

City of Oxford
Community Development Department
STAFF REPORT
Planning Commission

Case # PC-03-2013

Date – February 12, 2013

APPLICATION

Applicant: City of Oxford
Action Request: **ZONING CODE TEXT AMENDMENT** to Amend Chapter 1137 Nonconformities and Adding Definitions to Chapter 1159, City of Oxford, Applicant

DESCRIPTION

Last year, the Planning Commission under the directive from City Council, formed a subcommittee to review the existing Nonconforming Chapter of the Oxford Zoning Code and to identify barriers to the redevelopment of nonconforming buildings/uses. The first task was to review existing regulations dealing with large apartment complexes. The second task was to deal with, specifically, nonconforming land use and develop new regulations to encourage redevelopment of quality housing stock to replace those dilapidated/blighted buildings.

ZONING CODE

The attached text amendment includes proposed changes to Chapter 1137 Nonconformities, as a result of many Planning Commission Subcommittee meetings.

COMPREHENSIVE PLAN

Some applicable **Land Use Principles** of the Comprehensive Plan are as follows (p. 3.9):

- Infill development and redevelopment of underutilized sites is a priority. (3.9)
- The development of new residential areas, and redevelopment of existing residential areas, will have strong neighborhood qualities. (3.10)
- Places will be connected to create better opportunities to walk, bike and access public transportation throughout the community. (3.12)
- Environmentally sensitive and sustainable practices will be encouraged in future developments. (3.12)

Some applicable **Land Use Goals** of the Comprehensive Plan are as follows (p. 3.21):

Objective 1: Manage Growth

LU 1.5 Charge the Planning Commission with planning and managing long term growth, including, but not limited to a comprehensive review of the zoning code and subdivision regulations. (p. 3.21)

Objective 2: Enhance neighborhoods within the Mile Square

LU 2.1 Continue to promote diversity of housing opportunities in the Mile Square. (p. 3.21)

Objective 9: Create new residential areas with traditional neighborhood qualities

LU 9.4 Create standards, or modify existing standards, to allow for a mix of housing types within neighborhoods. (p. 3.24)

AGENCY REVIEWS

Requests for review were made to the Police, Fire, Engineering and Economic Development Departments. The following comments have been received:

Police:	No comments received
Fire:	No comments received
Engineering:	No comment
Econ. Dev.	No comments received

DECISION CRITERIA

A copy of the Text Amendment Decision Criteria is attached.

ANALYSIS

City Council and the Planning Commission met in 2012 and tasked the Planning Commission with several work items. One of the items was the redevelopment of old housing stock, encompassing single family dwelling units and apartment complexes. The Commission formed a subcommittee to tackle two subjects: the redevelopment of apartment complexes and the amendment to the Nonconformities Chapter. The revision to the regulations governing the R-3 (Multi-Family Residential) District was adopted in September, 2012.

The Planning Commission Subcommittee on Nonconformities took a deliberate step to review the Nonconforming Chapter since the Chapter encompassed a larger geographical area than the regulations of a specific zoning district. One of the major changes was to deal with those buildings with nonconforming uses. The Subcommittee felt there were many buildings with nonconforming uses that would require some form of improvements.

The current regulations were put in place in 2007 and depending on the square footage of improvements the building may be subject to different requirements. The proposed amendment to the Nonconforming Chapter would allow a building with nonconforming uses to go through the process in a more streamlined manner. The proposed amendment breaks down the improvements to a structure into three (3) categories: renovation, reconfiguration and reconstruction. Improvements falling under the category of renovation encompassing nonstructural improvements would not require any reduction from the approved rental occupancy. Proposed improvements involving structural modifications, the improvements are considered reconfiguration. The proposed language would allow reconfiguration to move forward without meeting the site development regulations of the underlying district, but is subject to a 30% reduction in the approved rental occupancy. Any demolition/destruction of an existing building is considered reconstruction; therefore, the new building must satisfy the use and site development regulations of the underlying district. Due to these categories, a new definition was also created under Chapter 1159.

Other recommendations include allowing the buildings with nonconforming uses to expand, subject to the underlying regulations and no increase in intensity of the nonconforming use. Additionally, it also provides leeway for porch additions to the building with a nonconforming use.

