

## ARTICLE XII

### NONCONFORMITY: NONCONFORMING USES OF LAND, NONCONFORMING STRUCTURES, AND NONCONFORMING USES OF STRUCTURES AND PREMISES

#### SECTION 12.00 - INTENT

It is the intent of this Ordinance to permit legal nonconforming lots, structures, or uses to continue until they are removed but not to encourage their survival.

It is recognized that there exists within the districts established by this Ordinance and subsequent amendments, lots, structures, and uses of land and structures which were lawful before this Ordinance was passed or amended which would be prohibited, regulated, or restricted under the term of this Ordinance or future amendments.

Such uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as ground for adding other structures or uses prohibited elsewhere in the same district. A nonconforming use of a structure, a nonconforming use of land or a non conforming use of a structure and land shall not be extended or enlarged after passage of this Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited in the district involved.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner.

#### SECTION 12.01 - NONCONFORMING USES OF LAND

Where, at the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is no longer permissible under the terms of this Ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

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- (a) No such nonconforming use shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.
- (b) No such nonconforming use shall be moved in whole or in part to any other portion of the lot occupied by such use at the effective date of adoption or amendment of this Ordinance.
- (c) If such nonconforming use of land ceases for any reason for a period of more than 180 days, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located.

### SECTION 12.02 - NONCONFORMING STRUCTURES

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

- (a) No such structures may be enlarged or altered in a way which increases its nonconformity.
- (b) Should such structure be destroyed by any means to an extent of more than 100 percent of its current assessed value exclusive of the foundations, at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.
- (c) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- (d) Nothing contained in this Ordinance shall however prohibit a homeowner from improving his homestead by an enlargement or alteration of the homestead structure so long as the enlargement or alteration thereto is in keeping as near as reasonably can be with the provisions contained in this Ordinance and provided such improvement receives the prior approval of the Zoning Board of Appeals; provided further that any homestead destroyed by any means, except voluntary destruction, to an extent of more than 100 percent of its current assessed value exclusive of foundations at the time of destruction, may be reconstructed by a homeowner as his homestead provided such reconstruction meets the provisions of this Ordinance as near as reasonably can be and such reconstruction receives the prior approval of the Zoning Board of Appeals. Under this paragraph homeowner may only have one homestead in the City of Keego Harbor and such homestead must be his sole residence in the city and he must be residing in or have resided therein at time application to enlarge, alter or reconstruct is applied for.
- (e) Repairs or maintenance deemed necessary by the Building Official to keep a nonconforming fence, shed and deck structurally safe and sound are permitted. However, if a nonconforming fence, shed and deck becomes physically unsafe

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and/or unlawful due to lack of maintenance and repairs and is therefore declared as such by the Building Official, it shall not thereafter be restored, repaired, or rebuilt except in full conformity with the regulations in the district in which it is located. Additional repairs, improvements, or modernization of non-conforming fences, sheds and decks beyond what is required to maintain the safety and soundness of these structures, shall be permitted provided such repairs or improvements do not exceed twenty-five (25) percent of the market value (as determined by the Building Official) of a fence, shed and deck during any period of twelve consecutive months. Any such repairs, improvements, and modernization shall not result in enlargement of the cubic content of a nonconforming fence, shed and deck.

### **SECTION 12.03 - NONCONFORMING USES OF STRUCTURES AND LAND**

If a lawful use of a structure, or of structure and land in combination, exists at the effective date of adoption or amendment of this Ordinance that would not be allowed in the district under the terms of this Ordinance such use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) No existing structure devoted in whole or in part to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
- (b) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, and which existed at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building;
- (c) If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided that the Zoning Board of Appeals, by making findings in the specific case, shall find that the proposed use is more appropriate to the district than the existing nonconforming use. In permitting such change, the Zoning Board of Appeals may require appropriate conditions and safeguards in accordance with the purpose and intent of this ordinance.
- (d) Any structure, or structure and land in combination in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may thereafter be resumed.
- (e) When a nonconforming use of a structure, or structure and premises in combination, is discontinued or ceases to exist for 6 consecutive months or for 12 months during any three-year period, or otherwise sooner abandoned, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located. Structures occupied by seasonal uses shall be exempted from this provision.

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- (f) Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.
- (g) Nothing contained in this ordinance shall, however, prohibit a homeowner from improving his homestead by an enlargement or alteration of the homestead structure so long as the enlargement or alteration therein is in keeping as near as reasonably can be with the provisions contained in this ordinance and provided such improvement receives the prior approval of the Zoning Board of Appeals; Provided further that any homestead destroyed by any means, except voluntary destruction, to an extent of more than 100 percent of its current assessed value exclusive of foundations at the time of destruction may be reconstructed by a homeowner as his homestead provided such reconstruction meets the provisions of this ordinance as near as reasonably can be and such reconstruction receives the prior approval of the zoning board of appeals. Under this paragraph a homeowner may only have one homestead in the City of Keego Harbor and such homestead must be his sole residence in the city and he must be residing in or have resided therein at time application to enlarge alter or reconstruct is applied for.

### **SECTION 12.04 - REPAIRS AND MAINTENANCE**

On any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding fifty (50) percent of the assessed value of the building, providing that the cubic content of the building as it existed at the time of passage or amendment of this Ordinance shall not be increased. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

### **SECTION 12.05 - USES UNDER EXCEPTION PROVISIONS NOT NONCONFORMING USES**

Any use which is listed as a Principal Use Permitted Subject to Special Conditions in this Ordinance shall be deemed a conforming use.

### **SECTION 12.06 - CHANGE OF TENANCY OR OWNERSHIP**

There may be a change of tenancy, ownership or management of any existing nonconforming uses of land, structures and premises provided there is no change in the nature or character of such nonconforming uses.

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### **SECTION 12.07 - CITY REMOVAL OF NONCONFORMING USES AND/OR STRUCTURES**

The City may acquire by purchase, condemnation, or otherwise, private property for the removal of nonconforming uses and/or structures provided that said property shall not be used for public housing. Pursuant thereto, the Council may, in its discretion, provide that the cost and expense of acquiring such property be paid from General Funds, or the cost and expense or any portion thereof be assessed to a special district.

### **SECTION 12.08 - NONCONFORMING LOTS OF RECORD**

When the owner of a nonconforming lot of record does not own or cannot reasonably acquire sufficient abutting land to enable him to conform to the requirements of this Ordinance relating to minimum lot area, minimum lot width, or both, such lots of record may be used by such owner as building site provided that all of the requirements of this Ordinance are met, and provided that not more than one dwelling unit shall occupy any lot except in conformity with the provisions of this Ordinance for required lot area for each dwelling unit.

If two (2) or more lots or combination of lots and portions of lots with continuous frontage in single ownership are recorded at the time of passage or amendment of this Ordinance, and if all or part of such lots do not meet the requirements of the SCHEDULE OF REGULATIONS AND FOOTNOTES for lot width and area, the lands involved shall be considered to be a single undivided lot for building permit purposes of this Ordinance, and no portion of said lot shall be used or sold in any manner which diminishes compliance with lot width, yard, and area requirements established by this Ordinance, nor shall any division of any lot be made which creates a lot width, yard, or area less than the requirements stated in the Ordinance. These same provisions shall apply to platted and unplatted lots or parcels.

When two or more abutting or contiguous lots (one or more of which is/are nonconforming in width or area) are of record and in single ownership as of the effective date of this Ordinance and each is occupied by a principal structure (as of the effective date of this Ordinance) the two or more abutting lots shall be deemed as nonconforming lots of record under this ordinance.