

NOTICE

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**CHAPTER 1175
ADMINISTRATION AND ENFORCEMENT**

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SECTION 1175.01 SCOPE OF CHAPTER.

This Chapter contains the procedures required for issuance of zoning permits, use certificates, sign permits and conditional and temporary use permits. The powers and duties are enumerated for; the City Council; the Planning Commission; the Board of Zoning Appeals; and the Zoning Administrator. This Chapter also specifies the requirements for amendments, variances, appeals and interpretations of this Zoning Code.

SECTION 1175.02 ZONING PERMIT REQUIRED.

No development or use permitted by this Zoning Code, including accessory and temporary uses, may be established or changed, no structure shall be erected, constructed, reconstructed, altered, razed, or removed, and no building used, occupied, or altered with respect to its use after the effective date of this Zoning Code until a zoning permit has been secured from the Zoning Administrator by the owner, tenants, contract purchaser or agent

thereof, any or all of which may be referred to singularly or collectively as applicant. However, where a building permit is required, such building permit shall also serve as a zoning permit. The zoning permit shall certify that all proposed structures and site development meet the applicable provisions of this Zoning Code.

SECTION 1175.03 APPLICATION REQUIREMENTS FOR ZONING PERMITS.

- A. All applicants for a zoning permit shall use application forms supplied by the City of Kettering which shall be completed fully and shall be filed with the Zoning Administrator. Every application for a zoning permit shall be accompanied by all plans and other information necessary to determine that all provisions of this Zoning Code have been met. In addition, the following requirements shall apply:
1. Application for a sign permit, conditional, or temporary use permit, if applicable, shall be made at the same time or prior to the application for a zoning permit for the same development.
 2. If the development for which a zoning permit is sought is required by any provision of this Zoning Code to undergo a site plan review, said site plan shall be approved prior to the issuance of a zoning permit.
 3. If a site for which a zoning permit is sought is subject to any covenants, conditions or other restrictions required pursuant to this Zoning Code, these shall be submitted as part of the application for the zoning permit.
 4. No application shall be accepted by the Zoning Administrator until it has been completed as described in this section and until all required fees established by the City of Kettering for processing have been paid.
- B. Within thirty (30) days after the receipt of an application, the Zoning Administrator either shall approve or disapprove the application for a zoning permit.

SECTION 1175.04 USE CERTIFICATES.

- A. No person shall use or occupy or permit to use for occupancy any building or premises, or any part of a building or premises, created or altered, changed, converted or whole or partly altered in its use or structure until a permit of occupancy has been issued therefor, stating that the proposed use of the building conforms to the requirements of the Zoning Code. However, where a building

permit is required, the Certificate of Use and Occupancy shall also serve as the use certificate.

- B. No use certificate shall be issued until the premises in question have been inspected and found by the Zoning Administrator to comply with the requirements of this Zoning Code, except that, at the discretion of the Zoning Administrator, such use certificate may be issued prior to total compliance if weather or lack of availability of materials or labor or other similar circumstances make such compliance infeasible, and assurance of total compliance is made by the developer.
- C. The issuance of a use certificate in no way relieves any recipient thereof from compliance with all of the terms of this Zoning Code and all other applicable regulations.

SECTION 1175.05 APPLICATION REQUIREMENTS FOR SIGN PERMITS.

All applications for sign permits as required in this Zoning Code shall be made in writing on a form supplied by the City of Kettering and shall contain or have attached thereto all drawings and information deemed by the Zoning Administrator to be necessary to determine whether all applicable provisions of this Zoning Code have been met.

SECTION 1175.06 CONDITIONAL USE PERMITS.

An application for a conditional use permit required by this Zoning Code shall be made following the procedure detailed in Section 1175.12 and shall meet all applicable requirements in this Zoning Code.

SECTION 1175.07 TEMPORARY USE PERMITS

An application for a temporary use permit required by this Zoning Code shall be made following the procedure detailed in Section 1167.20.

SECTION 1175.08 POWERS AND DUTIES OF THE ZONING ADMINISTRATOR.

The Zoning Administrator shall be appointed by the City Manager of the City of Kettering and shall have the following powers and responsibilities.

- A. Enforce the provisions of this Zoning Code and interpret the zoning district map and text in accordance with the provisions of this Zoning Code.

