

RESOLUTION NO. 09-12

A RESOLUTION AMENDING THE ADOPTED ZONING REGULATIONS FOR THE UNINCORPORATED PORTION OF WOODSON COUNTY, KANSAS.

WHEREAS, certain amendments to the adopted Zoning Regulations for the unincorporated portion of Woodson County, Kansas, have been initiated by the Board of County Commission; and,

WHEREAS, the Joint Planning Commission of Woodson County has conducted a public hearing on those amendments following published notification in accordance with K.S.A. 12-741, et seq, as amended; and,

WHEREAS, the Joint Planning Commission of Woodson County has recommended that the Governing Body of Woodson County, Kansas, approve the amendments to the Zoning Regulations for the unincorporated portion of Woodson County, Kansas;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF WOODSON COUNTY, KANSAS, THAT:

1. The following Zoning Regulations for Woodson County, Kansas, shall be amended as follows:
 - A. Section 21-109, Performance Standards – Conditional Uses, be amended by adding the following:
 6. All junkyards shall be screened with a solid fence a minimum of eight (8) feet in height on all sides. Said screening shall be consistent in materials and appearance and shall be constructed of normal fencing materials such as wood, metal or vinyl. Color of the fencing shall be natural or a color that is earth-toned and acceptable in appearance. Determinations of acceptable materials and color shall be made by the Zoning Administrator, with said decisions appealable only to the Board of Zoning Appeals.
 - B. Section 26-103, Modification of Area Regulations, paragraph (3)(c) be amended by removing the existing language and replacing it with the following:
 3. Front Yards:
 - (c) Open, unenclosed porches, platforms, or paved terraces, not covered by a roof or canopy and which extend or project into the front and side yard shall not extend or project into the required front yard more than 10 feet or into the required side yard more than 6 feet for all properties within the County, nor shall such improvements extend or project into the required front yard more than 10 feet or into the required side yard more than 2 feet for all properties within a City.

C. Section 26-104, Modifications of Area Regulations, paragraph (6) Corner Visibility, be amended by removing the existing language and replacing it with the following:

6. No sign, fence, wall, hedge, planting, or other obstruction, extending to a height in excess of 3 feet above the established street grade measured from the crown of the street, shall be erected, planted, or maintained in such a manner as to materially impede vision within the visibility triangle area of a corner lot. Within the County, the visibility triangle shall be an area measured along each street frontage a distance of 150 feet from the intersection of the two front lot lines, exclusive of all road right-of-way. Within each City, the visibility triangle shall be an area measured along each street frontage a distance of 30 feet from the intersection of the two front lot lines, exclusive of all street right-of-way.

D. Section 27-104, Conditional Uses Enumerated, (20) be amended by removing the existing language and replacing it with the following:

20. Junkyard, subject to the screening standards as established in Article 21.

E. Article 28, Nonconforming Uses, be amended by adding the following:

28-108 Amortization of Nonconforming Uses:

1. **Purpose and Intent.** The purpose and intent of this section is to provide for the continuation and, within a suitable period of time, elimination of existing uses of property, or certain performance standards for a permitted use, that do not conform to the requirements of these Regulations or that may not conform to future amendments thereto. The provisions herein are designed to accomplish this intent in a way that:

A. minimizes the nuisance, reduction in neighboring property values, and other adverse effects of properties that do not conform to their environs or to the performance standards of these Regulations; and,

B. allows the property owner or lessee to recover all or a substantial part of his investment in the nonconformity, while also minimizing the time period during which, by virtue of the nonconformity, he or she enjoys a special right not available to other property owners in the same zoning district.

2. **Application.** A nonconformity is any characteristic of a building, structure, lot or parcel of land, or of the use thereof, which was lawful prior to the date of enactment of these Regulations, or amendment thereto, and that does not conform to the requirements applicable to the zoning district in which it is located or to the performance standards applicable to said use. The existence of a use prior to the initial adoption of Zoning Regulations by Woodson County, or the lawful issuance of a Building Permit prior to the adoption of these Regulations shall establish the

lawfulness of any building, structure or use. There are two categories of nonconformity:

A. Use Nonconformities: A Use Nonconformity may apply to either a principal use or an accessory use. There are two categories of use nonconformity:

1. Activities Nonconformities: Any activities or functions carried on at a premises that are not allowed by the permitted and conditional uses of the zoning district in which the premises is situated, irrespective of the use for which the premises was designed. (EXAMPLE: The use of a dwelling now located in a Residence District as the site of a previously legal business is an example of an Activity Nonconformity.)

