

# CHAPTER 17

## NONCONFORMITIES

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### SECTION 1700. GENERAL

- A. Within the Districts established by this Ordinance there are uses, structures, and lots which were lawful before this Ordinance was adopted or amended. However, under the terms of this Ordinance and its future amendments where these uses, structure and lots are not permitted, such uses, structures, and lots, are referred to as "nonconformities" and may continue as regulated by this Chapter. A use lawfully existing prior to the effective date of this Ordinance, which does not comply with a parking, loading, screening, bulk and area, sign, or enclosure requirement or requirements, but which is otherwise lawful shall be deemed nonconforming and may continue as regulated by this Chapter.
- B. If, before the effective date of this Ordinance or amendment thereof, a Building Permit authorizing construction was lawfully issued, such construction may be started or continued after such date, subject to the provisions of the Building Code (see Appendix G) and Chapter 18 of this Ordinance.
- C. If, before the effective date of this Ordinance or amendment thereof, construction was started at a location not then subject to this Ordinance and was subsequently diligently pursued, and such construction at such date did not conform to this Ordinance, such construction may be continued after such date, subject to the provisions of Appendix G and Chapter 18 of this Ordinance. For the purposes of this Section, construction shall be deemed to have been started before such date if the Board of Adjustment finds, on application, that before such date the foundation

had been completed or costs equaling five (5) percent of the total estimated construction cost had been incurred and would be lost if construction were not permitted to proceed.

### **SECTION 1701. NONCONFORMING USES OF UNIMPROVED LAND**

- A. When at the effective date of this Ordinance or amendment thereto a lawful use of land exists which would not be permitted by the terms of this Ordinance or amendments thereto, and the only structures employed in connection with the use are all accessory or incidental to such use and in the aggregate do not cover more than 10% of the lot area devoted to the nonconforming use, such use shall be deemed a nonconforming use of unimproved land and shall terminate as follows:
1. If the replacement cost of the accessory structures, other than fences, is less than \$1,000.00, the nonconforming use shall terminate within five (5) years from the effective date of this Ordinance or from the date the use became nonconforming, whichever is later.
  2. If the replacement cost of the structures, other than fences, is \$1,000.00 or more, the nonconforming use shall be terminated on the basis of amortization of the replacement cost of the accessory structures at a rate of \$200.00 per year from the effective date of this Ordinance or from the date the use became nonconforming, whichever is later.
- B. Pending termination, the nonconforming use of unimproved land may be continued provided:
1. No such nonconforming use shall be changed to another nonconforming use, nor enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of this Ordinance or amendment hereto.
  2. No nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of this Ordinance or amendment hereto.
  3. No additional structures, other than fences, shall be constructed in connection with such nonconforming use of land.
  4. If any such nonconforming use of land ceases for any reason for a period of more than 90 days, except when government action impedes access to or use of the premises, any subsequent use of such land shall conform in all respects to the current regulations of the Zoning District in which it is located.

**SECTION 1702. NONCONFORMING USES OF BUILDINGS OR BUILDINGS AND LAND IN COMBINATION**

When at the effective date of this Ordinance or amendment hereto, there exists a lawful use of a building, or use of a principal building and land, or use of land and accessory structures, such structures covering more than 10% of the lot area, and such use would not be permitted by the terms of this Ordinance or amendment hereto, such use shall be deemed nonconforming and may continue subject to the following provisions:

- A. No building devoted to a nonconforming use shall be enlarged or extended, except in changing the use of the building to a use permitted in the District in which it is located.
- B. A nonconforming use of a portion of a building may be extended to the remaining portions of the building if such portions were clearly arranged and designed for such use but such use shall not be extended to occupy any land outside the building.
- C. A nonconforming use of a building, or building and land in combination, if superseded by a permitted use, shall not from that day on be resumed.
- D. A nonconforming use of a building, or building and land in combination, if discontinued for six (6) consecutive months or for six (6) months during any two (2) year period, except when governmental action impedes access to or the use of the premises, shall not subsequently be resumed.
- E. When nonconforming use status applies to a building and land in combination, termination of use of the building within the meaning of this Section shall eliminate the nonconforming status of the use of the land.
- F. A nonconforming use of a building or of a building and land in combination when located within an Agriculture or Residential District shall not be changed unless changed to a use permitted in the District in which the nonconforming use is located.
- G. A nonconforming use of a building or of a building and land in combination when located within a District other than an Agriculture or Residential District, may, as a Special Exception, be changed to a use permitted in such District by Right or Special Exception. Approval of the Special Exception may be granted by the Board of Adjustment after a finding that the proposed use will not result in any increase of incompatibility with the present and future use of the proximate properties.