- B. Receive, review and make determinations on applications for development concept plans, final development plans, zoning permits, and use certificates.
- C. Review and process plans pursuant to the provisions of this Zoning Code.
- D. Make determinations as to whether violations of this Zoning Code exist, determine the nature and extent thereof, and notify the owner in writing, specifying the exact nature of the violation and the manner in which it shall be corrected by the owner, pursuant to the procedures in this Zoning Code.
- E. Conduct inspections and surveys to determine compliance or non-compliance with the terms of this Zoning Code.
- F. Revoke a permit or approval issued contrary to this Zoning Code or based on a false statement or misrepresentation in the application.
- G. Stop, by written order, work being done contrary to this Zoning Code. Such written order, posted on the premises involved, shall not be removed except by order of the Zoning Administrator. Removal without such order shall constitute a violation of this Zoning Code.
- H. Institute any action or proceeding authorized by law to prevent unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; restrain, correct, or abate such violation, so as to prevent the occupancy or use of any building, structure, or land; or prevent any act or land use unlawful under this Zoning Code.
- I. Grant administrative variances. An administrative variance is a variance that alters a lot or yard width requirement by less than ten percent (10%); or alters a minimum rear yard setback requirement by twenty-five percent (25%) or less for existing single-family and two-family dwellings; or authorizes up to ten percent (10%) additional impervious surface area; or authorizes the reduction of up to ten percent (10%) in the number of off-street parking spaces pursuant to the regulations in Section 1173.03(G). All such variances may be granted under the terms and conditions of Section 1175.08(I)1 through and including Section 1175.08(I)4. All administrative variances to alter a rear yard setback requirement shall also adhere to the provisions of Section 1175.08(I)5.
 - 1. An applicant requests the administrative variance in accordance with the procedures set forth in this Zoning Code for application for variances as contained in Section 1175.10B.

2. In addition to the published notice, the Zoning Administrator shall give notice by first-class mail, postage prepaid, of the time, place and purpose to the property owners referred to below of the proposed administrative variance and of the right to object in writing within ten (10) days after the notice was mailed. No public hearing is required upon a minor variance that may be granted through this administrative procedure unless a written objection is received within that ten (10) day period, in which case the variance must be processed through the normal procedures of the board of zoning appeals as set forth in Section 1175.10 and 1175.11.
 - a. All owners of separate ownership parcels of land (i.e., parcels owned by persons or entities who or which do not own any other parcel within the notification radius) within 200 feet of the perimeter boundary of the land under consideration.
 - b. If there are not twenty-five (25) separate ownership parcels within that 200 foot radius, the distance shall be extended in increments of fifty (50) feet until the total number of separate ownership parcels meets twenty-five (25).

Failure to give this notice by mail shall not invalidate any department actions nor any public hearing or subsequent decision.

3. The notice shall inform the recipients of their opportunity to review, comment on, and object to the proposed variances.
4. If the Zoning Administrator receives no objections to the requested variance within ten (10) working days of the mailings of the notice, the Zoning Administrator may grant the variance upon a written finding that it complies with the standard contained in Section 1175.11.
5. The Zoning Administrator is authorized to grant up to a twenty-five percent (25%) administrative rear yard variance for additions to existing single-family and two-family dwellings that meet all of the following conditions:
 - a. The existing dwelling is already situated at or within ten feet (10') of the minimum front yard building setback requirement for the subject property;
 - b. The addition will create a single story extension of the existing floor plan of the dwelling;

- c. The exterior building materials and colors of the addition shall be the same as the exterior building materials and colors of the existing dwelling or those proposed to be used on the existing dwelling;
 - d. The design of the addition shall be architecturally compatible to the existing dwelling to which it shall be attached, and to dwellings on adjoining properties. The determination of compatibility shall be based on the provisions of Section 1154.02G; and
 - e. The floor plan of the addition shall compliment the existing or proposed floor plan of the dwelling.
- J. Maintain and keep current the permanent records required by this Zoning Code, including but not necessarily limited to, the zoning district map, the code text, and records of all official actions of the City relating to this Zoning Code.
- K. Permit the substitution of standards as provided in Sections 1151.17, 1167.21 and 1169.06.

SECTION 1175.09 PROCEDURES AND REQUIREMENTS FOR TEXT AMENDMENTS AND ZONING MAP CHANGES.

Once formally adopted, the text of this Zoning Code and the Official Zoning District Map may be amended by City Council, provided that such amendment satisfies the public health, safety and welfare requirements underlying this Zoning Code and provided that such amendment is in accordance with sound planning and zoning practices.

A. Initiation of Amendment Application

A request to amend this Zoning Code and the zoning district map may be initiated as follows:

1. By adoption of a resolution by City Council and subsequent referral of the proposed amendment to the Planning Commission;
2. By adoption of a motion by the Planning Commission;
3. By adoption of a motion by the Board of Zoning Appeals;
4. By filing of a formal request by the Planning Director to the Planning Commission;

5. By filing of an application by a resident, owner, person with an interest in the property or an agent of any resident, owner or person with an interest in the property to be changed or affected by the proposed amendment; however, the Planning Commission shall not be required to hear any application for a zoning amendment which has been the subject matter of an application within the preceding twelve (12) months.

