

12-307-4.06 SECTION 12-307 DEVELOPMENT REVIEW PROCEDURES

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12-307-1 GENERAL PROVISIONS
12-307-1.01 Summary of Procedures

The following table provides a summary of the procedures in this Section. In the event of conflict between this summary table and the detailed procedures in these Regulations, the detailed procedures govern.

Procedure	Review and Decision-Making Bodies				Notice
	Staff	PC	BZA	BoCC	
Conditional Use	R	<R>		DM ²	N, P, M
Amendment, revocation of CUP				<DM ² >	N, L
Site Plan	R			DM ²	P, M,
Zoning Map Amendments	R	<R>		DM ²	P, N, M
Zoning Text Amendment	R	<R>		DM ²	N
Written Interpretations	DM ¹		A		--
Zoning Variance	R		<DM ² >		N, M
Appeals of Administrative Decisions			<DM ² >		N
<p>KEY: PC: Planning Commission BZA: Board of Zoning Appeals BoCC: Board of County Commissioners R: Review Body; responsible for review and recommendation DM: Decision-Making Body; responsible for final decision to approve or deny A: Authority to hear and decide appeal < >: Public Hearing Required [2] Decision may be appealed to District Court. Notice: N--Newspaper notice, P--Posted signs, M--Mailed notice; L: Letter to property owner or tenant, L2: Letter to townships and cities</p>					

12-307-1.02 Applications

- a. Authority to file applications
 Unless otherwise expressly stated, applications for review and approval under these Regulations may be initiated by the owner(s) of the property that is the subject of the application, the landowners' authorized agent, or any review or decision making body.
- b. Form of application
 Applications required under these Regulations shall be submitted in a form and in such numbers as required by the official responsible for accepting the application. Officials

responsible for accepting applications shall develop checklists of submittal requirements and make those checklists available to the public.

- 1) Application forms and checklists of required submittal information for Zoning Map Amendments, Text Amendments, Conditional Use Permits, and Site Plans are available at the Planning Office.
 - 2) Application forms and checklists of required submittal information for Zoning Variances, Home Occupations, Temporary Business Uses, Agritourism Registrations, and Special Events, are available at the Zoning and Codes Office.
- c.** Application filing fees
- 1) Applications shall be accompanied by the fee amount that has been established by the Board of County Commissioners.
 - 2) Fee schedules shall be available in the office responsible for accepting the applications and shall be made available to the public.
 - 3) Fees are not required with applications initiated by review or decision-making bodies.
 - 4) Application fees are nonrefundable.
- d.** Application completeness
- 1) An application will be considered complete and ready for processing only if it is submitted in the required number and form, includes all required supplemental materials, and is accompanied by the required filing fee.
 - 2) Staff will provide written notice to the applicant of any incomplete applications within 7 calendar days of submittal. The notice shall include an explanation of the application's deficiencies.
 - 3) Incomplete applications may be pulled from the processing cycle. When the deficiencies are corrected, the application will be placed in the next processing cycle.
 - 4) The official responsible for processing the item, the Planning Director or the Director of Zoning and Codes, may require that applications or plans be revised before being placed on the agenda of the Planning Commission, the Board of Zoning Appeals, or the Board of County Commissioners if the responsible official determines:
 - a) That the application or plan contains inaccuracies or omissions that hinder timely or competent evaluation of the application's/plan's compliance with these Regulations; or
 - b) The plan cannot be approved without a variance or some other change or modification that the decision-making body for that application or plan does not have the authority to make.
 - 5) Action or inaction by the responsible official under this section may be appealed to the Board of Zoning Appeals.

12-307-1.03 Continuation of Public Hearings

- a. A public hearing for which proper notice was given may be continued by the Board of Zoning Appeals, the Planning Commission, or the Board of County Commissioners to a later date without providing additional notice as long as the continuance is set for a specified date and time and that date and time is announced at the time of the continuance.
- b. If a public hearing is tabled or deferred by the Board of Zoning Appeals, the Planning Commission, or the Board of County Commissioners for an indefinite period of time or postponed more than 3 months from the date of the originally scheduled public hearing, new public notice shall be given, in accordance with the notice requirements of the respective procedure, before the rescheduled public hearing.

12-307-1.04 Action by Review Bodies

- a. Review bodies may take any action that is consistent with these Regulations, any adopted County policy or resolution, any by-laws that may apply to the review body, and the notice that was provided.
- b. The review body's action may include recommending approval of the application, recommending approval with modifications or conditions, or recommending denial of the application. The review body may defer action on the item and return it to staff for further review provided the decision-making body provides information as to the reason for additional review or the purpose of the additional review.
- c. The review body may recommend conditions, modifications, or amendments if the effect of the condition, modification, or amendment is to allow a less intensive use or Zoning District than indicated in the application, reduce the impact of the development, or reduce the amount of land area included in the application.
- d. Review bodies may not recommend a greater density of development, a more intensive use, or a more intensive zoning district than was indicated in the public notice.
- e. Review bodies are not required to recommend approval of the maximum density or intensity of use allowed.

12-307-1.05 Action by Decision Making Bodies

- a. Decision-making bodies may take any action that is consistent with these Regulations, any adopted County policy or resolution, any by-laws that may apply to the review body, and the notice that was provided.
- b. The decision-making body's action may include approving the application, approving the application with modifications or conditions, or denying the application. The decision-making body may defer action on the item and return it to the review body for further consideration or to staff for further review provided the decision-making body provides information as to the reason for additional review or the purpose of the additional review.

12-307-1.06 Deferred Items

- a. Once on a published and distributed agenda for the Planning Commission, Board of County Commissioners, or Board of Zoning Appeals, action of the commission or board is required to defer an item.

- b. The applicant may defer an item prior to publication of the agenda by submitting a written request to the official responsible for processing and reviewing that application; either the Planning Director or Director of Zoning and Codes.

12-307-1.07 Inactive Files

- a. Inactive files are files for which no new information responding to a request for additional information or providing additional information essential to completing a review of the request has been submitted within a period of 12 or more months.
- b. The official responsible for processing and reviewing the application may notify the applicant in writing that a file has been closed when the file has been inactive for a period of time equal to or exceeding 12 months. Requests for action after a file has been declared inactive and the applicant has been notified require resubmittal as a new application. Review fees are required to be paid as part of the resubmittal.

12-307-1.08 Public Notice

The following notice provisions apply except where other provisions are expressly stated.

- a. Newspaper Notice.
 - 1) Newspaper notices shall indicate the date, time, and place of the public hearing or date of action that is the subject of the notice; describe the property involved in the application by address or general location; describe the nature, scope, and purpose of the application; and indicate where additional information can be obtained.
 - 2) When newspaper notice is required, the official responsible for processing and reviewing the application is responsible for ensuring that notice is published in the official newspaper of the county at least 20 days prior to the date of the public hearing.
- b. Mailed Notice.
 - 1) Mailed notices shall indicate the date, time, and place of the public hearing or date of action that is the subject of the notice; describe the property involved in the application by address or general location; describe the nature, scope, and purpose of the application; and indicate where additional information can be obtained.
 - 2) Notice shall be mailed to the record owner of the subject property and all owners of property located within ½ mile (2,640 ft) of the subject property, as listed on a Certified Property Owner List provided by the Douglas County Clerk.
 - a) The applicant is responsible for providing certified ownership information. Current ownership information for properties within Douglas County shall be obtained from the Douglas County Clerk. Ownership information shall be considered current if, at the time of submission, it is no more than 30 days old. Unless noted otherwise in specific sections, the Planning Office or Zoning and Codes Office shall be responsible for sending the mailed notice.
 - b) If the foregoing area includes area within the corporate limits of a city, the list shall include owners of property extending 400 feet into the corporate limits of the city.