In essence, the proposed changes are to combine existing 1137.04 and 1137.08. The Subcommittee believed that the recommended changes would remove the development barriers to facilitate the redevelopment of dilapidated/obsolete buildings with newer and safer buildings.

Based on suggestions from the Subcommittee, the Planning Commission also held two work sessions to review the proposed changes and felt that the changes would be needed in anticipation of future redevelopment projects.

Many thanks to the Subcommittee members who spent countless hours to discuss, debate and work through this proposed language. The Subcommittee felt that this proposed language would fulfill the desire of the Planning Commission and City Council in encouraging the redevelopment of dilapidated buildings.

RECOMMENDATION

Staff recommends that the Commission make affirmative recommendations to City Council for adoption to facilitate anticipated redevelopment of various dilapidated housing stock in this community.

SUBMITTED

BY: Jung-Han Chen
Jung-Han Chen
Community Development Director

DATE: January 7, 2013

ATTACHMENT

(c) Planning Commission and Council Review. The Planning Commission shall base its recommendation on a proposed Zoning Code amendment upon the complete application, upon any staff report, and upon any relevant and credible public comment presented during the public hearing. Council shall base its decision on the same materials and shall also consider the Planning Commission recommendation.

If the Planning Commission or Council finds that the information provided is insufficient to make a determination, it may suspend its review until sufficient information has been provided.

- (1) Decision standards. A proposed amendment shall be approved only if it meets at least one of the following criteria, and if its benefits will likely outweigh any potential pitfalls.

Text Amendments

- A. The proposed amendment will make the Code conform more closely to the Comprehensive Plan.
- B. The proposed amendment will improve the public health, safety, and general welfare of Oxford.
- C. The proposed amendment will clarify the intent of the Code.
- D. The proposed amendment will better implement the intent of the Code.
- E. The proposed amendment will improve enforcement of the Code.

CHAPTER 1137

Nonconformities

1137.01 PURPOSE.

The purpose of this Chapter is to recognize the existence of uses, buildings, lots and structures that lawfully existed at the time of this Code's enactment, or amendment thereto, but which now do not conform with one or more of the regulations contained in this Code. This Chapter regulates the disposition of legally established nonconforming uses, buildings, lots and structures which are subject to regulations limiting their use, restoration, reconstruction, extension, and substitution. Such nonconforming status shall be permitted to continue only in conformance with this Chapter. The provisions are intended to encourage ~~greater compliance~~ reduction of nonconformity with this Zoning Code in the short-term and elimination of nonconformities in the long-term, while respecting vested interests in the existing uses and improvements.

1137.02 ADMINISTRATION.

(a) The provisions of this Chapter shall apply only to nonconformities that have been legally established. A nonconformity that was not legally established shall not qualify for any of the protections provided.

(b) An applicant and/or owner for any development review procedure that deals with nonconformities shall bear the burden of proof in demonstrating that the use was a legal nonconformity on the effective date of this Code.

(c) Board of Zoning Appeals shall have all powers conferred upon it as per Section 713.15 of the Ohio Revised Code, or as authorized by the City of Oxford Charter and in compliance with state law.

(d) The Zoning Administrator shall determine if a use, lot, structure, or site is less nonconforming than another use, lot, structure, or site based upon criteria such as required parking spaces, trip generation, potential nuisances, setbacks, bulk, or other criteria relevant to the intent of this Code.

1137.03 AVOIDANCE OF UNDUE HARDSHIP.

To avoid undue hardship, nothing in this Code shall be deemed to require a change in the plans, construction or designated use of any building or structure on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Code and upon which actual building construction has been carried on diligently. Actual construction is defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried out diligently.

~~1137.04 NONCONFORMING LAND USES.~~

~~Where, at the time of adoption of this Code, lawful uses of land exist that would not be permitted by the regulations of this Code, the uses may be continued so long as they remain otherwise lawful and provided that:~~

~~(a) A legal nonconforming land use may continue, but shall not be expanded either on the same or adjoining land beyond the building or structure that was occupied by the use at the time the land use became nonconforming, except that such use may be extended~~

throughout those parts of an existing building that were clearly arranged or designed for such use at the adoption of this Code.