B. Standards for Zoning Map Amendments.

All recommendations by the Planning Commission for zoning map amendments shall be consistent with the City of Kettering's adopted plans, goals and policies and with the intent of this Zoning Code. Accordingly:

1. Prior to making a recommendation to the City Council on a proposed rezoning, the Planning Commission shall make a finding to determine if the following conditions exist. No rezoning of land shall be approved prior to a specific and documented finding of at least one (1) of the following:
 - a. There has been a change in demand for land which alters the information upon which the zoning district map is based, as a result of:
 - i. A change in migration patterns, family size, birth rate or other socio-economic measurements,
 - ii. A significant change in area or neighborhood conditions, building conditions or traffic volumes, or
 - iii. A major change, such as the construction of a major road, the installation of a utility line, or other similar factor which significantly alters the area.
 - b. A study indicates that there has been an increase in the demand for land in the requested zoning classification, and as a result the supply of land within the City of Kettering mapped as such on the zoning district map, is inadequate to meet the demands for such development.
 - c. The proposed use cannot be accommodated by sites already zoned in the City due to lack of transportation or utilities, or other similar development constraints, or the market to be served

by the proposed use cannot be efficiently served by the geographic location of the existing zoning districts.

- d. There is an error in the ordinance text or zoning district map as enacted.
2. No rezoning of land from a residential zoning district classification (RE, R-1, R-2, R-3, R-4) to any nonresidential classification (O, CC, B, ED, M) shall be recommended by the Planning Commission unless:
 - a. Such proposed rezoning site is at least one (1) acre in size, or a complete block face; or
 - b. Such proposed rezoning site is contiguous to land in the proposed zoning district classification.
 3. No rezoning of land from a Residential Development District to an Office District, General Business District or Economic Development District shall be recommended by the Planning Commission unless such proposed rezoning site is contiguous to land in the proposed zoning district classification.

C. Report of the Planning Commission

In addition to the findings required to be made by Subsection (B) above, findings shall be made by the Planning Commission on each of the following matters based on the evidence presented to it, including a recommendation from the Planning Director.

1. The extent to which the proposed amendment and proposed use are in compliance with and deviate from adopted plans, goals and policies.
2. The suitability of the property in question for the uses permitted under the proposed zoning.
3. The adequacy of public facilities such as transportation, utilities, and other required public services to serve the proposed use.
4. The effect of the proposed rezoning on surrounding uses.
5. The effect of the proposed rezoning on the economic viability of existing developed and vacant land within the City.

The Planning Commission shall not recommend the adoption of a proposed amendment unless it finds that the adoption of such an amendment is in the public interest and not solely for the interest of the applicant.

D. Contents of Application

1. Map Amendment

Application for a map amendment may be instituted by the City of Kettering, by all the fee owners of the property sought to be affected or by any authorization of a fee owner of the property sought to be affected. When the petitioner or co-petitioner is a business entity doing business under an assumed or fictitious name, the petitioner's application shall include the name and residence of all true and actual owners of such business or entity. When the petitioner or co-petitioner is a partnership, joint venture, syndicate, unincorporated voluntary association, or agent for a fee owner, the application shall include the names and addresses of all partners, joint venturers, syndicate members, members of the unincorporated voluntary association or fee owners.

Such application shall be made on an application form provided by the Planning Director and the following information shall be entered on the form, or shall accompany it:

- a. The location of the proposed amendment, and the existing and proposed zoning on the property (properties) in question.
- b. The reasons for the proposed amendment, directly addressing the criteria in Sections 1175.09 (B) and (C).
- c. A description of the character of the area in question, including a description of the land uses in the area.
- d. A list of the names and addresses of the owners of all properties lying within two hundred (200) feet of any part of the property proposed to be rezoned.
- e. The legal description and size of the property proposed to be rezoned.
- f. The application fee, of an amount set by the City.
- g. The name, address, telephone number and signature of the person(s) initiating the request.

- h. Such other information as the City or any of its Boards, Commissions, Departments or Officers may reasonably require.

2. Text amendment.

The application for an amendment to the text of this Zoning Code shall include:

- a. The particular chapter, section, subsection and paragraph sought to be amended.
- b. The language of the proposed amendment.
- c. The reasons for such proposed change in the text.
- d. The name, address, telephone number and signature of the persons initiating the request.
- e. The application fee, of an amount set by the City of Kettering.
- f. Such other information as the City or any of its Boards, Commissions, Departments or officers may reasonably require.