- c) If the foregoing area includes area within an adjacent county, the applicant shall provide a certified list of property owners within the notification area from the County Clerk or other designated department in the adjacent county.
 - 3) Required notices shall be deposited in the US mail at least 20 days before the public hearing, meeting, or date of action that is the subject of the notice. When required notices have been properly addressed and deposited in the mail, failure of a party to receive such notice will not be grounds to invalidate any action taken.
- c. Posted notice.
 - 1) Posted notices shall indicate the date, time, and place of the public hearing or date of action that is the subject of the notice; state the language 'Development Activity Proposed'; and indicate where additional information can be obtained.
 - 2) Posted notice shall be in the form of official signs provided by the agency reviewing the item (Zoning and Codes or Planning Office).
 - 3) Posted notice shall be clearly visible from each public road bordering the subject property. At least one sign shall be posted on each road frontage.
 - a) For applications that do not abut public roads, the Planning Director or Director of Zoning and Codes is authorized to approve an alternative form of posted notice that will be visible to passers-by.
 - 4) Posted notice shall remain in place for at least 20 days before the public hearing, meeting, or date of action that is the subject of the notice. Failure to properly post or maintain such signs is grounds for deferral or denial of the application.
 - 5) The applicant shall be responsible for posting and maintaining the signs and will remove notice signs required by this section within 10 days of the date that action is taken on the item or the item is withdrawn.

12-307-1.09 Written Findings

Unless otherwise specifically provided in these Regulations, written findings are not required for a final decision on any application.

- a. Provided, however, that any decisions may be expressly made subject to the subsequent adoption of written findings and, in such cases, the decision shall not be considered final until such findings are adopted.
- b. Provided further, that where an appeal of any quasi-judicial decision has been filed in the District Court of Douglas County pursuant to K.S.A. 12-760 or K.S.A. 60-2101(d) in cases where written findings have not been adopted, written findings shall be adopted by the approving authority within 45 days of service of the appeal on the County and thereafter shall be certified to the District Court as part of the administrative record. The 45-day time period for adoption and certification of findings may be extended at the discretion of the body making the decision but shall be done in a manner so as to not interfere with the District Court proceedings.

12-307-1.10 Where Resolution Required

Adoption of a resolution is required in the case of Zoning Text Amendments, Zoning Map Amendments, and Conditional Uses. In such instances, the decision approving the application shall not be deemed to be final until the resolution has been published in an official County newspaper.

12-307-2 CONDITIONAL USES

- a. A conditional use permit provides a public hearing process for the establishment of land uses which may be desired in the community but which, by the nature or scale of the use, have the potential to negatively impact surrounding land uses, the character of the area, the road network, or other features in the area.
- b. Uses which are permitted in each zoning district with approval of a conditional use permit are marked in the permitted use table in Section 12-304 with a 'C'. The conditional use permit process is intended to insure that the proposed uses are appropriate in the unincorporated portion of Douglas County; especially those land uses that are of a sensitive nature due to the intensity of the use or environmental impacts associated with the normal operation of the business or activity.
- c. The Governing Body's action on a conditional use permit is a purely discretionary act that will be decided based upon the facts and circumstances discovered in the review of each application. There is no implied "right" for any person or landowner to obtain a conditional use permit for any use on any property.

12-307-2.01 Automatic Conditional Use Status

If an existing use was permitted in a zoning district without a conditional use permit at the time it was established, but is now regulated as a conditional use, the use will be considered an approved Conditional Use and will be allowed to continue without a public hearing. Any alterations or expansions of the use are subject to the conditional use amendment procedures of Section 12-307-2.12.

12-307-2.02 Application

A conditional use permit application shall be submitted to the Planning Office requesting such establishment or change. The submittal of a conditional use permit application shall include such plans and accompanying data as to demonstrate conformance with the requirements of the Zoning Regulations.

- a. A pre-application meeting with a member of the Planning Staff is required at least 7 days prior to the formal submission of a conditional use permit application.
- b. Conditional use permit applications shall be submitted to the Planning Office in accordance with the Planning Commission submission deadlines.

12-307-2.03 Public Hearing Notice

Newspaper, posted, and mailed notice of the Planning Commission's public hearing shall be provided as listed in Section 12-307-1.08.

- a. The Planning Office shall be responsible for the newspaper and mailed notice. The Planning Office shall provide the signs for the posted notice, but it is the applicant's responsibility to post and maintain the signs.

12-307-2.04 Staff Review And Report

The Planning Director will review each Conditional Use Permit application in accordance with the review and decision-making criteria of Section 12-307-2.05. Based on the results of that review, the Planning Director will provide a report on the Conditional Use Permit application to the Planning Commission and Board of County Commissioners.

12-307-2.05 Planning Commission's Review And Recommendation

The Planning Commission shall hold a public hearing on the proposed Conditional Use Permit, review the Conditional Use Permit application in accordance with the review and decision-making criteria noted in Section 12-307-2.05 and submit a recommendation that the Board of County Commissioners either approve, approve with conditions, or deny the proposed Conditional Use Permit.

- a. The Planning Commission may also defer the item with direction to staff or the applicant to provide additional information needed for their decision.
- b. A majority of the members of the Planning Commission present and voting at the hearing shall be required to recommend approval or denial of the Conditional Use Permit to the Board of County Commissioners.
- c. If the Planning Commission fails to make a recommendation on a Conditional Use, the Planning Commission shall be deemed to have made a recommendation of denial.

12-307-2.03 Protest Petition

A protest petition may be filed in opposition to a Conditional Use Permit application. If the petition is found to be valid a $\frac{3}{4}$ vote of all of the members of the Board of County Commissioners is required to approve the Conditional Use Permit application, regardless of the Planning Commission's recommendation. The supermajority voting requirement, however shall not apply if K.S.A. 12-757(g) or other applicable law which requires approval by only a majority of the Board of County Commissioners

- a. A protest petition will be considered 'valid' if it meets both the following requirements:
 - i. It is signed by the owner or owners of 20% or more of the real property within the area required by KS Statute to be notified of the Conditional Use Permit public hearing (property within 1,000 feet radius of the land for which the rezoning is proposed. If the foregoing area includes area within the corporate limits of a city, the list shall include owners of property extending 200 feet into the corporate limits of the city.), excluding roads and public ways. Each and every owner of a single piece of property must sign the protest petition, but all are considered as a single owner in determining the sufficiency of the petition; and
 - ii. It is filed with the County Clerk before 5:00 p.m. within 14 days after the date of the conclusion of the Planning Commission public hearing.
- b. A property owner list for the notification area can be obtained from the County Clerk's office. The protest petition forms are available in the Planning Office.