- ~~—(b) The intensity of a nonconforming nonresidential land use shall not be increased through the introduction of goods and services not directly related to the nonconforming use. If the intensity of a nonconforming use is diminished, the intensity of the use shall not be reinstated except as provided for in Section 1137.08.~~
- ~~—(c) No new signs are permitted for nonconforming land uses. (Ordinance 2981, Passed 10-16-07.)~~

1137.04 NONCONFORMING LAND USES.

Any use of any structure or lot that was conforming or validly nonconforming and otherwise lawful at the enactment date of this Ordinance and is nonconforming under the provisions of this Ordinance or that shall be made nonconforming by a subsequent amendment, may be continued so long as it remains otherwise lawful, subject to the standards and limitations of this Section.

(a) General regulations and development standards.

1. A nonconforming use may not move in whole or in part to any other location of the lot unless the use satisfies the provision of this Section.
2. A nonconforming use may be enlarged, expanded or extended to occupy parts of another structure or portions of a lot that it did not occupy on the effective date of this Ordinance, provided such enlargement shall comply with the provisions of this Chapter. Additionally, such expansion, extension and enlargement shall not increase the degree of nonconformity, or increase in intensity.
3. Any building or structure containing a nonconforming use may be enlarged up to 25% of the existing total gross floor area on the effective date of this Ordinance, provided that the expanded portion complies with all coverage and site development requirements of the zone in which it is located.
4. A porch addition to the front façade of an existing residential building that contains a nonconforming use may be permitted, provided that the proposed addition satisfies the design standards, setback and lot coverage regulations of the District. Such porch addition shall not be enclosed and shall be open at least on 2 sides.
5. Any proposed addition under Section 1137.04(a)3 shall be considered as reconfiguration to an existing structure and shall comply with the conditions set forth in this Chapter.
6. The enlargement of a nonconforming use that has the effect of making a structure nonconforming, other than as described in subsection c. above, shall not be permitted, but rather shall be construed as a request for a variance.
7. Any nonconforming vehicle management shall be made in conformance with the current regulations when the improvement to the structure is considered a reconfiguration and reconstruction.

8. A legal nonconforming land use may be extended throughout those parts of an existing building, provided that the extension shall not create any new nonconformity. Such improvement is considered as reconfiguration and shall comply with the conditions outlined below.

9. Change to another Nonconforming Use.

Except as provided in this Section, a nonconforming use may be changed only to a use that conforms to the Ordinance. Once changed to a conforming use, no use may revert to a nonconforming use.

(b) Improvements to a Structure.

Improvements to a structure containing a nonconforming use may be permitted, but is subject to the following conditions:

1. Such improvements as a result of being-remodeled damaged or demolished voluntarily.
2. Such improvements shall not cause a new nonconformity, nor shall it increase the degree of nonconformity or noncompliance existing prior to such remodeling or improvements, except permitted in this Section.
3. For nonconforming residential uses in residential districts: Improvements fall within the following three categories (as defined in Section 1159.19):

(1) Renovation: For renovation, the following shall apply:

a. Any structure may be maintained to its original footprint, no reduction in occupancy.

(2) Reconfiguration: For reconfiguration, the following shall apply:

a. Any structure that has more occupancy than permitted in the underlying zoning district shall have its occupancy reduced by at least 30% from the approved rental occupancy, or the allowable occupancy permitted in the underlying district, whichever is larger.

b. The use and structure remain nonconforming unless they satisfy the requirements of that District.

c. All fractional numbers of residential occupancy greater than or equal to 0.5 shall be rounded up to the next whole number.

d. Proposed enlargement that is above and beyond 25% of the existing total gross floor area on the effective date of this Ordinance may be allowed, provided additional reduction in occupancy from the approved rental permit based on the ratio of each one percent of the additional enlargement, one percent of reduction in occupancy is required subject to the approval of the Planning Commission.

(3) Reconstruction: For reconstruction, the following conditions shall follow:

a. The new building shall satisfy all the site development regulations of that District.

b. The use shall satisfy the underlying use regulations.