- E. Public Hearing

1. Before submitting its recommendations on a proposed amendment to Council, the Planning Commission shall hold a public hearing thereon, notice of which shall be given by one (1) publication in a newspaper of general circulation in the City of Kettering. A copy of the proposed amendment, including text and maps, shall be on file in the office of the Kettering Planning and Development Department for examination. Public notice shall be given at least seven (7) days before the hearing.
2. In addition to the published notice, the Zoning Administrator shall give notice by first class mail, postage-prepaid, of the time, place and purpose of the public hearing to the following property owners:
 - a. All owners of separate ownership parcels of land (i.e., parcels owned by persons or entities who or which do not own any other parcel within the notification radius) within 200 feet of the perimeter boundary of the land under consideration.

- b. If there are not twenty-five (25) separate ownership parcels within that 200 foot radius, the distance shall be extended in increments of fifty (50) feet until the total number of separate ownership parcels meets twenty-five (25).

Failure to give this notice by mail shall not invalidate any department actions nor any public hearing or subsequent decision.

3. The Planning Commission may recommend that the application be granted as requested, or it may recommend a modification of the zoning amendment request, or it may recommend that the request be denied. These recommendations shall then be certified to City Council.
4. After receiving from the Planning Commission the certification of recommendations on the proposed amendment, and before adoption of such amendment, Council shall hold a public hearing thereon, at least seven (7) days notice of the time and place of which shall be given by one (1) publication in a newspaper of general circulation of the City.

F. Correction of Typographical Errors and Mechanical Defects in Zoning Text.

The correction of typographical errors and mechanical defects in the zoning text shall not be deemed to constitute amendments which require completion of the procedure set forth above in this Section 1175.09. Accordingly, as part of the work of continuing the codification and recodification of the ordinances of this city, the City Council assigns and delegates to the law department the authority to correct such errors and defects as that department may observe or as may be brought to its attention by the office of the city manager or by other departments. These corrections through this law department shall be made revising pages of codification. This authority and responsibility may be exercised, however, only in accordance with the following standards:

1. Corrections shall be limited to typographical errors, spelling, sentence structure, punctuation, capitalization, paragraphing, arrangement, headings, style and the numbering of parts, titles, chapters, sections and pages.
2. The attorneys in the law department shall use professional skill and judgement to avoid changes in purpose or meaning.

SECTION 1175.10 PROCEDURES AND REQUIREMENTS FOR VARIANCES.**A. Authority**

The Board of Zoning Appeals has power to vary literal application of the requirements of this ordinance where, by reason of exceptional narrowness, shallowness, or shape, or by reason of other exceptional topographical conditions or other extraordinary and exceptional situations or conditions on a piece of property, the strict application of any regulation enacted under this ordinance would result in peculiar, exceptional, and undue hardship on the owner of such property. A variance shall be granted only after the Board of Zoning Appeals finds that all of the required procedures and standards for variances have been met as specified in this Section and Section 1175.11.

B. Application

An application for a variance shall be filed only after the applicant has been denied a zoning certificate by the Zoning Administrator and it is determined that a variance is needed. Such application shall be made on an application form provided by the Zoning Administrator and the following shall be entered on the form or shall accompany it:

1. Owner's name, address, phone number and signature;
2. Applicant's name if different from owner;
3. Parcel(s) location, address and lot number;
4. Site plan of property in question;
5. Specific section(s) of the Zoning Code to be varied, explanation of variance need and reasons for variance;
6. A list of the names and mailing addresses of all property owners within two hundred (200) feet of any part of the lot in question;
7. The application fee in an amount set by the City of Kettering;
8. Such other information as the City or any of its Boards, Commissions, Departments or Officers may reasonably require.

C. Public Hearing

1. The Board of Zoning Appeals shall conduct a public hearing on each application for a variance. Notification of the hearing shall be by the following means:

a. In addition to the published notice, the Zoning Administrator shall give notice by first class mail, postage-prepaid, of the time, place and purpose of the public hearing to the following property owners. Such written notice shall be mailed at least seven (7) days before the hearing date. (Ord. 3603-93 Passed 5/11/93).

(i) All owners of separate ownership parcels of land (i.e., parcels owned by persons or entities who or which do not own any other parcel within the notification radius) within 200 feet of the perimeter boundary of the land under consideration.

(ii) If there are not twenty-five (25) separate ownership parcels within that 200 foot radius, the distance shall be extended in increments of fifty (50) feet until the total number of separate ownership parcels meets twenty-five (25).

Failure to give this notice by mail shall not invalidate any department actions nor any public hearing or subsequent decision. (Ord. 3597-93 Passed 3/23/93).

b. Notification of the hearing shall be published in a newspaper of general circulation in the City of Kettering, Ohio, at least seven (7) days before the hearing. The notice shall state the date, time and place of the proposed hearing, and shall contain a summary of the proposed variance. (Ord. 3603-93 Passed 5/11/93).