12-307-2.04 County Commission Action

Following receipt of the Planning Commission's recommendation, the Board of County Commissioners shall take one of the following actions on the Conditional Use Permit application:

- a. Approve with adoption of resolution, approve with conditions or modifications with adoption of resolution, or deny.
 - 1) A 2/3 majority vote of the membership of the Board of County Commissioners is required to override the Planning Commission's recommendation.
- b. Return the application to the Planning Commission for further consideration, with a statement specifying the basis for the Board of County Commissioners' failure to approve or disapprove.
 - 1) The Planning Commission, after considering the explanation of the Board of County Commissioners, may resubmit its original recommendations with its reasons for doing so, or submit new and amended recommendations.
 - 2) Upon the receipt of such recommendations, the Board of County Commissioners may, by a simple majority vote, approve the Conditional Use Permit application, approve it with conditions or modifications, or deny it.
 - 3) If the Planning Commission fails to deliver its recommendations to the Board of County Commissioners following the Planning Commission's next regular meeting after receipt of the Board of County Commissioners' report, the Board of County Commissioners will consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendations and proceed accordingly.
- c. The Board of County Commissioners may act by a simple majority vote, except for the following cases:
 - 1) Action that is contrary to the Planning Commission's recommendations, in which case the decision shall be by a 2/3 majority vote of the full membership of the County Commission; or
 - 2) Approval, or approval with conditions or modifications, when a valid protest petition has been submitted in accordance with Section 12-307-2.03 in which case the decision shall be by a 3/4 majority vote of the full membership of the Commission.
- d. Following the approval of the Conditional Use Permit application and adoption of the resolution, the use may commence when the applicant has obtained a permit for the conditional use from the Zoning and Codes Office as well as any building permits needed to accommodate the new use.

12-307-2.05 Review And Decision-Making Criteria

In reviewing and making decisions on proposed Conditional Use Permits, review and decision-making bodies shall consider at least the following factors:

- 1) Whether the proposed use complies with all applicable provisions of these Regulations;
- 2) Whether the proposed use is compatible with zoning and land uses of nearby properties in terms of scale, site design, and operating characteristics, including hours

- of operation, traffic generation, lighting, noise, odor, dust, and other external impact;
- 3) Whether the proposed use is compatible with the character of the area;
 - 4) Suitability of subject property for the uses to which it has been restricted and for the uses which are proposed;
 - a. Special consideration shall be given to properties in the A District that are well suited for agricultural uses; as the intent of these regulations is to permit other uses while maintaining the county's inventory of agricultural property.
 - 2) Whether the use will cause significant adverse impacts on the natural environment;
 - 3) Whether the use will cause significant adverse impacts on community facilities, the transportation network, or utilities in the area.
 - 4) Whether the use is in conformance with the Comprehensive Plan or other adopted plans for the area;
 - 5) Whether it is appropriate to limit the period of time the proposed use is to be allowed and, if so, what that time period should be; and
 - 6) Professional staff recommendation.

12-307-2.06 Application Materials

Each application for a Conditional Use Permit shall be accompanied by the following:

- a. A certified property owner list from the Douglas County Clerk for all owners of property located within ½ mile (2,640 ft) feet of the subject property within Douglas County.
 - 1) If the foregoing area includes area within the corporate limits of a city, the list shall include owners of property extending 400 feet into the corporate limits of the city.
 - 2) If the foregoing area includes area within an adjacent county, the applicant shall provide a certified list of property owners within the notification area from the County Clerk or other designated department in the adjacent county.
- b. The review fee, which is listed on the fee schedule in the Planning Office; and
- c. Such plans and accompanying data as to demonstrate conformance with the requirements of the Zoning Regulations.
 - 1) Professionally prepared traffic and/or drainage information/study shall be provided as requested by the county engineer to allow for a thorough review of potential impacts of proposed use and to evaluate if the transportation network is adequate for the proposed use.
 - 2) The application materials and plans shall be submitted in paper (one copy) and electronic (PDF) formats.

12-307-2.07 Time Limitations on Approval

- a. If requested improvements or uses are not implemented, or a building permit is not obtained for the site, within 2 years from the date of the Conditional Use Permit approval by the Board of County Commissioners, the Conditional Use Permit approval shall become null and void.
- b. Applicants may request the Board of County Commissioners to approve a one-year time extension if the request is submitted to the Planning Office prior to the expiration date.

12-307-2.08 Assurance of Performance (Bonds)

The Board of County Commissioners may require the applicant to file with the County Clerk, a performance bond during the period of construction, reconstruction, or alteration, such bond to be in an amount determined by the Commissioners to be sufficient to insure completion of plans as submitted.

12-307-2.09 Additions or Structural Alterations to Conditional Uses

Additions or structural alterations to Conditional Uses after they have been approved will be processed in the following manner:

- a. The Planning Director may administratively approve changes to the Conditional Use site plan which the Planning Director determines are minor; that is, the revised site plan will be substantially similar to the approved site.
- b. Changes to the site plan which are determined by the Planning Director to be other than minor shall be provided to the Board of County Commissioners for approval.

12-307-2.10 Changes to The Conditional Use or Conditions of Approval

Any change in use or any change in conditions or restrictions placed on the Conditional Use will require an amended Conditional Use application with the same public notification and approval process as required for the original Conditional Use.

12-307-2.11 Amendment, Suspension and Revocation

- a. The Board of County Commissioners is authorized to amend, suspend, or revoke an approved Conditional Use Permit if the Board of County Commissioners make one of the following findings:
 - 1) A violation of a condition of the Conditional Use Permit has occurred;
 - 2) A violation of County Code provisions governing the Zoning Regulations has occurred;
or
 - 3) A violation of other applicable Code provisions or any state or federal law or regulation by the property owner or agents of the property owner has occurred, provided that such violations relate to the conduct or activity authorized by the Conditional Use Permit or the qualifications of the property owner or agents of the property owner to engage in such conduct or activity.
- b. The Board of County Commissioners is authorized to amend, suspend or revoke an approved Conditional Use Permit in accordance with the following process:
 - 1) Upon its own initiative, or upon the recommendation of County staff or the Planning

Commission, the Board of County Commissioners may establish a public hearing date to consider the proposed amendment, suspension, or revocation of an approved Conditional Use Permit. Notices of the public hearing shall be mailed to the property owner of record and the tenant of the property with the Conditional Use Permit by certified mail, return-receipt requested, no less than 20 days prior to the public hearing date. One notice of the public hearing shall be published in the official county newspaper no less than 20 days prior to the date of the public hearing.

- 2) At the public hearing, the Board of County Commissioners shall receive and consider all relevant information and evidence concerning the Conditional Use Permit. The Board of County Commissioners may continue the public hearing and retain jurisdiction over the proposed amendment, suspension, or revocation as it deems appropriate.
- 3) After the conclusion of the public hearing, The Board of County Commissioners shall consider all relevant information and evidence concerning the Conditional Use Permit. The Board of County Commissioners may amend, suspend, or revoke the Conditional Use Permit if it finds, based upon a preponderance of the information and evidence, that such action is supportable in fact.
- 4) Any motion for the amendment, suspension, or revocation of a Conditional Use Permit shall clearly state the following:
 - a) The grounds for revocation, which may include incorporation of findings presented by County staff;
 - b) The terms and conditions of such change and at what time further review shall be appropriate; and
 - c) The terms and conditions of the amendment to the Conditional Use Permit.

