



## COMMUNITY DEVELOPMENT DEPARTMENT

# EXTENSION OF NONCONFORMING USE PROCEDURE

The following information is provided with this Application for Extension of Nonconforming Use to assist you in completing and submitting your application for consideration by the Board of Adjustment (BOA). The BOA generally meets the fourth Thursday of each month (unless altered by a holiday) at 5:00 p.m. in the City Council Chambers, City Hall, 401 S. Johnstone Ave., Bartlesville, OK. **Your application and required attachments must be submitted 30 days prior to the next scheduled meeting.** Your staff contact person is Holly Mayhew, Planner I. You can reach her at 918-338-4286, or by email at [hjmayhew@cityofbartlesville.org](mailto:hjmayhew@cityofbartlesville.org).

The procedure for an Extension of Nonconforming Use is as follows:

1. The Extension of Nonconforming use shall provide the following information either on the application itself or in written text that accompanies the application:
  - a. Completed application form and a nonrefundable application fee of \$50.00;
  - b. Plot plan and vicinity sketch showing boundary lines and dimensions, adjoining streets, rights-of-way, existing utilities and location of existing and/or proposed structures; and
  - c. Supplemental information (example attached). In order for the BOA to approve a request for Extension of Nonconforming Use, they are required to find:
    - i. The application of the ordinance provisions to the property would create an unnecessary hardship (other than financial).
    - ii. Conditions exist (topography, shallowness of the lot, shape of the lot, etc.) which are peculiar to the lot.
    - iii. Approving the Extension of Nonconforming Use would not cause substantial detriment to the public good or impair achieving the purposes of the ordinance; and
    - iv. Granting the Extension of Nonconforming Use would be the minimum necessary to alleviate the unnecessary hardship.
2. The City of Bartlesville Zoning Regulations require applicants for an Extension of Nonconforming Use to submit with their application a list of the names and addresses of all property owners of record within a 300-foot radius of the exterior boundaries of the subject property. This list must be certified as current and accurate by a registered professional engineer, an attorney, a bonded abstractor, or a registered land surveyor. The attached certification must be submitted with this list (see Exhibit A). In addition to the certified list of names and addresses, one (1) set of these names and addresses are to be provided with your application on self-stick mailing labels.
3. Complete the Extension of Nonconforming Use application and bring it with *all required material*, including a \$50 filing fee, to the Community Development Department at the address below. Staff will make sure your application is complete; incomplete applications will not be accepted.

4. Your application, along with the filing fee, must be submitted before 5:00 p.m. Thursday, 30 days prior to the next Board of Adjustment meeting. Applications that do not meet this deadline schedule will not be accepted.
5. After your complete application and required materials are submitted, legal notice of the request will be published in the Bartlesville Examiner-Enterprise as required by State law. Also at this time, every property owner within 300 feet of the exterior boundaries of your property will be notified by letter of your request and invited to present comments at the BOA public hearing. These owners, and any other citizen, may protest your proposal at the public hearing if they so desire.
6. Your request will be considered at a public hearing at the next scheduled BOA meeting. You will be sent notice of this meeting, and you and/or your representative must be present. Staff will introduce your request, and you and any interested citizen will have the opportunity to speak to the board concerning your request. Information concerning presentations before the BOA is provided in Exhibit B.
7. At the conclusion of this public hearing, the BOA, by majority vote, will take action to approve, conditionally approve, deny, or table the proposal.



Case No.:	_____
Date Received:	_____
BOA Hearing Date:	_____

***APPLICATION FOR EXTENSION OF NONCONFORMING USE***

**APPLICANT INFORMATION**

Name: \_\_\_\_\_ Daytime Phone: \_\_\_\_\_

Applicant Address: \_\_\_\_\_

Email: \_\_\_\_\_

As Applicant, what is your interest in this property?

Present Owner   
  Purchaser (attach copy of contract for purchase)   
  Attorney for Owner  
 Representative for owner   
  Other: \_\_\_\_\_

**SITE INFORMATION**

General Location: \_\_\_\_\_

Address and Legal Description: \_\_\_\_\_

Record Owner (if other than Applicant): \_\_\_\_\_

Reason Nonconforming Use is Needed: \_\_\_\_\_

**THE FOLLOWING ITEMS ARE ATTACHED:**

1. Application fee of \$50.00
2. Supplemental Information – Points and Criteria for Request
3. Plot Plan – Vicinity Sketch
4. List of names and addresses of all property owners within 300 feet (or greater as may be required by Community Development Director) of the perimeter boundary of the property
5. One (1) set of self-stick mailing labels, either typed or legibly printed, of names and addresses of all property owners within 300 feet (or greater as may be required by Community Development Director) of the perimeter boundary of the property.
6. Surrounding Property Owner Certification

SIGNATURE (Applicant) \_\_\_\_\_

SIGNATURE (Property Owner if not Applicant) \_\_\_\_\_



COMMUNITY DEVELOPMENT DEPARTMENT

**SUPPLEMENTAL INFORMATION FOR  
EXTENSION OF NONCONFORMING USE**

The Board of Adjustment (BOA) is an appointed administrative body clothed with quasi-judicial powers to determine if an ordinance in a particular case should be “adjusted.” Because their powers are derived from State enabling legislation, the BOA is limited in its authority.