2. Following the public hearing, the Board of Zoning Appeals shall, within thirty (30) days, approve the variance request, deny the variance request, recommend that the applicant modify and resubmit the request, or approve the request with conditions. However, no request for a variance shall be approved unless all of the standards in Section 1175.11 are met.

3. The Board of Zoning Appeals shall not be required to hear and act upon any application for a variance which has been the subject of an application within the previous twelve (12) month period, unless the

application has been modified at the request of the Board of Appeals, or unless there has been a substantial change in area conditions.

SECTION 1175.11 STANDARDS FOR VARIANCES.

No variance from the strict application of the provisions of this Zoning Code shall be granted by the Board of Zoning Appeals or by the Zoning Administrator unless it is determined that all the following requirements are met:

- A. Failure to grant the variance will impose hardship on the owner, have a detrimental effect upon land values of the property in the neighborhood or preserve or encourage blighting influences; and
- B. The granting of the variance will not permit the establishment of any use which is not otherwise permitted in the district in which the real estate is located; and
- C. The circumstances of the particular land are such that the failure to grant the variance will effectively deprive its owner of the reasonable use of the land. Mere loss in value is not sufficient to establish deprivation in the use of the land. The granting authority shall not consider self-created hardships, whether or not the applicant purchased or acquired an interest in the land with or without knowledge of the restrictions or whether or not other variances have been granted under similar circumstances; and
- D. The variance must be necessary for the reasonable use of the land or building and the variance as granted is the minimum variance that will accomplish this purpose; and
- E. The proposed variance will not impair access to light and air on adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values of adjacent areas.

The above determinations shall be supported by written findings of fact. The granting authority may prescribe conditions it deems necessary to insure that the objectives of the regulations or provisions of this Zoning Code to which the variance applies will be met.

SECTION 1175.12 PROCEDURES AND REQUIREMENTS FOR CONDITIONAL USE PERMITS

- A. Conditional Use Defined: A use permitted in a particular Zoning District only upon showing that such use in a specified location will comply with all the

conditions and standards for the location or the operation of such use as specified in this ordinance and authorized by the proper authority.

B. Development Concept Plan

Notwithstanding any other provision of this Zoning Code no plan or zoning certificate shall be approved for any type of conditional use of any parcel until a development concept plan for the site has been approved, pursuant to the provisions of this Section. The application for development concept plan approval shall include the following:

1. The location, size and property lines of the site in question.
2. The existing land use, topography and areas of vegetation on the site, streets and utilities serving the site, and the land uses of contiguous properties.
3. Proposed land uses, approximate building footprints and heights, parking areas, vehicular and pedestrian circulation paths, bufferyards and open space areas.
4. The manner in which the site will be served by utilities.
5. General areas of the site where natural features will be disturbed including a grading plan (as warranted) and areas of proposed new landscaping.
6. Proposed density, floor area and staging of development.
7. A statement indicating how all the conditions for approval set forth in this Zoning Code for the use in question shall be met.
8. How the plan for the proposed site fits in with future development of the remainder of the parcel or parcels under the same ownership.
9. Such other information as the City or any of its boards, commissions, departments or officers may reasonably require.

All plans and documents submitted as required by this chapter shall be prepared to such scale, of such size and submitted in as many copies as may be determined by the Zoning Administrator.

If a parcel of land is being used as a permitted conditional use at the time of adoption of this ordinance but no development concept plan had been approved

in accordance with the procedures and requirements of this ordinance, the existing plan shall be considered to be the approved development plan for the purposes of this ordinance.

C. Development Concept Plan Procedure

1. An application for approval of a development concept plan shall be submitted to the Zoning Administrator for review. The Zoning Administrator shall forward the application to the Board of Zoning Appeals with comments, and that Board shall then render a decision after a public hearing.
2. The Board of Zoning Appeal's decision on the concept plan may be appealed to the City Council which shall render a decision after a public hearing.

D. Final Development Plan

1. Prior to the issuance of a Zoning Certificate for a conditional use, or building permits for construction for any conditional use with an approved concept plan, an applicant must submit a final development plan to the Zoning Administrator for review.
2. The Zoning Administrator shall review the submitted final development plan to determine if it is consistent with the approved concept plan.
 - a. If the Zoning Administrator determines that the final plan has no significant changes, as defined in 1175.12(H), and is consistent with the original concept plan, the Zoning Administrator may approve the final plan and issue the appropriate permits. This decision may be appealed to the Hearing Examiner. The Hearing Examiner shall render a decision at a regular meeting with no public hearing. The Hearing Examiner's decision may be appealed to the Board of Zoning Appeals, which shall render a decision upon reviewing the record and with no public hearing. The Board's decision may be appealed to the City Council, which shall render a decision after public hearing.
 - b. If the Zoning Administrator determines that the final plan includes a minor change -- as defined in 1175.12(H)(2) -- from the approved concept plan, the Zoning Administrator shall forward the application to the Hearing Examiner.