12-307-2.12 Resolution

The approved Conditional Use Permit resolution shall be published in the official County newspaper.

12-307-2.13 Appeal

Within 30 days of the Board of County Commission's decision on the Conditional Use Permit, any person aggrieved by such decision may maintain an action in District Court to determine the reasonableness of the final decision.

12-307-3 SITE PLAN REVIEW AND APPROVAL

12-307-3.01 Purpose

The purpose of requiring site plan review and approval is to ensure compliance with the standards of these Regulations prior to the commencement of development activity and to ensure the compatible arrangement of buildings, off-street parking, lighting, landscaping, ingress and egress, and drainage in a manner that will promote safety and convenience for the public.

12-307-3.02 Applicability

The following site plan requirements do not apply to single-dwelling residences or their accessory structures. The conditions and requirements of this section shall be in full force and effect in each

and all of the following instances:

- a. Whenever development, other than single-dwelling residences and their accessory buildings, is proposed;
- b. Whenever development is proposed to a nonconforming use, including changes to a structure housing a non-conforming use or the expansion of a non-conforming use;
- c. Whenever a use is altered, changed, or intensified in a manner that increases parking, or outside storage requirements;
- d. Whenever a building addition or expansion is proposed;
- e. Whenever a development proposes the alteration of the parking area, access aisles or circulation pattern; or
- f. Whenever a site plan is required in any other part of the Zoning Regulations.

12-307-3.03 Building Permits

No building permit shall be issued for the erection or alteration of a structure or building meeting any of the criteria in Section 12-307-7.02 until a site plan has been submitted and approved as set forth herein.

12-307-3.04 Presubmittal Meeting

A pre-submittal meeting is required with a member of the Planning Staff seven days prior to the submittal of the site plan application.

12-307-3.05 Administrative And Commission Site Plans

- a. Revisions to previously approved site plans which the Planning Director determines are minor, i.e. the proposal is substantially similar to the approved site, may be processed administratively.
- b. Changes to a previously approved site plan that substantially rearranges parking, landscaping, drainage, lighting, or proposes a more intense use, requires staff review and consideration by the Board of County Commissioners.
- c. All new site plans require staff review and consideration by the Board of County Commissioners.

12-307-3.06 Application Materials

One paper copy and one electronic copy (pdf) of the following materials shall be submitted to the Planning Office:

- a. An application form provided by the Planning Office. If the application is not signed by the property owner, an executed Owner Authorization Form shall be required.
- b. Site plan and accompanying data as to demonstrate its conformance with the requirements of the Zoning Regulations.
- c. A certified property owner list from the County Clerk for all owners of property located within

½ mile (2,640 ft) feet of the subject property within Douglas County.

- 1) If the foregoing area includes area within the corporate limits of a city, the list shall include owners of property extending 400 feet into the corporate limits of the city.
 - 2) If the foregoing area includes area within an adjacent county, the applicant shall provide a certified list of property owners within the notification area from the County Clerk or other designated department in the adjacent county.
- d. Executed certificate of mailing of the required mailed notification (Section 12-307-3.07) and a sample of the letter used for the notification;
 - e. The review fee which is listed on the fee schedule in the Planning Office; and
 - f. Professionally prepared traffic or drainage information/study provided as required by the County Public Works Department.

12-307-3.07 Mailed Notification

Notice is not required for site plans which the Planning Director has determined propose a minor change; i.e. the proposed changes are of such a nature that the revised site plan will be substantially similar to the approved site. In all other cases the following notification procedures apply:

- a. The applicant shall mail written notice of the proposed consideration of a site plan to all owners listed on the certified property owner list prior to the submission of the site plan application to the Planning Office. The notice can be mailed by regular mail and the applicant shall submit a Certificate of Mailing, on a form provided by the Planning Office, for the notice at the time of submission of the proposed site plan.
- b. All mailed notices shall:
 - 1) Describe the property involved in the application by address or by general description;
 - 2) Provide a brief description of the proposed development or significant alteration to existing development;
 - 3) List the projected date of construction of the proposed use;
 - 4) List the person, with contact telephone number and address, designated by the applicant to respond to questions concerning the proposed site plan;
 - 5) Note the date the site plan application will be submitted to the Planning Office for review; and
 - 6) Include a statement with substantially the following information:

*“NOTICE OF SITE PLAN CONSIDERATION PENDING BEFORE THE
LAWRENCE-DOUGLAS COUNTY PLANNING OFFICE’*

This letter is being sent to the owner of property within ½ mile (2,640 ft) of the proposed development described further in this letter. It is being sent for

the purpose of informing the property owner and other interested parties about the proposed development. This letter does not grant the recipient and/or property owner any legal rights to challenge the proposed development, instead, it is being provided solely to advise property owners in the area of the pending proposed development.

For further information, contact the applicant's designated representative or the Lawrence-Douglas County Planning Office at (785) 832-3150."

- c. The applicant is responsible for mailing notice to all property owners listed on the certified property owner list prior to the submittal of the site plan application.
 - 1) When required notices have been properly addressed and deposited in the mail, failure of a party to receive such notice will not be grounds to invalidate any action taken by the Planning Commission or Board of County Commissioners.

12-307-3.08 Posted Notice

All site plans, with the exception of those which the Planning Director has determined constitute a minor change as defined in Section 12-307-3.05, require posted notice as outlined in Section 12-307-1.08.

12-307-3.09 Review Process

- a. Site plans requiring County Commission approval.
 - 1) Planning Staff shall review the site plan for conformance with these Regulations, schedule the application on a County Commission agenda, and make a report, with recommendations, to the Board of County Commissioners.
 - 2) After receiving the report of the Planning Staff, the Board of County Commissioners may receive comment on the item and shall take one of the following actions: approve the site plan, with or without conditions; deny the site plan; or defer action with direction to staff or the applicant for additional information.
- b. Administrative site plans.
 - 1) Planning Staff shall review the site plan for conformance with these Regulations, and make a report with recommendations to the Planning Director.
 - 2) The Planning Director may take one of the following actions: approve the site plan, with or without conditions; or deny the site plan.

