

NOTICE

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CHAPTER 1137 NONCONFORMITIES

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SECTION 1137.01 NONCONFORMITIES.

It is necessary to regulate nonconformities in the interest of the promotion of the public health, safety and general welfare.

SECTION 1137.02 DEFINITIONS.

- A. Nonconformity: Any use, structure, site, lot of record, or sign lawfully established prior to the effective date of this code which would not be permitted by, or is not in full compliance with, the regulations in this Zoning Code or subsequent amendments to this Zoning Code.
- B. Nonconforming use: An activity that uses land or structures for purposes that were legally established prior to the effective date of this Zoning Code and which would not be permitted to be established as a new use under regulations of this Zoning Code or subsequent amendments to this code that apply to the zoning district in which the use is located.
- C. Nonconforming structure: Any building or structure, other than a sign, fence or wall, legally established prior to the effective date of this Zoning Code, which does not fully comply with the standards imposed by this Zoning Code or subsequent amendments to this Zoning Code.
- D. Nonconforming Site: Any site legally established prior to the effective date of this Zoning Code which does not fully comply with the standards imposed by this Zoning Code or subsequent amendments to this Zoning Code.

- E. Nonconforming lot of record: Any recorded lot which at the time it was recorded fully complied with all then existing Zoning and Subdivision ordinances but which does not fully comply with the lot requirements of this Zoning Code or of any other ordinance or regulation of the City of Kettering and subsequent amendments to this Zoning Code or other ordinances.
- F. Nonconforming sign: Any sign legally established prior to the effective date of this Zoning Code which is not fully in compliance with the regulations of this Zoning Code or subsequent amendments to this Zoning Code.

SECTION 1137.03 GENERAL PROVISIONS.

Nonconformities must comply with the following general provisions:

- A. Any nonconforming use, or structure site, lot or sign lawfully existing on the effective date of this Zoning Code or subsequent amendment to it may be continued except as provided herein and so long as it remains otherwise lawful.
- B. No nonconformity shall be enlarged, expanded, or extended unless such alteration is in full compliance with all requirements of this Zoning Code. However, nothing in this section shall be deemed to prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who could declare such structure to require repair or restoration in accordance with applicable codes or regulations regulating the safe condition of structures in the City of Kettering.
- C. No nonconformity shall be moved in all or part for any distance, to any other location on the same or on any other lot unless the entire structure and use shall thereafter conform to the regulations of the zoning district in which it is located after being moved.
- D. No use, structure or sign which is accessory to a principal nonconforming use or structure shall continue after such principal use or structure shall have ceased or terminated under the provisions of this Zoning Code unless it shall thereafter conform to all regulations of this Zoning Code.
- E. In all enforcement proceedings, the person who claims the benefit of a nonconformity shall have the burden to prove that they were lawfully existing on the effective date of this Zoning Code.

- F. Nothing contained in this article shall require any changes to be made in plans, construction, or designated use of any building, structure or use for which an application for a building permit was filed prior to the effective date of this Zoning Code or any amendment which would make the use nonconforming.

SECTION 1137.04 REGULATION OF NONCONFORMING USES.

Nonconformities shall be subject to the following regulations:

- A. Right to continue. A nonconforming use lawfully established prior to the effective date of this Zoning Code, or prior to any subsequent amendment which creates such nonconformity, may be continued and maintained unless the nonconforming use is abandoned for a period of six months or more. The right to continue the nonconforming use continues even though there is a change of ownership or change of occupant or change of management where there is no change in the operation of the nonconformity. The Board of Zoning Appeals is authorized to modify a nonconforming use if the Board of Zoning Appeals determines that the modification of the nonconforming use would promote the public health, safety and welfare of the neighborhood in which the nonconformity exists through improvement of property values, avoidance of blighting influences, reduction of traffic, lowering of noise, improvement of the maintenance of the nonconforming structure, or enhancement of services necessary by the occupants of nearby properties. However, all nonconforming uses which were first permitted in the B-3 District and M District in the Zoning Code in effect prior to the adoption of this Zoning Code and are located in any R District shall be changed to a conforming use or terminated and the buildings or structures removed, within forty (40) years after the date of issuance of a permit therefor. However, such nonconforming uses for which no permit was originally issued, or for which a permit was issued prior to January 1, 1936, shall be changed to a conforming use or terminated and the buildings or structures removed prior to January 1, 1976. In no case shall any such nonconforming use be continued beyond January 1, 1996.
- B. Termination of nonconforming uses. A nonconforming use shall terminate if it has ceased to operate for a period of six months or more or in the event that any building or structure that is devoted in all or part to a nonconforming use is destroyed by any means to an extent more than fifty (50) percent of the appraised value based on the county tax duplicate for the subject property prior to the time of damage of such structure, exclusive of foundations. In the event the nonconforming use is terminated by means of destruction of the structure as described in this section, the owner may either demolish the rest