- H. Should the structure containing a nonconforming use be damaged or partially destroyed to the extent of more than 50%, but less than 75% of its current replacement cost at the time of damage, the restoration of the structure shall be subject to the Board of Adjustment's findings after adherence to the procedural requirements for a Special Exception, that the contemplated restoration is necessary for the continuance of the nonconforming use, and will not result in any increase of incompatibility with the present or future use of proximate properties. Should the structure containing a nonconforming use be damaged or destroyed to the extent of 75% or more of its replacement cost at the time of damage, the nonconforming use shall not continue or be resumed.

### **SECTION 1703. NONCONFORMING SIGNS**

- A. Outdoor advertising signs lawfully existing on the effective date of this Ordinance or amendment hereto, but which would be prohibited by the terms of this Ordinance or future amendment hereto, shall be deemed nonconforming and may continue subject to the following provisions:
1. The sign shall be maintained in good repair and visual appearance;
  2. Should the sign be damaged or partially destroyed to the extent of more than 50% of its current replacement cost at the time of damage, the sign shall be removed, or made to conform; and
  3. If the sign is not used for advertising purposes for a period of six (6) consecutive months, the sign shall be deemed abandoned and shall be removed, or made to conform.
- B. Other signs lawfully existing at the effective date of this Ordinance or amendment hereto but which would be prohibited by the terms of this Ordinance or amendment hereto, shall be deemed nonconforming and may continue subject to the following requirements:
1. A sign which is nonconforming by reason of restrictions on the use of strobe or beacon lights incident thereto may continue so long as the strobe or beacon lights are removed immediately;
  2. The sign shall be maintained in good repair and visual appearance;
  3. Should the sign be damaged or partially destroyed to the extent of more than 50% of its current replacement cost at the time of damage, the sign shall be removed or made to conform; and

4. If the sign is not used for advertising purposes for a period of six (6) consecutive months, the sign shall be deemed abandoned and shall be removed.

## **SECTION 1704. NONCONFORMING LOTS**

### **A. Residential Districts**

In Residential Districts on any lot filed of record on or before the first effective date of this Ordinance, or on any lot within a subdivision approved by the Planning Commission, or on any lot of record for which a recorded instrument of conveyance bears the endorsement of the Planning Commission and such lot is nonconforming by reason of failure to meet Zoning Ordinance requirements for size or average width, a single-family detached dwelling may be constructed without complying with the required lot area, land area per dwelling unit, lot width, recreation or common open space per dwelling unit or the required side yard which abuts a public street; provided, however, no side yard may be less than five (5) feet, and recreation or common open space shall not be less than 50% of the lot area. All other requirements of the Zoning District shall be complied with.

### **B. Nonresidential Districts**

On any lot filed of record on or before the first effective date of this Ordinance, or on any lot within a subdivision having received approval of the Planning Commission, or any lot of record for which a recorded instrument of conveyance bears the endorsement of the Planning Commission the permitted use may be located on such lot without regard for its area or width provided that other requirements of the Zoning District shall be complied with.

### **C. Substandard Lot of Record**

1. In any District where dwellings are permitted, if any lot is smaller than the minimum requirements herein contained and all sides of such lot touch lands that were under other ownership at the effective date of this Ordinance, such lot may be used for the construction of one single-family detached dwelling. In such case, the Board of Adjustment may permit appropriate reductions of required yards and increase of permitted lot coverage.
2. Where a lot has been created for nonresidential purposes under or any section of this Ordinance and such lot does not comply with the residential bulk and area requirements of the Zoning District in which it is located, such lot shall not be used for residential purposes.