12-307-3.10 Site Plan Contents

A site plan shall:

- a. Be prepared by an architect, engineer, landscape architect, or other qualified individual, per the standards of these regulations at a scale of 1 inch equals 50 feet or larger;
- b. Be arranged so that the top of the plan represents north or, if otherwise oriented, is clearly and distinctly marked;
- c. Include a written and graphic scale and a north arrow;

- d. Show boundaries and dimensions graphically, and contain a written legal description of the property;
- e. Show the present and proposed topography of the area by contour lines at an interval of not more than 5 feet;
- f. Show, by use of directional arrow, the proposed flow of storm drainage from the site;
- g. Show the location of existing and proposed structures and indicate the number of stories, height, gross floor area, and entrances to all structures;
- h. Show the location and dimensions of existing and proposed access points, drive aisles, off-street parking, loading zones and walkways;
- i. Indicate location, height, and materials for screening walls and fences;
- j. List the type of surfacing and base course proposed for all parking, loading and walkway areas;
- k. Show the location and size, and provide a landscape schedule of all perimeter and interior landscaping including grass, ground cover, trees and shrubs. The schedule must show that landscape materials will be no smaller or less dense than the following standards:
 - 1) Ground cover: 2" Pots on 6 - 8" centers, or 6" pots on 10 - 12" centers
 - 2) Shrubs: 18 - 24", 2 gallon size (spreading evergreens - 5 gallon container size or Balled & Burlapped)
 - 3) Ornamental trees: 1 1/2 - 1 3/4" ca. (smaller ornamental trees are to be 5 - 6' in height)
 - 4) Shade trees: 2 - 2 1/2" ca.
 - 5) Coniferous trees: 6 - 8', (Balled & Burlapped)
- l. Describe the proposed use of the site and list the number of required off-street parking spaces. If the exact use is not known at the time a site plan is submitted for review, off-street parking requirements shall be calculated by the general use group using the greatest off-street parking requirement of that use group;
- m. Show the proposed location, indicate the direction, and list the amount of illumination of proposed lighting together with information on screening proposed for the lighting and steps taken to prevent glare; a point by point illumination array may be required for parking lot lighting.
- n. Show location and dimensions of each outdoor storage area, including trash storage; and
- o. Provide a note indicating that the site plan for a public or governmental building(s) and facility(ies) has been designed to comply with the provisions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities, appendix A to 28 CFR part 36.

12-307-3.11 Approval Criteria

Planning Staff shall make a report based on a review of the site plan with the following criteria:

- a. That the proposed use is a permitted use in the District in which the property is located or is an allowed nonconforming use;
- b. That the site plan contains only platted land, vested parcel (as defined in the Subdivision Regulations, Chapter 11 County Code), or nonconforming lot as defined in Section 12-308-4.
- c. The site plan is compliant with these Zoning Regulations and other adopted policies or standards of County agencies;
- d. That the proposed arrangement of buildings, off-street parking, access, lighting, landscaping, and drainage is compatible with adjacent land uses;
- e. That the vehicular ingress and egress to and from the site and circulation within the site provides for safe, efficient, and convenient movement of traffic, not only within the site but on adjacent roadways as well;
- f. That the site plan provides for the safe movement of pedestrians within the site;
- g. That there is a sufficient mixture of grass, trees, and shrubs within the interior and perimeter (including public right-of-way) of the site so that the proposed development will be in harmony with adjacent land uses and will provide a pleasing appearance to the public. Any part of the site plan area not used for building, structures, parking or access ways shall be landscaped with a mixture of grass, trees, and shrubs; and
- h. That all outdoor storage areas, including trash areas, are adequately screened from adjacent right-of-way and properties.

12-307-3.12 Assurance of Performance

The Board of County Commissioners may require the applicant to file a cash deposit or performance bond with the Douglas County Clerk as a condition of approval, to insure completion of approved landscaping, fencing, off-street parking, and loading, drainage and other specific items of the site plan. The amount of the deposit or performance bond shall be recommended by the Planning Staff, based upon current costs, and set by the Board of County Commissioners.

- a. If upon inspection of the completed project by the Director of Zoning and Codes, it is found that the conditions of the site plan have been met, the deposit or performance bond shall be released to the applicant.
- b. If the applicant does not comply within a reasonable time with the conditions of the site plan, the Director of Zoning and Codes shall give written notice to the applicant and the bonding company. (Reasonable time shall be determined by the life of the performance bond as stated thereupon, less 60 days.)
- c. If the conditions of the site plan have not been met 30 days prior to the expiration of the performance bond, the county shall bring such action as is necessary to insure completion of the site plan conditions.
 - 1) However, if the applicant can show that he has tried to the utmost of his ability to meet

the conditions of the site plan within the time period allotted, but that adversities not of his making have been the cause of his failures to meet the site plan conditions, the Board of County Commissioners may require that he extend the performance bond for a specified period of time. In general, no initiation of commercial, or office activity shall take place before all of the conditions of the site plan and other provisions of the Zoning Regulations have been satisfied.

- d. That consideration shall be given to seasons of the year and adverse weather conditions in requiring completion of landscaping plans before initiation of such activity. Where it has been determined that adverse weather has delayed landscaping, the commercial or office activity may commence with the provision that the landscaping must be completed within 6 months.
- e. Commencement of an activity on an a lot or eligible parcel having an approved site plan without completion of site plan conditions, except as noted above, shall be considered a violation of the Zoning Regulations.

12-307-3.13 Time Limitations

- a. If a building permit has not been issued for the site within 2 years from the date of the site plan approval by the Board of County Commissioners or the Planning Director, the site plan shall be and become null and void.
- b. For good cause shown, the expiration date may be extended by the Board of County Commissioners for a period not to exceed 1 year. The application for extension must be made in writing to the Planning Director and will be considered only if received before the expiration date of the site plan. The Planning Director shall place such request, with any recommendation of the Planning Director on the agenda of the Commission.
- c. No action by the County shall be necessary to cause the site plan to expire. Its expiration shall be considered a condition of the original approval. After the expiration date, or extended expiration date, any further application for a building permit or for other development activity on the site shall be considered as though the site plan had not been granted.

12-307-4 ZONING MAP AMENDMENTS

The Board of County Commissioners may, from time to time, amend, supplement, or change, by resolution, the boundaries of the districts herein established. The resolution shall become effective upon publication in the official county paper.

12-307-4.01 Initiation

An amendment to the zoning map, rezoning, may be initiated by the Board of County Commissioners or the Planning Commission. An amendment to a specific property may be initiated by an application of the owner of the property affected. Any proposed amendment shall follow the process set forth in this section after initiation.

12-307-4.02 Application

- a. Application for a zoning map amendment shall be submitted to the Planning Office upon appropriate forms available from the Planning Office. Such application shall be made in accordance with the Planning Commission submission deadlines.

- b. A pre-application meeting with a member of the Planning Staff is required at least 7 days prior to the formal submission of a zoning map amendment application.

12-307-4.03 Application Materials

Each application for a zoning map amendment shall be accompanied by the following:

- a. A conceptual plan and data necessary to demonstrate that the proposed amendment is in general conformance with the Comprehensive Plan;
- b. A general location map, showing the location of the property in relation to at least one intersection of two public, full-maintenance roads;
- c. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the property shall be designated by legal description or a general description sufficient to identify the property under consideration; and
- d. A certified list from the Douglas County Clerk of all owners of property located within the required notification area which is ½ mile (2,640 feet) of the subject property.
 - 1) If the foregoing area includes area within the corporate limits of a city, the list shall include owners of property within the ½ mile (2,640 foot) notification area up to 400 feet within the corporate limits of the city.
 - 2) If the foregoing area includes area within an adjacent county, the applicant shall provide a certified list of property owners within the notification area from the County Clerk or other designated department in the adjacent county.