4. For other nonconforming uses: Nonconforming use may be expanded, as described in 1137.04(a)3 In no instance, shall the uses increase in intensity.

1137.05 NONCONFORMING LOTS.

- (a) A lot in a residential zoning district that does not satisfy the site development ~~dimensional~~ regulations for any permitted use in that District may have erected on it a single-family dwelling if the lot has a minimum area of 3,000 square feet and a minimum lot width of 33 feet. This provision shall apply even though the lot fails to meet the requirements for lot areas, lot depth, lot width, or any combination thereof that are generally applicable in the zoning district provided that the new single-family conforms to the height, lot coverage, vehicular access and yard or setback requirements of the District where the property is located.
- (b) Additions to a conforming/permitted use and structure on a nonconforming lot are permitted if the addition satisfies all ~~dimensional~~ site development regulations ~~requirements of the code in~~ the District where the property is located.
- (c) The lot on which there is located a nonconforming use or structure, shall not be reduced in any of the dimensional requirements to further increase the structure's nonconformity.

1137.06 NONCONFORMING STRUCTURES.

Where a lawful structure exists at the effective date of adoption or amendment of this Code that could not be built under the terms of this Code by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) Additions to a nonconforming structure are permitted if the addition satisfies all dimensional requirements of the code and the use occupying the building is an approved permitted or conditional use.
- (b) No nonconforming building or structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
- (c) A nonconforming building or structure shall not be enlarged or extended unless the proposed extension is in compliance with the regulations of the District in which it is located, and will not increase any existing nonconformity in any other portion of the building or structure.
- (d) A nonconforming building or structure shall not be moved in whole or in part to any other location on the lot or to another premise(s) unless the building is made to conform to the regulations of the District in which it is to be located.
- (e) A building or structure that contains a dwelling unit, that has less than the minimum required lot or dwelling square foot area may be changed in any way that does not make the dwelling unit area more nonconforming and does not violate any other provision of this code.
- (f) Reconstruction of damaged and demolished nonconforming structures may be permitted provided that the reconstructed portion satisfies the site development regulations of the District.

1137.07 DISCONTINUANCE OF NONCONFORMITIES.

- (a) A nonconforming land use, structure, or portion thereof, shall not be reinstated if it is discontinued for a continuous one-year period and thereafter any use of the premises shall conform to the use regulations of the District in which the building or lot is located. The intent to continue a nonconforming use shall not be assumed to be evidence of its continuance.

- (b) A nonconforming structure or lot that has been made conforming shall not be made nonconforming.

~~—1137.08 MAINTENANCE AND REPAIR, DAMAGED AND EDEMOLISHED
NONCONFORMING STRUCTURES~~

~~(a) Ordinary repairs may be performed on a nonconforming structure or on any portion thereof. In the event that a nonconforming use, building, or structure is destroyed, damaged or demolished voluntarily or by accidental fire, explosion, act of God or the public enemy by any means, those portions so destroyed, damaged or demolished, may be restored and repaired provided that such reconstruction, restoration and repair shall be in compliance with the following conditions:~~

- ~~(1) A zoning certificate and building permit authorizing such reconstruction, restoration or repair shall be obtained within one year of the date of such damage, and~~
- ~~(2) Such permit shall only be issued once every 3 years.~~
- ~~(3) Such reconstruction, restoration or repair shall be completed within a period of one year from the date of issuance of the zoning certificate and building permit.~~
- ~~(4) Such reconstruction, restoration or repair shall not cause a new nonconformity, nor shall it increase the degree of nonconformity or noncompliance existing prior to such reconstruction, restoration or repair.~~
- ~~(5) The proposed structure shall be designed and constructed with the similar architectural character to the existing structure and/or the surrounding neighborhood(s) and in accordance with HAPC and/or the Mile Square Design Guidelines when applicable.~~
- ~~(6) All fractional numbers greater than or equal to 0.5 shall be rounded up to the next whole number.~~

~~(b) Those portions so reconstructed, restored or repaired to the extent less than 25% of the total gross floor area, may be restored to the original footprint, floor area and height of the building or structure.~~

