board of Zoning Appeals meeting, an official notice to the public shall be published in a newspaper of general circulation in the City, or the City of Louisburg Growth Area if said variance is to a regulation of the Louisburg Growth Area Zoning Regulations, explaining the variance request and the time and place of the scheduled hearing.

In addition, a copy of the public hearing notice shall be mailed by the applicant, return receipt requested, to each party of interest, owners of all property located within two hundred (200) feet of the boundaries of the property included in the application., and to each Planning Commission member at least fifteen (15) days prior to the date of the public hearing. The applicant shall submit the Post Office receipts and returned notices to the Codes Administrator at least two working days prior to the public hearing.

4. At the scheduled meeting, the Board of Zoning Appeals shall hear all facts and testimony from all parties wishing to be heard concerning the requested variance. In each case, the Board of Zoning Appeals shall not grant a variance unless it finds, based on the evidence presented, facts which conclusively support all of the following findings:
 - A. **UNIQUENESS:** The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by actions of the property owners or applicant. Such conditions include the peculiar physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.
 - B. **ADJACENT PROPERTY.** The granting of the variance will not be materially detrimental or adversely affect the rights of adjacent property owners or residents.
 - C. **HARDSHIP:** The strict application of the provisions of the zoning regulations from which a variance is requested will constitute an unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be a sufficient reason by itself to justify the variance.
 - D. **PLIBUC INTEREST:** The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.
 - E. **SPIRIT AND INTENT:** Granting the requested variance will not be opposed to the general spirit and intent of the zoning regulations.
 - F. **MINIMUM VARIANCE:** The variance requested is the minimum variance that will make possible the reasonable use of the land or structure.
5. Minutes of the public meeting, including evidence presented during the proceedings and the findings of the Board of Zoning Appeals, shall be kept. The Board of Zoning Appeals may either grant, grant conditionally, or deny the application for a variance. The written determination of the Board of Zoning Appeals shall be sent to all affected parties, including the Planning Commission.

CITY OF LOUISBURG, KANSAS

**VARIANCE APPLICATION
BOARD OF ZONING APPEALS**

Return Form To:
Codes Administrator
City of Louisburg
215 S. Broadway
Louisburg, KS 66053
(913) 837-5811
(913) 837-5374 (fax)

For Office Use Only
Case No.: _____
Case No.: _____
Deposit: _____
Date Advertised: _____
Public Hearing Date: _____

APPLICANT INFORMATION:

Applicant: _____ Phone: _____
Address: _____ Zip: _____
Owner: _____ Phone: _____
Address: _____ Zip: _____

PROPERTY INFORMATION:

Location of Property: _____
Legal Description:

ADJACENT ZONING AND LAND USE:

	<u>Existing Land Use</u>	<u>Zoning</u>
North	_____	_____
South	_____	_____
East	_____	_____
West	_____	_____

Present Use of Property: _____

Proposed Use of Property: _____

Utility Lines or Easements that would restrict proposed development: _____

PLEASE INDICATE BELOW THE EXTENT TO WHICH THE FOLLOWING STANDARDS ARE MET, IN THE APPLICANTS OPINION. PROVIDE AN EXPLANATION ON A SEPARATE SHEET FOR EACH STANDARD WHICH IS FOUND TO BE MET.	Yes	No
UNIQUENESS: The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by actions of the property owners or applicant. Such conditions include the peculiar physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.		
ADJACENT PROPERTY: The granting of the variance will not be materially detrimental or adversely affect the rights of adjacent property owners or residents.		
HARDSHIP: The strict application of the provisions of the zoning regulations from which a variance is requested will constitute an unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be a sufficient reason by itself to justify the variance.		
PUBLIC INTEREST: The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.		
SPIRIT AND INTENT: Granting the requested variance will not be opposed to the general spirit and intent of the zoning regulations.		
MINIMUM VARIANCE: The variance requested is the minimum variance that will make possible the reasonable use of the land or structure.		

Applicant's Signature

Date

**CITY OF LOUISBURG ZONING REGULATIONS
ARTICLE 10 BOARD OF ZONING APPEALS**

SECTION 1001. BOARD OF ZONING APPEALS ESTABLISHED

The Board of Zoning Appeals shall consist of five members. Two members shall reside in the unincorporated growth area, and three shall reside in the City. The Mayor with the approval of the Governing Body, shall appoint all members. None of the members shall hold any other public office of the City, with the exception that two members shall be members of the Planning Commission, one of which shall reside within the City and one within the growth area. Each member shall serve for a term of three years, except that in May 2000, two terms shall be for two years so that terms will be staggered. All terms shall begin on the date of the first regular council meeting in May. Vacancies shall be filled by appointment of the Mayor with the approval of the Governing Body. Appointments shall be for the remaining unexpired term. Members shall serve without compensation.

SECTION 1002. BOARD OF ZONING APPEALS: ORGANIZATION MEETINGS

The Board shall organize by selecting one of its members as chairman and one as vice-chairman and such other officers as may be necessary, and they shall serve as such officers one (1) year and until their successors have been selected. Said Board of Zoning Appeals shall meet at such time and place as may be fixed by said Board, and special meetings may be called by the chairman or in his absence by the vice-chairman, and a majority of said Board shall constitute a quorum for the transaction of business. The Board shall elect a secretary who shall keep a complete and accurate record of all proceedings, hearings, and actions of the Board. The secretary may either be a member of the Board or someone who is not a member of the Board.