12-307-4.04 Public Hearing Notice

Newspaper and mailed notice of the Planning Commission's public hearing on zoning map amendments shall be provided by Planning Staff per the provisions in Section 12-307-1.08. The applicant shall ensure that notice is posted on the subject property, per Section 12-307-1.08(c).

- a. The Planning Director is responsible for mailing notice to the owner of the subject property and all property owners listed on the certified property owner list. Required notices shall be mailed at least 20 days before the public hearing.
- b. When required notices have been properly addressed and deposited in the mail, failure of a part to receive such notice shall not invalidate any subsequent action taken by the Planning Commission or the Board of County Commissioners.

12-307-4.05 Lesser Change Table

- a. Pursuant to K.S.A. 12-757 the Planning Commission has adopted a "Lesser Change Table." The Lesser Change Table is for the use of the Planning Commission in determining the hierarchy of Zoning Districts and for determining when public notification or re-notification is required. The table lists zoning classifications in descending order from the least intense to the most intense zoning district.
- b. In accordance with the cited statute, a recommendation or action to amend the zoning map to assign the 'lesser change' zoning district to the land, rather than the zoning district advertised in the notice, shall not require further notice. A recommendation or action to

amend the zoning map to assign any zoning district other than the one advertised in the notice or one listed in the Lesser Change Table will be inconsistent with the advertised hearing and shall require re-advertising and the holding of a new hearing, after proper notice. Such recommendation or action by the Planning Commission or the County Commission shall be construed as an instruction to the Planning Director to set a new hearing and to give notice of the proposed hearing, including the new Zoning District in the notice.

- c. For purposes of K.S.A. 12-757, the zoning districts that are available for rezoning through lesser change are listed in the following table

Table of Lesser Change	
Advertised/Proposed Zoning District	Districts to be Considered a 'Lesser Change'
AG-1	None
AG-2	AG-1
CP	AG-2, AG-1
LS	None
RT	AG-1
LB	AG-1
GB	LB, RT, AG-1
LI	AG-1
GI	LI

12-307-4.06 Evaluation Criteria

In reviewing and making decisions on proposed zoning map amendments, review and decision-making bodies shall consider at least the following factors:

- a. Zoning and uses of nearby property;
- b. Character of the area;
- c. Suitability of subject property for the uses to which it has been restricted under the regulations of the current zoning district;
- d. Length of time subject property has remained vacant as zoned;
- e. Extent to which removal of restrictions will detrimentally affect nearby properties;
- f. The gain, if any, to the public health, safety and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application;
- g. Conformance with the comprehensive plan;
- h. Conformance with plans for the area, as reflected in adopted area and/or sector plans including the property or adjoining property;

- i. The suitability of the property for agricultural uses. This shall be evaluated with each rezoning request from the A District to maintain an adequate inventory of productive, or potentially productive, agricultural land;
- j. Impact on environmentally sensitive lands; and,
- k. Professional staff recommendation.

12-307-4.07 Review Process—Planning Commission

- a. All such proposed amendments shall first be reviewed by the Planning Director in accordance with the review and decision-making criteria of Section 12-307-4.06. Based on the result of this review, the Planning Director will provide a report and recommendation on the proposed amendment to the Planning Commission.
- b. The Planning Commission shall hold a public hearing on the proposed zoning map amendment. The hearing may be adjourned from time to time and at the conclusion of the same, the Planning Commission shall prepare its recommendations based on the review and decision-making criteria of Section 12-307-4.06 and forward the application to the Board of County Commissioners with a recommendation for approval, approval with conditions or modifications, or denial of the proposed amendment.
- c. A majority of the members of the Planning Commission present and voting at the hearing shall be required to recommend approval or denial of the amendment to the Board of County Commissioners.
 - 1) If the Planning Commission fails to make a recommendation on a rezoning request, the Planning Commission shall be deemed to have made a recommendation of denial.
 - 2) The Planning Commission may recommend conditions or modifications if the effect of the condition or modification is to limit the allowed uses, to allow a lesser change from the rezoning requested in the proposed amendment, or to reduce the area included in the amendment.
 - 3) The Planning Commission may not recommend greater density of development, intensity of use, or a more intense zoning district classification than was specified in the published notice.

12-307-4.08 Protest Petition

A protest petition may be filed in opposition to a zoning map amendment. If the petition is found to be valid, a 3/4 vote of all of the members of the Board of County Commissioners is required to approve the Zoning Map Amendment, regardless of the Planning Commission’s recommendation. The supermajority voting requirement, however shall not apply if K.S.A. 12-757(g) or other applicable law requires approval by only a majority of the Board of County Commissioners.

- a. A protest petition will be considered ‘valid’ if it meets both the following requirements:
 - i. The petition is signed by the owner or owners of 20% or more of the real property within the area required by KS Statute to be notified of the Conditional Use Permit public hearing (property within 1,000 feet radius of the land for which the rezoning is proposed. If the foregoing area includes area within the corporate limits of a city, the list shall include owners of property extending 200 feet into the corporate limits of the city.), excluding roads and public ways. Each and every owner of a single piece of

property must sign the protest petition, but all are considered as a single owner in determining the sufficiency of the petition; and

- ii. The petition is filed with the County Clerk before 5:00 p.m. within 14 days after the date of the conclusion of the Planning Commission public hearing.

- b. A property owner list for the notification area can be obtained from the County Clerk's office.

12-307-4.09 Board of County Commissioners Action

When the Planning Commission submits a recommendation of approval, approval with conditions or modifications, or denial of a proposed amendment, the Board of County Commissioners may take one of the following actions:

- a. Approve with adoption of resolution, approve with conditions or modifications with adoption of resolution, or deny the proposed amendment.
 - 1) A 2/3 majority vote of the membership of the Board of County Commissioners is required to override the Planning Commission's recommendation.
- b. Return the proposed amendment to the Planning Commission for further consideration, with a statement specifying the basis for the Board of County Commissioners' failure to approve or disapprove.
 - 1) The Planning Commission, after considering the explanation by the Board of County Commissioners, may resubmit its original recommendation with its reasons for doing so or submit a new and amended recommendation.
 - 2) Upon the receipt of such recommendation, the Board of County Commissioners may, by a simple majority vote, approve the proposed amendment, approve it with conditions or modifications, or deny it.
 - 3) If the Planning Commission fails to deliver its recommendation to the Board of County Commissioners following the Planning Commission's next regular meeting after receipt of the Board of County Commissioners' report, the Board of County Commissioners shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.
- c. The Board of County Commissioners may allow or impose conditions or modifications on the proposed amendment if the effect of the condition or modification is to limit the allowed uses, to allow a zoning classification of lesser change, or to reduce the amount of land area included in the proposed amendment.
- d. The Board of County Commissioners may not approve a greater density of development, intensity of use, or a more intense zoning district classification than was specified in the published notice.
- e. The proposed rezoning shall become effective upon publication of the adopting resolution in the official County newspaper.

12-307-4.10 Conditions

- a. When the procedures of these Regulations allow the Planning Commission to recommend, or the Board of County Commissioners to approve, applications for zoning map amendment with conditions, the conditions shall relate to a situation created or aggravated by the proposed use or development.
- b. When conditions are imposed which require completion before the zoning resolution may be published, an application shall not be deemed to be approved until the applicant has complied with all the conditions.