**SECTION 1705. STRUCTURAL NONCONFORMITIES**

A structure lawfully existing at the effective date of the adoption of this Ordinance or amendment hereto, but which would be prohibited by the terms of this Ordinance by reason of restriction on floor area, density, intensity, height, yards, its location on the lot, or other requirements concerning the structure, shall be deemed nonconforming and may continue subject to the following provisions:

- A. No such nonconforming structure may be enlarged or altered in any manner which increases its nonconformity provided that the addition of a mezzanine or similar alteration which does not increase the cubic content of the structure shall not constitute an increase in nonconformity.
- B. Should such structure except Antennas and Antenna Supporting Structures be damaged or partially destroyed by any means to the extent of more than 50% of its current replacement cost at the time of damage, the restoration as a nonconforming structure shall be subject to the Board of Adjustment's findings, after adherence to the procedural requirements for a Special Exception, that its restoration to a conforming structure cannot reasonably be made in view of the nature and extent of the nonconformity and the nature and extent of the damage.
- C. Antenna and Antenna Supporting Structures, if damaged or destroyed by any means may be reconstructed by obtaining a Building Permit issued in compliance with the original conditions of approval. The reconstructed Antenna and Antenna Supporting Structure shall be placed at the same location and have less than or equivalent height and mass.
- D. Should such nonconforming structure be moved for any distance whatever, it shall conform to the provisions of this Ordinance and the District in which located.
- E. Within the incorporated area of the City of Claremore a nonconforming structure existing at the effective date of this Ordinance may be continued, maintained, and repaired, except as otherwise provided in this Section. In the case of residential use of a property in a nonresidential area which has been under the same continuous ownership since August 5, 1968, a residence which is destroyed by fire, windstorm or other tragedy, or is otherwise removed by its owner, may be rebuilt for residential use after the owner is advised of the existing zoning of the property.

- F. A nonconforming structure shall not be added to or enlarged in any manner, unless said structure, including additions and enlargements, is made to conform to all of the regulations of the Zoning District in which it is located. This provision shall not apply to a residential dwelling under the same continuous ownership since August 5, 1968 in the incorporated area of the City of Claremore.

#### **SECTION 1706. REPAIRS**

- A. On any building containing a nonconforming use or any nonconforming structure, ordinary repairs and maintenance may be made. However, the cubic content of the building and the structural nonconformity shall not be increased.
- B. If a nonconforming structure or a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of maintenance, and a final order of vacation or demolition is entered by any authorized official by reason of physical condition, it shall not thereafter be used, restored, or repaired, or rebuilt except in conformity with the provisions of the District in which located.

#### **SECTION 1707. PARKING, LOADING AND SCREENING NONCONFORMITIES**

A use lawfully existing at the effective date of this Ordinance or amendment hereto except for an Adult Entertainment Establishment as listed in Use Unit 1513 and a Dance Hall as listed in Use Unit 1520 (see also Sections 1708 and 1709) but which does not comply with a parking, loading or screening requirement or requirements of this Ordinance, shall be deemed nonconforming and may continue subject to the following provisions:

- A. No such use shall be enlarged or extended unless parking and loading is provided as required for the enlargement or extension.
- B. No such use shall be enlarged or extended unless screening is provided as required for the use.
- C. No such use shall be changed unless parking, screening and loading is provided as required for such use. However, the Board of Adjustment may modify such parking and loading requirements as a Special Exception after meeting the standards contained in Section 1901 and the proposed use will not result in any increase of incompatibility with the present and future use of the proximate properties.

- D. A Use Unit 30, Junk and Salvage Yards use shall be screened in accordance with the provisions of Section 1530 of this Ordinance on or before the expiration of 12 months from the effective date of this Ordinance. However, existing storage racks that do not meet minimum setback requirements may remain.