- 1) The Hearing Examiner may approve the final plan, at a regular meeting with no public hearing. If the decision is not appealed, permits may be issued.
 - 2) The Hearing Examiner's decision may be appealed to the Board of Zoning Appeals, which shall render a decision upon reviewing the record and without conducting a public hearing. If the Board approves the plan and the decision is not appealed, permits may be issued. The Board's decision may be appealed to the City Council, which shall render a final decision after conducting a public hearing.
- c. If the Zoning Administrator determines that the final plan includes a major change -- as defined in 1175.(H)(1) -- from the approved concept plan, the Zoning Administrator shall forward the application to the Board of Zoning Appeals. The Board shall conduct a public hearing and render a decision. If the application is approved, permits may be issued. The Board's decision may be appealed to the City Council which shall render a final decision after a public hearing.
- E. Conditions for Approval of a Development Concept Plan or a Final Development Plan
1. Approval of a development concept plan or of a final development plan shall be given if a conditional use satisfies all of the following:
 - a. That the proposed conditional use is to be located in a district wherein such use may be conditionally permitted;
 - b. That all conditions for approval of the conditional use have been met;
 - c. The development is consistent with the comprehensive plan for the City as reflected in this Zoning Code and planning studies approved by the Planning Commission.
 - d. The development is an effective and unified treatment of the development possibilities on the project site; and the development plan makes appropriate provision of the preservation of streams and stream banks, wooded cover, rough terrain and similar areas.

- e. The development is planned and developed to harmonize with any existing or proposed development in the area surrounding the project site.
- f. Off-street parking spaces are provided in accordance with Chapter 1173, Off-Street parking and Loading Access Control and Transportation.
- g. There is a beneficial relationship between the proposed development and the neighborhood in which it is to be established.
- h. There are adequate services and utilities available or proposed to be made available in the construction of the project, and
- i. The proposed use will not have a significant negative effect on, and will not conflict with, adjacent uses. To this end, the Board of Zoning Appeals may impose such additional requirements and conditions with regard to construction, maintenance, and operation as it deems necessary to protect adjacent uses and the public interest.

The above determinations shall be supported by written findings of fact.

2. The Board of Zoning Appeals shall not be required to hear an application for a conditional use permit which has been the subject of an application for a conditional use permit within the past twelve (12) months, unless it is an application which has been modified at the request of the Board.

F. Public Hearing

1. Whenever a public hearing is required in this Chapter, notice of such hearing shall be given by one (1) publication in a newspaper of general circulation in the City of Kettering at least seven (7) days before the hearing. A copy of the proposed plan shall be on file in the office of the Zoning Administrator for examination.
2. In addition to the published notice, the Zoning Administrator shall give notice by first class mail, postage pre-paid, of the time, place and purpose of the public hearing to the following property owners:
 - a. All owners of separate ownership parcels of land (i.e., parcels owned by persons or entities who or which do not own any other

parcel within the notification radius) within 200 feet of the perimeter boundary of the land under consideration.

- b. If there are not twenty-five (25) separate ownership parcels within that 200 foot radius, the distance shall be extended in increments of fifty (50) feet until the total number of separate ownership parcels meets twenty-five (25).

Failure to give this notice by mail shall not invalidate any department actions nor any public hearing or subsequent decision. (Ord. 3597-93 Passed 3/23/93).

G. Modifications to Approved Final Development Plan

The development shall conform to the approved final development plan. The applicant, his successors and assignees shall make no alterations, additions, or deletions to the final development plan, the related documents or to the site, except as provided herein. Upon final approval of a development plan, changes may be made only pursuant to a new submission of a final development plan which shall be processed and approved in accordance with this Chapter.

H. Significant Changes

Significant changes to an approved development concept plan are defined as follows:

1. Major changes shall be defined as any of the following:
 - a. Greater than ten percent (10%) increase in the total impervious surface area or floor area as previously approved for the entire proposed development.
 - b. An increase in the number of approved residential units.
 - c. Changes in the perimeter boundaries of the land included in the total proposed development which requires subdivision approval.
 - d. A change greater than ten percent (10%) in the amount of land in the total proposed development designated for a specific use of the land.