12-307-4.11 Appeals

Within 30 days of the Board of County Commission’s decision on the zoning map amendment, any person aggrieved by such decision may maintain an action in District Court to determine the reasonableness of the final decision.

12-307-4.12 Limitation on Successive Applications

Withdrawal of an original application after it has been advertised for public hearing shall constitute denial of the application as if the public hearing had been held and concluded.

- a. A successive application shall not be accepted for a period of 12 months from the date of the Board of County Commissioners’ denial of the original application unless a successive application is substantially different from the original application that was denied.
- b. A successive application which is determined to be substantially different based on the following criteria may be accepted:
 - 1) A different zoning district category has been applied for; or
 - 2) Specific responses to the reasons for the denial set forth in the findings of fact by the Board of County Commissioners are, in the opinion of the Planning Director, addressed in the resubmission.

12-307-4.13 Date of Effect

The Zoning Regulations map amendment will become effective upon publication of the adopting resolution in the official County newspaper.

12-307-5 ZONING TEXT AMENDMENTS

The Board of County Commissioners may, from time to time, amend, supplement, or change these Zoning Regulations by resolution. The resolution shall become effective upon publication in the official county paper.

12-307-5.01 Initiation

- a. An amendment to the text of the Zoning Regulations may be initiated by the Board of County Commissioners or the Planning Commission and adopted in accordance with the rules of that body.
- b. Applications for text amendments may be submitted by private parties and shall be filed with the Planning Director.
 - 1) The application shall be in writing and shall include the proposed text and the reasons for proposing the amendment. The Planning Director shall forward the application to the Board of County Commissioners for review and consideration of initiating the

amendment taking into consideration the need for the amendment.

12-307-5.02 Public Hearing Notice

Newspaper notice of the Planning Commission's public hearing on zoning text amendments shall be provided by Planning Staff as provided in Section 12-301-1.08(a).

12-307-5.03 Staff Review/Report

The Planning Director will review each proposed text amendment in accordance with the review and decision-making criteria of Section 12-307-5.06 and, if deemed necessary, distribute the proposed amendment to other agencies and reviewers. Based on the results of those reviews, the Planning Director will provide a report with recommendation on the proposed amendment to the Planning Commission and Board of County Commissioners.

12-307-5.04 Planning Commission's Review/Recommendation

The Planning Commission shall hold a public hearing on the proposed text amendment, review the proposed text amendment in accordance with the review and decision-making criteria of Section 12-307-5.06 and recommend that the Board of County Commissioner's approve with adoption of a resolution, approve with modifications with adoption of a resolution, or deny the proposed amendment. The Planning Commission is also authorized to forward the proposed amendment to the Board of County Commissioners with no recommendation.

12-307-5.05 Board Of County Commissioners Action

After receiving the Planning Commission's recommendation, the Board of County Commissioners shall take one of the following actions on the proposed text amendment:

- a. Approve, approve with modifications, or deny; or
- b. Return the application to the Planning Commission for further consideration, together with a written explanation of the reasons for the Board of County Commissioner's failure to approve or disapprove.
 - 1) The Planning Commission, after considering the explanation by the Board of County Commissioners, may resubmit its original recommendations with its reasons for doing so or submit a new or amended recommendation.
 - 2) Upon the receipt of such recommendation, the Board of County Commissioners may, by a simple majority vote, approve the proposed text amendment, approve it with modifications, or deny it.
 - 3) If the Planning Commission fails to deliver its recommendations to the Board of County Commissioners following the Planning Commission's next regular meeting after receipt of the Board of County Commissioners' report, the Board of County Commissioners will consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendations and proceed accordingly.

12-307-5.06 Review And Decision-Making Criteria

In reviewing and making decisions on proposed zoning text amendments, review bodies shall consider at least the following factors:

- a. Does the proposed text amendment correct an error or inconsistency in the Zoning Regulations or meet the challenge of a changing condition?

- b. Does the proposed text amendment advance a clear public purpose?
- c. Does the proposed amendment affect the adequacy of existing or planned facilities and services?
- d. Does the proposed text amendment result in reasonably compatible land use relationships?
- e. Will the proposed text amendment advance the interest of the citizens of Lawrence and rural Douglas County as a whole, not solely those having immediate interest in the affected area?
- f. Is the proposed text amendment consistent with the Comprehensive Plan and the stated purpose of these Regulations, Section 12-301-3.

12-307-5.07 Date of Effect

The Zoning Regulations text amendment will become effective upon publication of the adopting resolution in the official County newspaper.

12-307-6 WRITTEN INTERPRETATIONS

Requests for written interpretations of these Regulations shall be submitted in writing to the Director of Zoning and Codes.

12-307-6.01 Procedure

- a. Following the submittal of a complete application on a form established by the Director of Zoning and Codes, the Director shall review and evaluate the issue for which an interpretation is requested, consult with the Planning Director and staff, as necessary; request additional information or documentation as necessary and render a written interpretation.
- b. Within ten working days after a request for an interpretation has been submitted, the Director of Zoning and Codes shall provide the interpretation to the applicant in writing and shall file a copy of the interpretation in the official record of interpretations, which is available for public inspection.

12-307-6.02 Appeals

Appeals of the Director of Zoning and Codes written interpretation may be taken to the Board of Zoning Appeals. If the appeal results in a change of interpretation, the new interpretation shall be filed in the official record of interpretations maintained by the Director of Zoning and Codes.

- a. The appeal must be filed with the Board of Zoning Appeals within 10 working days after the Director of Zoning and Codes' decision.
- b. Appeals may be filed by any person aggrieved, any officer of the County, or any governmental agency or body affected by any interpretation.
- c. The procedure for filing appeals is contained in Section 12-308.

12-307-7 VARIANCES

12-307-7.01 Authority and Applicability

The zoning variance procedures of this section authorize the Board of Zoning Appeals to approve, in specific cases, variances from specific zoning standards of these Regulations that will not be contrary to public interest and where, owing to special conditions, a literal enforcement of zoning standards would result in 'unnecessary hardship'.

- a. The Board of Zoning Appeals is not authorized to approve a variance that would allow a use that is not permitted in the applicable zoning district.

12-307-7.02 Application Filing

Zoning variance applications shall be filed with the Director of Zoning and Codes.

- a. The application and plans, if needed, shall be provided to the Director on forms provided by the Zoning and Codes office; along with the fee for such application as established by the Board of County Commissioners.
- b. A pre-application meeting is required with Zoning and Codes staff a minimum of 7 days prior to submittal of the application.

12-307-7.03 Public Hearing Notice

Newspaper and mailed notice of the Board of Zoning Appeals' public hearing shall be provided per the provisions in Section 12-307-1.08.

12-307-7.04 Staff Review/Report

The Zoning and Codes Director will review each proposed variance application in accordance with the review and decision-making criteria of Section and, if deemed necessary, distribute the variance application to other agencies and reviewers. Based on the results of those reviews, the Zoning and Codes Director will provide a report on the variance application to the Board of Zoning Appeals.