## **SECTION 1708. ADULT ENTERTAINMENT ESTABLISHMENTS**

An Adult Entertainment Establishment, as listed in Use Unit 13 and Section 1513, lawfully existing at the effective date of this Ordinance or amendment hereto, but which does not comply with a parking, loading, spacing or screening requirement or requirements of this Ordinance, shall be deemed nonconforming and may continue subject to the following provisions:

- A. Sexually-Oriented Businesses shall be regulated by Section 604.C, Nonconforming Uses.
- B. Adult Entertainment Establishments located in an AR or R District shall not be changed to another use except that such use is in compliance with all provisions of said AR or R District.
- C. In other than AR or R Districts Adult Entertainment Establishments are subject to the following provisions:
1. No such use shall be enlarged or extended;
  2. No such use shall be changed to another use which would not meet parking, loading, screening and spacing requirements, unless changed to a use within Use Unit 11, Offices, Studios and Support Services, Use Unit 14, Convenience Goods and Services or Use Unit 15, Shopping Goods and Services. However, the Board of Adjustment may permit by Special Exception other uses permitted by Right or Special Exception within the Zoning District, even though such use may be nonconforming as to parking, loading, screening or spacing;
  3. No such use which contains a public entrance door that is within 50 feet of an AR or R District, as set forth in Section 1513.C, shall continue more than one (1) year from the date this provision first became effective; and
  4. No such use that is less than 300 feet from an AR or R District and is nonconforming as to off-street parking or loading requirements as stated in Section 1513.D shall continue for more than one (1) year from the date this provision first became effective provided:

- a. The 300 feet is to be measured in a straight line from the nearest building wall of the Adult Entertainment Establishment to the nearest point on a Residential Zoning District boundary line, excluding any residentially zoned expressway right-of-way.
- b. The Board of Adjustment may, as a Special Exception, reduce the number of required off-street parking spaces on a lot, or may allow the required off-street parking on a lot other than on the lot which contains the business. For off-site parking to be considered the proposed lot must be within the owner's control, within 200 feet of the lot containing the business, accessible, convenient and safe for patrons. Additionally, for the Special Exception to be approved, the Board must find that the use is not injurious to the neighborhood or otherwise detrimental to the public welfare.

### **SECTION 1709. DANCE HALL ESTABLISHMENTS**

A Dance Hall lawfully existing at the effective date of this Ordinance or amendment thereto, but which does not comply with Section 1520 or other parking, loading, spacing or screening requirements of this Ordinance, shall be deemed nonconforming and may continue subject to the following provisions:

- A. Dance Hall Establishments located in an AR or R District shall not be changed to another use except that such use is in compliance with said AR or R District.
- B. In other than AR or R Districts Dance Hall Establishments are subject to the following provisions:
  1. No such use may be enlarged or extended;
  2. No such use shall be changed to another use which would not meet parking, loading, screening and spacing requirements, unless changed to a use within use Unit 11, Office, Studios and Support Services, Use Unit 14, Convenience Goods and Services or Use Unit 15, Shopping Goods and Services; provided, however, the Board of Adjustment may permit by Special Exception other uses permitted by Right or Special Exception within the Zoning District. even though such use may be nonconforming as to parking, loading, screening or spacing; and
  3. Such use which is nonconforming as to off-street parking and loading requirements, as set forth in Section 1520 and/or setback and locational standards from AR or R Districts as set forth in Section 1520, shall terminate within one (1) year from the effective date of this Ordinance.

4. The Board of Adjustment may, as a Special Exception, reduce the number of off-street parking spaces (see Section 1520.D) on a lot or allow the required off-street parking on a lot other than the lot which contains the business. For the off-site parking to be considered the proposed lot must be within the owner's control, within 200 feet of the lot containing the business, accessible, convenient and safe for patrons. Additionally, for the Special Exception to be approved, the Board must find that the use is not injurious to the neighborhood or otherwise detrimental to the public welfare.

#### **SECTION 1710. STROBE AND BEACON LIGHTS**

Strobe and beacon lights if visible from a public street shall be removed immediately unless otherwise required by law.