of the structure and clear the lot or remodel the structure for a use that does conform to the zoning of the district in which the structure is located.

- C. Termination of non-structural nonconforming use. Any nonconforming use of land that does not involve any building or structure may be continued for a period of two (2) years after the enactment of this ordinance or any amendment to it that creates the nonconformity, at the end of which period such nonconforming use shall cease or be changed to a conforming use.

SECTION 1137.05 NONCONFORMING STRUCTURES.

A nonconforming structure shall not be modified in any manner which increases the degree of nonconformity unless brought fully into compliance with all the provisions of this Zoning Code, except as otherwise specified in this section.

- A. Nonconformity with residential development regulations. Any residential structure that is nonconforming in regard to minimum side or rear yard width may be expanded provided such expansion does not increase the degree of nonconformity along a particular lot line or violates any other provision of this Zoning Code. The Zoning Administrator shall determine that the expansion is necessary to avoid hardship on the owner or occupant, to promote property values in the neighborhood, or to avoid blighting influences in the neighborhood.
- B. Termination by failure to restore damaged structures. In the event that any nonconforming structure is destroyed by any means to the extent of more than fifty (50) percent of the assessed value as shown on the tax duplicate prior to the time of damage of such structure, exclusive of foundation, shall not be rebuilt, restored or reoccupied for any use unless it conforms to all regulations of this Zoning Code, the building code and any other applicable codes. The owner shall have the option of either clearing the lot of the damaged structure or restoring the structure for a use that does conform with the regulations of this code.

When such a nonconforming structure is damaged or destroyed to the extent of fifty (50) percent or less of the assessed value as shown on the tax duplicate prior to the time of damage, no repairs or rebuilding shall be permitted except in conformity with this article and other applicable regulations of this Zoning Code and the following conditions:

1. A zoning permit in regard to the restoration or reconstruction shall be applied for no later than six (6) months after the destruction, and rebuilding or restoration shall be completed within two (2) years.

2. Such restoration shall not cause a new nonconformity nor shall it increase the degree of nonconformance or noncompliance existing prior to the damage or destruction.

SECTION 1137.06 NONCONFORMING SITES

A nonconforming site shall not be modified, expanded or altered in any manner which increases the degree of nonconformity unless brought fully in conformance with all the provisions of this Zoning Code except as otherwise specified in this section.

- A. Nonconforming buffer yard. In the event that the nonconformity is a result of non-compliance with the buffer yards required by this Zoning Code, and when the land area of the subject property and location of existing structures precludes provision of the required buffer yards, the nonconformity shall, as a pre-condition to issuance of a permit, be required to comply fully with conditions determined by the Zoning Administrator that will accomplish substantially the same effect as would be accomplished if the nonconforming site did comply to the buffering standards of this code as provided in Chapter 1169, Bufferyards and Landscaping.
- B. Nonconforming landscaping and screening. In the event that a site or structure is nonconforming as a result of the landscaping and screening requirements of this Zoning Code, the following standards shall be met:
 1. All required vehicular use area perimeter screening and screening for service and storage areas shall be provided for all new or additional parking, service or storage areas being added to the structure or site.
 2. When the land area of the subject property and location of existing structures precludes provision of the required landscaping and screening, the nonconformity shall, as a pre-condition to the issuance of a permit, be required to comply fully with conditions determined by the Zoning Administrator that will accomplish substantially the same effect as would be accomplished if the nonconforming use did comply to the landscaping and screening standards of this Zoning Code as provided in Chapter 1169, Bufferyards and Landscaping.
- C. Nonconforming parking. Where an existing structure or site is nonconforming with regard to off-street parking and loading, a new permitted use may be substituted or an existing permitted use may be expanded if the following conditions are met:

1. The requirements of the code for off-street parking and loading shall be met for the existing structure, as well as for any expansion.
 2. If the Zoning Administrator finds that the constraints of physical features or size of the site preclude meeting the requirements of subsection (1) above, then, where the new or expanded use is required by this Zoning Code to have a greater number of spaces than the existing use, then the number of new parking and loading spaces required to be provided shall be the difference between those required for the new or expanded use and those that would be required for the existing use.
- D. Nonconforming Street Access. Where an existing nonconforming structure or site is nonconforming in regard to street access as provided in Chapter 1167, the structure or site shall be brought into conformity with the provisions of this Zoning Code for street access or shall be brought as close to conformity as the physical circumstances make possible through the following devices:
1. Elimination of multiple curb cuts on individual street frontages of the site;
 2. Elimination of access from non-residential uses to residential streets;
 3. Combination of access points with those of adjoining sites;
 4. Realignment of access points to meet standards set forth elsewhere in this Zoning Code.

The Zoning Administrator shall determine the application of this section in accordance with the standards and criteria set forth in this section.

- E. A non-conforming vehicular use area, including any off-street parking and driveway for a single family use, shall not be modified in any manner which increases the surface area unless the surface pavement is brought fully into compliance with all the provisions of this Zoning Code, except as otherwise specified in this Code.
- F. Vehicular use areas, non-conforming due to curbing, shall be curbed in accordance with the provisions of this Zoning Code upon the following:
- a. Whenever a non-conforming vehicular use area is expanded, the edge of the expanded pavement area shall be separated from adjoining, non-paved surfaces with curbing in accordance with the provisions of this

Zoning Code, except as may be otherwise specified in this Zoning Code.

- b. At such time a non-conforming vehicular use area is eventually expanded in area equal to twenty-five percent of the area of the initial non-conforming portion, then the entire non-conforming section shall be curbed in accordance with the provisions of this Zoning Code, except as may be otherwise specified in this Zoning Code.
- c. Whenever non-conforming vehicular use area is modified to accommodate required buffer yards and landscaping in accordance with Section 1169, the edges where pavement is removed shall be curbed in accordance with the provisions of this Zoning Code, except as may be otherwise specified in this Zoning Code.
- d. The edges of portion of a non-conforming vehicular use area that are reconstructed shall be curbed in accordance with this Zoning Code, except as may be otherwise specified in this Code. "Reconstructed" shall, as a minimum, include the removal of the surface pavement and its subsequent replacement.

SECTION 1137.07 NONCONFORMING LOTS OF RECORDS.

A nonconforming lot of record may be used for the development of a single family residential use in any district in which such use is permitted provided that the development conforms with all the standards of the zoning district in which the lot is located except for lot area and frontage requirements.

SECTION 1137.08 NONCONFORMING SIGNS.

Nonconforming signs are subject to the provisions contained in Chapter 1171 – Sign Regulations.

SECTION 1137.09 NONCONFORMITY DUE TO LACK OF PERMIT.

For any nonconforming use which is nonconforming only because of the absence of a permit, the use shall not be enlarged, altered or extended to occupy a greater land area without first securing the issuance of the required permit. The use shall be deemed to be conforming upon the issuance of the permit. Any nonconforming use which is designated as a conditional use in the district wherein it is located shall remain a nonconforming use until such conditional use permit has been obtained. If a permit is not obtained within thirty (30)

days after an order is issued by the Zoning Administrator, then the City shall pursue such means as it deems necessary to achieve compliance with this Zoning Code.