2. Design Nonconformities: The design or intended use of all or substantially all of a premises for any use not allowed by the permitted and conditional uses of the zoning district in which it is located, irrespective of the nature of the activities currently carried on at that premises. (EXAMPLE: A previously legal premises now located in a Residence District that was designed and intended as an automobile service station or an open sales lot, would be an example of a Design Nonconformity, even if no service station or sales business were currently operated on the premises.)

B. Standards Nonconformities: All other nonconformities with the requirements of these Regulations are nonconformities of the standards, including nonconformities involving:

1. yards
2. building height
3. lot area or lot area per dwelling unit
4. lot width
5. floor area ratio
6. size of business
7. off-street parking and loading
8. signs

9. buffer planting strips

10. screening

(EXAMPLES: An existing junkyard that does not have screening as required by the performance standards of these Regulations, or an otherwise conforming business with a sign that does not meet a requirement of the sign regulations, would be examples of Standards Nonconformities.)

3. Restoration of Damaged Structures. See Article 28-105 herein.

4. Additions, Enlargements, and Alterations to Structures.

A. Activity or Design Nonconformity. No addition, enlargement, or structural alteration as defined herein shall be made to any structure having a Design or Activity Nonconformity without the elimination of all such nonconformity.

B. Standards Nonconformity. No addition or enlargement to a use, nor an addition, enlargement, or structural alteration as defined herein shall be made to any structure having a Standards Nonconformity without both:

1. The conformance of any new addition or enlargement portion of the structure to all requirements of the zoning district

2. The elimination in whole or in part, to the extent the Zoning Administrator determines physically and economically feasible, of Standards Nonconformities existing on the property before the addition or enlargement, particularly where such nonconformities can be reduced or eliminated without relocation of structures, acquisition of additional land, or expenditures disproportionate to the cost of the enlargement.

5. Expansion.

A. Within Structures

1. Activity or Design Nonconformity. Expansion of activities within a structure having an Activity or Design Nonconformity, or both, is permitted only under one of the following conditions:

a. The structure has a design nonconformity and the expansion involves no structural alteration as defined herein

- b. The property is made conforming to all applicable provisions of these Regulations.
- 2. **Standards Nonconformity.** Expansion within a structure having a standards nonconformity is permitted conditioned upon the elimination in whole or in part, to the extent the Zoning Administrator determines physically and economically feasible, of standards nonconformities existing on the property before expansion, particularly where such nonconformities can be reduced or eliminated without relocation of structures, acquisition of additional land, or expenditures disproportionate to the cost of expansion.
- B. **Expansion of Land Use.** Expansion of the use of land having any nonconformity, whether involving a principal or accessory use, is permitted beyond the land area presently occupied only provided that the property is made conforming to all applicable provisions of these Regulations.
- 6. **Moving of Structures.** No structure with any nonconformity shall be moved in whole or in part to any other location on the same or any other lot unless in the new location it will conform to all regulations of the applicable zoning district.
- 7. **Amortization.**
 - A. All nonconformities shall be removed or the uses altered to eliminate, as applicable, the nonconformity within the amortization periods specified herein.
 - B. The amortization periods herein were determined based on:
 - 1. the degree of nuisance or other adverse effects each type of nonconformity creates;
 - 2. the size of the investment in the feature that creates the nonconformity and the relative ease and expense with which the nonconformity may be eliminated;
 - C. The following types of nonconformities shall not be subject to the amortization provisions herein:
 - 1. Standards nonconformities as specified herein;
 - 2. Design nonconformities of dwelling units;