SECTION 1003. POWERS AND JURISDICTION

The Board shall have the following powers and jurisdictions:

- A. Appeals. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Codes Administrator in the enforcement of these regulations.
 1. Appeals to the Board may be taken by the person aggrieved, or by any officer, department, or Bureau of the Government affected by any decision of the Codes Administrator. Such appeal shall be filed with the Codes Administrator within thirty (30) days after the date of the decision. The Codes Administrator shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from is taken.

2. An appeal stays all proceedings in furtherance of the action appealed from, unless the Codes Administrator certifies to the Board, after the Notice of Appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, 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 Board, or by a court of record on application or notice to the Codes Administrator on good cause shown.

B. Variances. To authorize in specific cases a variance from the specific terms of these regulations which will not be contrary to the public interest and 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. Such variance shall not permit any use not permitted by the zoning regulations in such district.

1. The applicant must show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the District Zoning Regulations, or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances, the strict application of the terms of the zoning regulations actually prohibit the use of this property in the manner similar to that of other property in the zoning district where it is located.
2. Variances from these regulations may be granted only in the following instances:
 - a. To vary the applicable lot area and width, height and yard regulations.
 - b. To vary the applicable off-street parking and off-street loading requirements.
3. A request for a variance may be granted upon a finding of the Board that all of the following conditions have been met. The Board shall make a determination on each condition and the finding shall be entered in the record.
 - a. The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by an action or actions of the property owner or applicant.
 - b. The granting of the permit for the variance will not adversely affect the right of adjacent property owners represented in the application.
 - c. The strict application of the provisions of the zoning regulations of which the 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.
 - e. The granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.

4. In granting a variance, the Board may impose such conditions, safeguards and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations.

C. Conditions of Determinations. To exercise the foregoing powers, the Board, in conformity with the provisions of this act, 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 building permit.

A majority of the Board shall constitute a quorum for the transaction of business and a concurring vote of a majority of the entire Board shall be necessary to reverse any order, requirements, decision or determination of the Codes Administrator, or to decide in favor of the applicant upon any matter which it is required to pass under these regulations, or to affect any variation in such regulation.

SECTION 1004. APPLICATIONS

A. Procedure. The procedure for requesting a hearing before the Board shall be as follows:

1. All applications to the Board shall be in writing on forms provided by the Board and filed with the Codes Administrator.
2. All applications shall be accompanied by an ownership list obtained from an abstractor or from County Records, listing the legal description and the name and address of the owners of all property located within two hundred (200) feet of the boundaries of the property included on the application.
3. The Board shall fix a reasonable time for the hearing of an application, and notice of the time, place and subject of each hearing shall be published in the official City newspaper at least twenty (20) days prior to the date fixed for the public hearing. A copy of the notice of public hearing shall be mailed by the applicant, return receipt requested, to each party of interest, each person on the ownership list, and each Planning Commission member at least fifteen (15) days prior to the date of the public hearing. The applicant shall submit the Post Office receipts and returned notices to the Codes Administrator at least two working days prior to the public hearing.
4. An application shall be accompanied by a fee in an amount as established by the City Council by Ordinance. A separate filing fee shall be required of each application.

B. Additional Requirements. In addition to the above requirements, certain applications require additional information as follows:

1. Appeal.

- a. An application for an appeal shall be filed within 30 days after a ruling has been made by the Codes Administrator.
- b. A clear and accurate written description of the proposed use, work, or action in which the appeal or interpretation is involved and a statement justifying the appellant's position shall be submitted.
- c. Where necessary a plot plan, drawn to scale, in duplicate, showing existing and proposed plans for the area in question shall be submitted.

2. Variances.

- a. The applicant shall 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 conditions as set out in Section 1003.B.3 of this Article.
- b. The applicant shall submit a sketch, in duplicate, drawn to scale and showing the lot or lots included in the application; the structures 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 shall be included.

C. Performance. In making any decision varying or modifying any provisions of the zoning regulations, the Board shall impose such restrictions, terms, time limitations, landscaping, screening, and other appropriate safeguards as needed to protect adjoining property.

The Board may require a performance bond to guarantee the installation of improvements such as parking lot surfacing, landscaping, etc. The amount of the bond shall be based on a general estimate of cost for the improvements as determined by the Board and shall be enforceable by or payable to the Governing Body in the sum equal to the cost of constructing the required improvements.

In lieu of the performance requirement, the Board may specify a time limit for the completion of such required improvements and in the event the improvements are not completed within the specified time, the Board may declare the granting of the application null and void after reconsideration.

SECTION 1005. APPEALS FROM THE BOARD OF ZONING APPEAL

Any person, official, or governmental agency dissatisfied with any order or determination of the Board may bring an action in the District Court to determine the reasonableness of any such order or determination. Such appeals must be filed in the District Court within thirty (30) days after the date the decision of the Board has been filed in the office of the City Clerk.