Requesting to extend a nonconforming use is technically similar to requesting a Variance. A Variance is a modification of the literal provisions of a zoning ordinance granted when strict enforcement of the zoning ordinance would cause undue hardship owing to circumstances unique to the individual property on which the nonconforming use is granted.

There are three crucial points of the variance:

1. Evidence of unnecessary hardship must exist.
2. Unique circumstances must be involved.
3. Its application must be to property rather than an individual.

In reviewing a request for extension of a nonconforming use, the BOA looks to see if the four following criteria are met:

1. That the granting of the permit will not be contrary to the public interest;
2. That the literal enforcement of the ordinance will result in unnecessary hardship;
3. That by granting the permit contrary to the provision of the ordinance, the spirit of the ordinance will be observed; that is, the intent of the law is not violated; and
4. That by granting the permit, substantial justice will be done; that is, the extension of the nonconforming use will not work a hardship on property around the applicant.

**As the applicant, you are required to complete the following section and include with your application. Failure to do so will render your application incomplete for processing and the application will be returned to you.**

**THREE CRUCIAL POINTS OF THE NONCONFORMING USE:**

*1. Evidence of unnecessary hardship must exist:*

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**Example:** If the 10-foot setback requirement is applied to the driveway and carport extension, our opportunity to stay in our home will be jeopardized. We have frequent medical appointments and must be able to leave and re-enter our home with reasonable ease and safety. Application of the 10-foot setback requirement would not allow us ready and safe access to our vehicle. Additionally, the value of our property will be diminished by the application of the 10-foot setback requirement. The highest and best use of the residence at 0000 Melmart Drive is as a residence for a single person or family who wish to provide an onsite living arrangement for an aging parent or relative. The driveway and carport extension appreciably enhances the utility of the residence for accommodating the needs of older adults.

*2. Unique circumstances must be involved:*

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**Example:** Because of the east-to-west slope of the lot and the need to manage water runoff across the lot, the residence was built with a crawl space (instead of a slab). Accordingly, the only ground level exit from the residence is located on the south side of the 1979 apartment addition. A driveway and carport built specifically to serve the apartment addition have been in place since 1979. This existing driveway and carport come within sixteen feet of including the ground level exit with adequate space for maneuvering a wheelchair and can be readily extended without compromising the aesthetics of the residence or reducing ease of access to the back yards of 0003 Melmart or 0004 Melmart, property adjoining our residence.

*3. Its application must be to property rather than to an individual:*

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**Example:** The proposed extension of the driveway and carport is directly related to the property in that it serves to enhance the property value by increasing the functional space and benefits of the house.

**MEETING THE CRITERIA:**

1. *That the granting of the permit will not be contrary to the public interest:*

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**Example:** The 1979 carport at 0000 Melmart is set back 50 feet from Melmart Drive and is not a visually prominent feature. We have received no negative comments concerning the driveway and carport during the thirteen years we have occupied the residence. The driveway and carport extension is built in the same style with the same materials. It is set back 70 feet from Melmart Drive and extends east to 86 feet from Melmart Drive. It is unlikely that passersby or nearby property owners would notice the driveway and carport extension unless it was specifically called to their attention. The property owner of 0004 Melmart Drive adjoining south driveway and carport does not object to the extension.

2. *That the literal enforcement of the ordinance will result in unnecessary hardship:*

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**Example:** If the 10-foot setback requirement is applied to the driveway and carport extension, our opportunity to stay in our home will be jeopardized. We have frequent medical appointments and must be able to leave and re-enter our home with reasonable ease and safety. Application of the 10-foot setback requirement would not allow us ready and safe access to our vehicle. A 16-foot extension to the 1979 driveway and carport is the minimum needed to provide covered wheelchair-accessible access to an automobile parked just short of the sole ground level entrance to the residence.

3. *That by granting the permit contrary to the provision of the ordinance, the spirit of the ordinance will be observed; that is, the intent of the law is not violated:*

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4. *That by granting the permit, substantial justice will be done; that is, the variance will not work a hardship on property around the applicant:*

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**Example:** The south side of the residence and the north side of the residence at 0004 Melmart are separated by about 27 feet. There are no features occupying this space other than the driveway and carport on the south side of our residence, leaving over 15 feet of clearance between the southern extremity of the carport extension and the north wall of the garage at 0004 Melmart. Even including the roof overhang of the residence at 0004 Melmart, an unrestricted height access exceeding 10 feet in width exists, achieving the intent of the 5-foot utility easement at the south end of the residence. By granting us the nonconforming use request, this project does not compromise, lessen the value or create a problem for our neighbor's property and well-being. The improvement we are planning is in line with our neighbors who care for and maintain their property.