- e. Changes that reduce the distance between any internal paved surface or building and adjacent residential zoned land by more than ten percent (10%).
 - f. An increase of more than five (5) feet in the height of any building or structure.
 - g. Redesign of any building or structure to an extent which, as determined by the Zoning Administrator, significantly alters or interferes with or departs from the central architectural design or theme of the proposed development.
 - h. Other changes that the Zoning Administrator determines to be so significant that, if such changes were made, the site would not be developed in reasonable conformance with the approved plan.
2. Minor changes shall be defined as any of the following:
- a. Greater than five percent (5%) but not more than ten percent (10%) increase or decrease in the total impervious surface area or floor area as previously approved for the entire proposed development.
 - b. A change greater than five percent (5%) but not more than ten percent (10%) in the amount of land in the total proposed development designated for a specific use of land.
 - c. Changes that reduce the distance between a paved surface or building and adjacent residentially zoned land by more than five percent (5%) but not more than ten percent (10%).
 - d. Redesign of any building or structure to an extent which, as determined by the Zoning Administrator, alters or interferes with or departs from the central architectural design or theme of the proposed development.
 - e. Other changes that the Zoning Administrator determines to be significant that, if such changes were made, the site would not be developed in reasonable conformance with the approved development concept plan.

I. Conflict with Other Provisions

The provisions of this chapter shall prevail over those of other chapters of the Planning and Zoning Code where the provisions shall apply with full force and effect.

SECTION 1175.13 PROCEDURES AND REQUIREMENTS FOR APPEALS FROM ADMINISTRATIVE ACTIONS.

- A. Notwithstanding other specific appeal procedures in the Zoning Code, the Board of Zoning Appeals shall hear and decide upon appeals where it is alleged there is an error in any decision, interpretation, judgment or determination made by the Zoning Administrator in the administration and enforcement of this Zoning Code. Such appeal shall be made within ten (10) days after the decision by filing with the Board of Zoning Appeals a notice of appeal on forms provided for such purpose. The appeal shall:
1. Cite specific provisions of this Zoning Code that are alleged to have been interpreted in error or the specific decision or action being appealed and the grounds on which the appeal is being made;
 2. Include any required application fee in an amount set by the City of Kettering;
 3. Include such other information as the City of Kettering or any of its Boards, Commissions, Departments or Officers may reasonably require; and
 4. A statement as to why the appellant has standing to pursue the appeal from the administrative action by a statement of the way in which the administrative action adversely affects the appellant.

The Zoning Administrator shall transmit to the Board of Zoning Appeals the materials constituting the record upon which the appeal is based. The Board of Zoning appeals shall normally hear the appeal within fourteen (14) days from the date of filing, or if no regular meeting is scheduled within this time period, at its next scheduled regular meeting, unless otherwise agreed to by the appellant.

- B. The Board of Zoning Appeals shall not be required to hear any case which has been the subject of an appeal during the previous twelve (12) months, unless substantial new evidence, critical to the case, becomes available.
- C. An appeal shall stay any further administrative action in regard to the action being appealed, except that when the appeal is of the issuance of a notice of

violation pursuant to Section 1175.15 involving illegal construction, such construction shall cease until a decision on the appeal is rendered by the Board of Zoning Appeals.

SECTION 1175.14 ENVIRONMENTAL STANDARDS MANUAL.

The Council of the City of Kettering may from time to time adopt, amend and revise an Environmental Standards Manual which shall contain Performance Standards and Design Guidelines:

- A. The Performance Standards are mandatory obligations of law required either under the provisions of the Zoning Code or the provisions of some other ordinance or statute. In the Performance Standards, the City of Kettering or other governmental agency has established a set of minimum or maximum performance standards to govern the use of land in Kettering. This section provides alternatives for decisions relating to the design and appearance of the built and natural environment of the community. Design Standards are guidelines within which the Zoning Administrator may exercise limited discretion.
- B. The Environmental Standards Manual may be adopted, amended, revised or repealed by an ordinance adopted as a routine ordinance or as an emergency ordinance in accordance with the provisions of the charter of Kettering, but need not be adopted, amended or revised in accordance with the provisions for amendments to the Kettering Zoning Code.

SECTION 1175.15 ENTRY AND INSPECTION OF PROPERTY.

- A. Authorization

An inspector designated by the Zoning Administrator is authorized to make inspections of property and structures located within the City of Kettering in order to safeguard the public health, safety and welfare, and may enter, examine and survey at any reasonable hour such properties for purposes of enforcing the provisions of this Zoning Code.

- B. Permission

Prior to seeking entry to a property or structure for purposes of making inspections necessary to enforce the provisions of this Zoning Code, the inspector or designate thereof shall attempt to obtain the owner's or occupant's permission to inspect. If such permission is denied or is unable to be obtained,

the enforcement officer shall request assistance from the Law Department in securing a valid search warrant prior to inspection.

C. Liability

No officer, agent or employee of the City of Kettering shall be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of duties under this Zoning Code.

SECTION 1175.16 NOTICE OF VIOLATION.

A. Whenever the Zoning Administrator, inspector or designate thereof determines that there is a violation of any provision of this Zoning Code, a notice of violation shall be issued. Such notice shall:

1. Be in writing;
2. Identify the violation;
3. Include a statement of the reason or reasons why it is being issued and refer to the sections of this Zoning Code being violated; and
4. State the time by which the violation shall be corrected.