12-307-7.05 Board of Zoning Appeals' Hearing and Decision

- a. The Board of Zoning Appeals shall hold a public hearing on the proposed variance and review the application in accordance with the applicable review and decision-making criteria of Section 12-307-7.07.
- b. Following the public hearing the Board of Zoning Appeals shall consider the recommendation of the Director of Zoning and Codes and evidence provided at the public hearing and shall take one of the following actions: approve the variance; approve the variance with conditions; or deny the variance.

12-307-7.06 Variance from Floodplain Regulations Review and Decision-Making Criteria

- a. The Board of Zoning Appeals may approve a zoning variance from the floodplain regulations of Chapter 12, only after considering all technical evaluations, relevant factors, and standards specified in Section 12-312. In addition, the following factors shall be considered:
 - 1) The danger of injury from materials swept onto other lands.
 - 2) The danger of life and property due to flooding or erosion damage;
 - 3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner or occupant.

- 4) The importance of the services provided by the proposed facility to the community;
 - 5) The necessity to the facility of a waterfront location, where applicable;
 - 6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - 7) The compatibility of the proposed use with existing and anticipated development;
 - 8) The relationship of the proposed use to the Comprehensive Plan and Floodplain management program for that area;
 - 9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - 10) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - 11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- b.** Variances shall not be approved within the regulatory floodway if any increase in flood levels during the regulatory food would result.
 - c.** Variances shall be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard to afford relief.
 - d.** Variances shall be issued only upon:
 - 1) A showing of good and sufficient cause,
 - 2) A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - 3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, or conflict with existing local laws or ordinances.
 - e.** Upon consideration of the above factors and purpose of the Floodplain Management Regulations, Section 12-312-1, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary.
 - f.** Any applicant to whom a variance is granted shall be given a written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
 - g.** The Director of Zoning and Codes shall maintain the records of all variances and report any variances to the Federal insurance Administration upon request.

12-307-7.07 Variance from Regulations, Other than the Floodplain Regulations

The Board of Zoning Appeals may approve a zoning variance from regulations, other than the Floodplain Regulations in Chapter 12, upon the finding that all of the following conditions have been met:

- a. That the variance request arises from such conditions that are unique to the property in question and not ordinarily found in the same zoning or district and are not created by actions of the property owner or applicant;
- b. That granting the variance would not adversely affect the rights of adjacent property owner or residents;
- c. That strict application of the regulations for which the variance is requested would constitute unnecessary hardship upon the property owner represented in the application;
- d. That the variance desired would not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
- e. That granting the variance desired would not be opposed to the general spirit and intent of these Regulations.

12-307-7.08 Filing and Mailing of Decision

Every decision or determination by the Board of Zoning Appeals shall be filed in the Zoning and Codes Office and mailed to the applicant and all other parties who have made a written request for notification.

12-307-7.09 Expiration of Approval

In the event the landowner fails to obtain a building permit or fails to commence the development activity within 24 months after final approval of the variance, then such variance shall expire.

- a. For good cause shown, the expiration date may be extended by the Board of Zoning Appeals for a period not to exceed 2 years. A written request for extension must be made to the Director of Zoning and Codes and will be considered only if received before the expiration date of the variance.
- b. The Zoning and Codes Director shall place such request, with any recommendation, on the agenda of the Board of Zoning Appeals. The Zoning and Codes Director shall notify the applicant of the date of the proposed consideration and will provide mailed notification to property owners per the provisions in Section 12-307-1.08.

12-307-8 APPEALS OF ADMINISTRATIVE ORDERS, REQUIREMENTS, DECISIONS, OR DETERMINATIONS

12-307-8.01 Applicability

Unless specifically provided for otherwise in these Regulations, the Board of Zoning Appeals is authorized to 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 administration or enforcement of the provisions of these Regulations. Staff review/reports required by these Regulations and considered by the Planning Commission at a public hearing or presented to the

Board of County Commissioners for consideration shall not be considered an order, requirement, decision, or determination and shall not be appealable to the Board of Zoning Appeals.

- a. The Planning Commission is not an 'administrative official' for purposes of these Regulations and the Board of Zoning Appeals shall have no jurisdiction to consider an appeal from any action, determination, or failure to act by the Planning Commission.
- b. Review procedures of these Regulations are not administrative orders, requirements, decisions, or determinations and the Board of Zoning Appeals shall have no jurisdiction to consider an appeal from any of the review procedures.

12-307-8.02 Application

Appeals of administrative decisions shall be filed with the Director of Zoning and Codes. The appeal shall be filed within 10 working days after the administrative official's order, requirement, decision, or determination. Appeals may be filed by any person aggrieved, or by any officer of the County, or any governmental agency or body affected by any decision of an administrative official.

12-307-8.03 Effect of Application

The filing of an application for an appeal of administrative order, requirement, decision, or determination stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the Board of Zoning Appeals, after the appeal is filed, that, because of facts stated in the certification (a) a stay would cause immediate peril to life or property or (b) the situation appealed from is transitory in nature, and therefore, an appeal would seriously interfere with enforcement of these Regulations.

- a. In each instance, the official whose decision is being appealed shall place in the certificate facts to support the conclusions.
- b. In such cases, proceedings will not be stayed other than by a restraining order, which may be granted by a court of record.

12-307-8.04 Record of Administrative Decision

The official whose decision is being appealed shall provide the Board of Zoning Appeals with all documents constituting the record upon which the action being appealed was taken.

12-307-8.05 Public Hearing Notice

Newspaper and mailed notice of the Board of Zoning Appeals' public hearing on the appeal shall be provided in accordance with Section 12-307-1.08. A copy of the notice shall also be mailed to each party to the appeal at least 20 days before the date of the hearing.

12-307-8.06 Review and Decision

- a. The Board of Zoning Appeals shall hold a public hearing on the appeal and, following the close of the public hearing, take final action based on the procedures and requirements of this section.
- b. In exercising the appeal power, the Board of Zoning Appeals, has all the powers of the official from whom the appeal is taken, and the Board of Zoning Appeals may reverse, affirm wholly or in part, or may modify the decision being appealed.

- c. If the Board of Zoning Appeals determines that it is necessary to obtain additional evidence to resolve the matter, it shall remand the appeal to the official from whom the appeal is taken, with directions to obtain the needed evidence and to reconsider the decision in light of that evidence.

12-307-8.07 Approval Criteria: Findings Of Fact

The Board of Zoning Appeals may reverse an order, requirement, decision, or determination of any administrative official only when the Board of Zoning Appeals finds substantial, factual evidence in the official record of the application that the administrative official erred. The decision of the Board of Zoning Appeals shall be supported by written findings of fact prepared by the Board of Zoning Appeals.

12-307-8.08 Filing and Mailing of Decision

Every decision or determination by the Board of Zoning Appeals shall be:

- a. Filed in the office of the County Clerk not more than 7 working days following the date of hearing; and
- b. Mailed to the applicant and all other parties who have made a written request for notification not more than 7 working days following the date of the hearing.

12-307-8.09 Date of Effect

Decisions on appeals become effective on the date the Board of Zoning Appeals makes its decision.

12-307-8.10 Appeals

Within 30 days of the date of effect of the Board of Zoning Appeals' decision, any person aggrieved by such decision may maintain an action in District Court to determine the reasonableness of the final decision