~~(c) Those portions so reconstructed, restored or repaired to the extent greater than 25% and less than 50% of the total gross floor area shall be subject to the following conditions:~~

- ~~(1) Any structure occupied by more occupants than permitted in the underlying zoning district shall have its occupancy reduced by at least 20% from the approved rental permit.~~
- ~~(2) Any structure or portion reconstructed must not encroach into any right-of-way or adjacent property and shall satisfy the setback regulations of the district when applicable; and~~
- ~~(3) The use and structure remain nonconforming unless they satisfy the requirements of that district.~~

~~(d) Those portions so reconstructed, restored or repaired to the extent greater than 50% and less than 75% of the total gross floor area shall be subject to the following conditions:~~

- ~~(1) Any structure occupied by more occupants than permitted in the underlying zoning district shall have its occupancy reduced by at least 20% from the approved rental permit.~~
- ~~(2) Any structure or portion reconstructed must not encroach into any right-of-way or adjacent property and shall satisfy the setback regulations of the district when applicable.~~
- ~~(3) Any structure or portion reconstructed may exceed the floor area and height of the original building provided the use is permitted, but may not exceed the height of the underlying zoning district.~~
- ~~(4) The use and structure remain nonconforming unless they satisfy the requirements of that district.~~

~~(e) Any nonconforming structure that is willfully demolished, reconstructed, restored or repaired to the extent 75% or more shall be subject to the following conditions:~~

- ~~(1) Any structure occupied by more occupants than permitted in the underlying zoning district shall have its occupancy reduced by at least 20% from the approved rental permit.~~
- ~~(2) Any nonconforming structure that is willfully demolished, reconstructed, restored or repaired as described above shall have its nonconforming status of a nonresidential use eliminated unless such use satisfies the use requirement of the underlying zoning district.~~
- ~~(3) All dimensional requirements of the underlying zoning district shall be satisfied. (Ord. 2981. Passed 10-16-07.)~~

1137.08 RESTORATION OF NONCONFORMING BUILDING DAMAGED BY FIRE, EXPLOSION, ACT OF GOD OR THE PUBLIC ENEMY

Any building which has been damaged by fire, explosion, act of God or the public enemy may be repaired and reconstructed and used as before the time of damage provided that a complete application for such repairs or reconstruction is filed within one year of the date of such damage and such repair or reconstruction is substantially completed within one year of the issuance of a zoning certificate.

1137.09 NONCONFORMING VEHICLE MANAGEMENT.

- (a) A conforming land use that does not have a sufficient number of parking spaces to satisfy this Code, or an amendment thereto, may continue indefinitely; however, the **parking vehicle management** and landscaping requirements for the entire use shall be satisfied if the use is expanded within the existing structure, if the structure is expanded or if the use is changed or substituted.
- (b) A use that is required to meet the nonresidential vehicle management area regulations and that does not satisfy the design criteria of this Code may continue indefinitely; however, the design criteria for the entire site shall be made to comply with all provisions of this Code if the footprint of the principle structure is expanded upon a change of use.

1137.10 NONCONFORMING SIGNS.

- (a) Determination of Legal Nonconformity:
 - (1) An existing sign that does not conform to the specific provisions of this Code may be eligible for the designation of a "legal nonconforming sign" provided that the sign was covered by a valid permit or variance, or complies with all applicable laws on the effective date of this Code, and amendments thereto.
- (b) Loss of Legal Nonconforming Status: A legal nonconforming sign loses the legal nonconforming designation if:
 - (1) The sign is relocated;
 - (2) The sign is replaced;
 - (3) The structure or size of the sign is altered in any way except towards compliance with this Chapter. This provision does not refer to general maintenance, changeable marquees, or face and copy changes.
 - (4) The sign is part of an establishment that discontinues its operation for a period of 1 year.
 - (5) The sign has not been used for a continuous period of six (6) months.
- (c) Maintenance and Repair of Nonconforming Signs:
 - (1) Normal maintenance shall be permitted, which includes painting of chipped or faded signs; replacement of faded or damaged surface panels; or repair or replacement of electrical wiring or electrical devices. A non-conforming sign shall not be structurally altered to prolong the life of the sign.