B. Service of notice of violation shall be as follows:

1. By personal delivery to the person or persons responsible, or by leaving the notice at the usual place of residence of the owner with a person 14 years of age or older; or
2. By certified mail, postage pre-paid, in the United States Post Office addressed to the person or persons responsible at a last known address. If a certified mail envelope is returned with endorsement showing that the envelope is unclaimed, then service shall be sent by first class mail, postage pre-paid, and the mailing shall be evidenced by a certificate of mailing which shall be filed by the inspector. Service shall be deemed complete when the fact of mailing is entered of record, provided that the first class mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery; or
3. By posting a copy of the notice form in a conspicuous place on the premises found in violation, providing that efforts to obtain service

pursuant to the provisions of Subsection (B) above have been unsuccessful.

SECTION 1175.17 REMEDIES.

A. Prohibitions and Penalties

1. No person shall fail or refuse to comply with an order issued by the Zoning Administrator or Zoning Inspector. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.
2. No person shall construct, modify, alter, use or occupy any structure, or property in violation of the Kettering Zoning Code; Chapters 1101 through 1177, inclusive. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.
3. Penalties
 - a. Whoever violates this section is guilty of a minor misdemeanor and shall be fined not more than One Hundred Dollars (\$100.00) per offense.
 - b. If within one year of the date of the offense the offender has been convicted of, or pleads guilty to, a violation of Section 1175.17, the offender is guilty of a misdemeanor of the third degree, and shall be fined not more than Five Hundred Dollars (\$500.00) nor imprisoned more than sixty (60) days or both.

B. Civil Remedies

The City of Kettering, the City Manager on behalf of the City of Kettering, or any officer designated by the City Manager on behalf of the City of Kettering may, in addition to the criminal remedies provided in this Zoning Code, file suit for injunction against any violation of this Zoning Code, or, if the violation has caused damages to the City of Kettering, for a judgment for damages and any person, property owner or occupant of property who can show that the person, property owner or occupant of property has suffered harm or whose property has suffered harm as a result of violations of this Zoning Code may file suit for injunction or damages to the fullest extent provided by the laws of the State of Ohio.

SECTION 1175.18 PROCEDURES AND REQUIREMENTS FOR APPEALS OF ZONING ADMINISTRATOR, BOARD OF ZONING APPEALS AND PLANNING COMMISSION DECISIONS.

A. Appeals from Zoning Administrator Decision.

A person aggrieved by a decision of the Zoning Administrator may appeal such decision by filing a written intent to appeal within five (5) calendar days of the written decision of the Zoning Administrator. A complete written appeal setting forth the facts, issues and arguments shall then be filed by the Appellant within fifteen (15) calendar days of the written decision of the Zoning Administrator or the appeal shall become void. The intent to appeal and the written appeal shall be filed with the Zoning Administrator. Such appeals shall be heard in accordance with the procedures established by this Zoning Code.

B. Appeals from Board of Zoning Appeals Decision.

A person aggrieved by a decision of the Board of Zoning Appeals (BZA) may appeal such decision by filing a written intent to appeal within five (5) calendar days of the written decision of the BZA. A complete written appeal setting forth the facts, issues and arguments shall be filed by the Appellant within fifteen (15) calendar days of the written decision of the BZA or the intent to appeal shall become void. The intent to appeal and the written appeal shall be filed with the Clerk of Council. Such appeals shall be heard in accordance with the procedures established by this Zoning Code.

City Council shall hold a public hearing on such appeal not later than thirty (30) working days after such appeal has been filed with the Clerk of Council. City Council, by an affirmative vote of a majority of its members, shall decide the matter and its decision shall be final.

C. Appeals from Planning Commission Decision.

A person aggrieved by the decision of the Planning Commission may appeal such decision by filing a written intent to appeal within five (5) calendar days of the written decision of the Planning Commission. A complete written appeal setting forth the facts, issues and arguments shall be filed by the Appellant within fifteen (15) calendar days of the written decision of the Planning Commission or the intent to appeal shall become void. The intent to appeal and the written appeal shall be filed with the Clerk of Council.

City Council shall hold a public hearing on such appeal not later than thirty (30) working days after such appeal has been filed with the Clerk of Council. City Council, by an affirmative vote of a majority of its members, shall decide the matter and its decision shall be final.

Legislative history: Ord. 3597-93; passed 3/23/93. Ord. 3604-93; passed 5/11/93. Ord. 3670-95; passed 4/11/95. Ord. 3741-97; passed 4/8/97. Ord. 3742-97; passed 4/8/97. Ord. 3830-00; passed 4/11/00.