# EXHIBIT B

## PUBLIC HEARINGS

### WHAT IS A PUBLIC HEARING?

**State Law requires a Public Hearing, also known as the Oklahoma Open Meeting Act, for all meetings of public bodies to be held at specified times and places which are convenient to the public and shall be open to the public.**

A public hearing is required when citizens or businesses apply for a special zoning permit to place a mobile home on a lot, build a carport, request a zoning change or a planned unit development. Applicants are required to attend the meeting, present their application and be prepared to answer questions. The public is always invited to attend as well.

Although public hearings are a required part of the process, the Community Development staff do their best to keep the process simple and customer friendly! We know public speaking is not for everyone, and many suffer anxiety at the thought of standing before a council, committee or board, and others in an audience, to answer questions or present information. Do not worry – everyone there are fellow citizens and neighbors!

### Whom should you expect to see in a Public Hearing?

In most cases, the public entities involved in public hearings are the Bartlesville City Council, the City Planning Commission (CPC), and the Board of Adjustment (BOA). These people are dedicated to preserving the integrity of your town and are fair-minded and unbiased. It is a vital part of their responsibility to interpret and apply City regulations, ordinances and resolutions to each individual application.

Depending on the type of application, one of the following entities will hear it:

- The CPC considers requests for: Rezoning; Planned Unit Developments; Site Development Plans; Lot Splits; Sketch Plans; Preliminary Plats; and Text Amendments to City Regulations. The CPC was established to oversee the development of land within the City of Bartlesville and preserve the integrity of the Comprehensive Plan and Zoning Regulations. The seven (7) members are appointed by the Mayor and City Council.
- The City Council hears recommendations from the CPC on the above listed applications, as well as a variety of other city matters. They make well researched and educated decisions, and by vote, make a final determination. The five (5) City Council members are voted upon by citizens.
- The BOA hears applications for special zoning permits, variances, nonconforming uses and appeals. This usually entails carports, mobile home placement, wireless communication towers, etc. they are also appointed by the Mayor and City Council and are comprised of five (5) members.



Seated in the audience will be any interested neighbors that have been contacted concerning the application. City regulations require that neighbors who live within a 300-foot radius of the property listed on the application must

be notified of the proposed construction. Interested citizens and neighbors are always welcome and are given the opportunity to speak at a certain point in the hearing. The council, committee or board will listen to all public input before making their final decision.

Community Development Staff will also be present. They have researched and prepared the information that will assist in the decision making process. A copy of the staff report is provided to the council, committee or board, as well as to the applicant, one week prior to the meeting. Copies of the staff report are available to the public, upon request, from the Community Development Department.

### **How are the hearings conducted? What is the procedure? What do I do?**

The hearings are conducted under Parliamentary Procedure. Parliamentary Procedure is simply a time proved method that keeps a meeting in order, allows everyone a chance to speak and ensures that motions and votes are made a part of the public record. An agenda is followed, with the chairperson or Mayor opening and conducting the meeting. A week prior to the hearing, an applicant will receive a copy of the agenda with their copy of the staff report. Notice of the meeting is posted in the local newspaper, and the agenda is posted at City Hall one week before the meeting for public information.

Upon entering the City Council Chambers, the council, committee or board will be seated at the front of the room. They have microphones for enhanced listening for the audience. The meeting will be taped and/or taken by transcription by a clerk or administrative assistant. Minutes are available to the public upon request.

A podium and microphone is placed directly in front of the council, committee or board. Each application will be heard in the order it appears on the agenda. The council, committee or board will listen to the staff report, then will ask the applicant to come forward and add any information to what has already been reported. At this time, the applicant should step up to the podium and state his/her name and address for the record. The applicant can then provide any additional information or simply wait for the council, committee or board to make inquiries. Once they have completed their questions, the applicant can then be seated. The Chairperson will open the hearing to the public, and at that time, anyone wishing to speak may do so. Citizens should also step up to the podium and clearly state their name and address for the record. All parties are given an opportunity to speak either in favor of or in opposition to the particular application.

Once the council, committee or board feels they have all the information necessary to make a decision, a motion is made to approve the application. It will be seconded and a roll call vote is taken. Once the vote has been taken and the application either approved or denied, the applicant and neighbors are welcome to take leave of the hearing. A formal letter will be forwarded to applicants the following day for their records with further instructions if necessary.

Public hearings are a good venue for citizens to participate in the decisions and development of their town. We invite you to attend and take an active part in our community!

### **FOR MORE INFORMATION:**

Inquiries about public hearings, or any city business, are welcomed. Please feel free to call us at 918-338-4238 between 8:00 a.m. and 5:00 p.m., Monday through Friday. We will be happy to answer your questions and provide assistance. Information can also be found on the City of Bartlesville website at [www.cityofbartlesville.org](http://www.cityofbartlesville.org). Zoning regulations, permit requirements, code enforcement, and much more can be found on this informative and easy to use website.