8. Administration.

- A. A Certificate of Non-Conformance and Amortization Schedule shall be required for the continuation of all nonconformities created by these Regulations or amendment thereto.
- B. When the Zoning Administrator determines that a property has any nonconformity, he or she shall notify the owner or lessee thereof, in writing, of such nonconformity and of the regulations applicable thereto.
- C. Following receipt of the notice, the owner or lessee shall file with the Zoning Administrator, within three months of the date thereof, either evidence that the property is not nonconforming or a completed application for a Certificate of Non-Conformance and Amortization Schedule.
- D. The application shall require the applicant to submit information as required by the Zoning Administrator to determine the applicable amortization period for the nonconformity. Upon timely receipt of a complete and accurate application therefore, the Zoning Administrator shall, within five (5) working days, issue a Certificate of Non-Conformance and Amortization Schedule for the nonconforming property.
- E. Failure to apply for a Certificate of Non-Conformance and Amortization Schedule within three (3) months of the notice provided for in this Section will require the amortization of the non-conformance within six (6) months of the notice provided for herein.
- F. Non-conforming uses that have obtained a Certificate of Non-Conformance and Amortization Schedule from the Zoning Administrator shall be discontinued within the amortization period specified herein for said use.

9. Extended Amortization Periods.

- A. An owner or lessee of non-conforming land, a structure, a building or an adult regulated use may, within three (3) months of the notice provided for herein, apply for an Extended Amortization Schedule of up to two (2) additional years. The owner or lessee shall state on the application that it is for an Extended Amortization Period and shall set forth the reasons for pursuing the extended period.
- B. Upon receipt of a complete and accurate application for an Extended Amortization Schedule, the Board of Zoning Appeals shall schedule and hold a public hearing thereon not less than thirty (30) days nor more than forty-five (45) days thereafter. At least

twenty (20) days in advance of the hearing, notice of the time and place of such hearing shall be published at the applicant's expense in the official newspaper of Woodson County. In addition, notice of the hearing shall be mailed to affected property owners in the manner, and to the extent required for rezoning hearings as specified these Regulations.

10. **Standards for Extended Amortization Schedule.** Approval and/or establishment of extended amortization periods and instructions for issuance of Extended Amortization Schedules based on applications therefore shall be granted by the Board of Zoning Appeals only in accordance with the standards herein. No Extended Amortization Schedule shall be approved or established unless the Board of Zoning Appeals shall find:
- A. The conditions upon which the application for the Extended Amortization Schedule are based are unique to the property for which the Extended Amortization Schedule is sought and are not applicable, generally, to other property within the same zoning classification.
 - B. That the period of amortization of the non-conformance will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
 - C. That the non-conformance during the period of amortization will be not injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the adjacent neighborhood.
 - D. That the non-conformance during the period of amortization will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
 - E. That adequate utilities, access roads, drainage, and/or other necessary facilities have been or are being provided.
 - F. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
 - G. That the non-conformance will conform to all other applicable regulations of the district in which it is located except those specific requirements directly relating to the non-conformance status of the property.

11. Amortization Periods for Nonconformities.

Use with Nonconformity	Amortization Period in Years		
	Value	In Residential Districts	In Other Districts
A. STRUCTURES & BUILDINGS			
As Principal Use:			
With Conforming Design & Nonconforming Activity	-0-	2	5
With Nonconforming Design & Conforming or Nonconforming Activity	-0-	7	1
As Accessory Use:	-0- Same for Principal Use		
B. LAND			
As Principal Use:			
With No Structures	-0-	1	2
With Only Accessory Structures:	\$6,000 or less*	1.5	3
	Over \$6,000*	2.5	5
As Accessory Use:	-0- Same for Principal Use		

*Value refers to value of improvements only.

Value is unequalized appraised valuation for property tax purposes on the date of passage of these Regulations, or the amendment that created the nonconformity, divided by the assessment ratio (expressed as a decimal).

All amortization periods start from the date of the notice from the Zoning Administrator to the property owner or lessee that a nonconformity exists.

2. That this Resolution shall be in full force and effect from and after its publication once in the official county newspaper.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS of Woodson County,
Kansas, this 17th day of December, 2009.


Gwendolyn Martin, Chair


Karl Allen, Commissioner


Larry Crossfield, Commissioner



Shelley Stuber, County Clerk