- (2) If the sign suffers damage to an extent greater than 60% of the estimated replacement value, the sign shall be replaced with a sign that complies with Chapter 1151.

(d) No new signs are permitted for nonconforming land uses.

Section 1159. 19 Definitions (Beginning with letter “R”)

- (1) **RECONFIGURATION**- interior or exterior modification to change the layout of a building or to make substantial/structural repair or alteration
- (2) **RECONSTRUCTION**-. Rebuilding as a result of destruction or demolition of an existing building to allow for a new building to be constructed on the same sit
- (5) **RENOVATION**- interior or exterior maintenance and/or upgrade of a structure, which does not involve any structural alteration.

Section 1159.10 DEFINITIONS (BEGINNING WITH LETTER “I”)

- (4) **INTENSITY**. The measure of collective activities related to the principal use within a building or a site based upon trip generation, number of employees (ex. barber chairs, mechanical lifts, number of shifts, hours of operation, etc.).

Zoning Code Text Amendment Application
City of Oxford, Ohio

Feb

REQUIRED INFORMATION

Name of Applicant:

City of Oxford

(Attach a Letter of Agency if the applicant is not the property owner.)

Mailing Address:

101 S. High St.

Telephone Number(s)

Oxford OH 45056

Email Address

(513) 524-5204

Jchen@cityofoxford.org

1137

Nonconformities

SUBMISSION REQUIREMENTS

A written, detailed description, where applicable, is required for each subsection.

All applications must include:

- A general description of the proposed amendment.
- A narrative statement that describes how the proposed amendment relates to the Comprehensive Plan.
- A statement that identifies potential negative consequences of the proposed amendment.
- Any existing section number and text that is proposed to be deleted or amended.
- Any new or amended text as it is proposed to be codified including its proposed location in the Code. (section numbers)
- A narrative statement that describes the expected effects of the proposed text.
- A narrative statement that compares the expected effects of the proposed text with any existing text that it will replace, if applicable.

Planning Commission and Council Review The Planning Commission shall base its recommendation on a proposed Zoning Code amendment upon the complete application, upon any staff report, and upon any relevant and credible public comment presented during the public hearing. Council shall base its decision on the same materials and shall consider the Planning Commission recommendation. If the Planning Commission or Council finds that the information provided is insufficient to make a determination, it may suspend its review until sufficient information has been provided.

Decision Standards A proposed amendment shall be approved only if it meets at least one of the following criteria, and if its benefits will likely outweigh any potential pitfalls. The proposed amendment will:

- make the Code conform more closely with the Comprehensive Plan.
- improve the public health, safety, and general welfare of Oxford.
- clarify the intent of the Code.
- better implement the intent of the Code.
- improve enforcement of the Code.

All materials and the application fee in the amount of **\$150.00 plus actual postage**, payable to the City of Oxford must be delivered to the office of Community Development, 101 East High Street, Oxford, Ohio 45056 45 days prior to the proposed meeting date. Any questions should be directed to the Community Development Department at (513) 524-5204.

NOTE: Incomplete applications will not be processed. City Staff will erect a public hearing sign on the subject property. It is the Applicant's responsibility to remove the signage once the hearing(s) are completed.

SIGNATURE OF APPLICANT:

Jung-Han Chen

Date:

12/17/12

PRINTED NAME:

Jung-Han Chen

FEE / RECEIPT

\$150 Fee plus Actual Postage Paid / Receipt Number:

NA

City of Oxford
Inter-Office Review Transmittal Sheet

Date: 2/4/13

To: Fire Department Engineering Division Police Department Economic Development

From: Community Development

PC-03-2013 ZONING CODE TEXT AMENDMENT to Amend Chapter 1137 Nonconformities, City of Oxford, Applicant

 X Review Revisions Other

Comments or status update requested by: Lynn Taylor

Please return no later than: **2/8/13** Note: If no comments are received, we will assume the project meets your department's standards.

.....
Drawings are returned: w/comments without/comments

✓

Drawings reviewed by: _____

A. Popescu

Date: 2-6-13

VICTOR POPESCU

PRINTED NAME

RECEIVED

FEB - 6 2013

City of Oxford
Engineering Division