

CHAPTER 1137
Conditional Uses And Substantially Similar Uses

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1137.01 PURPOSE.

(a) Until recent years, the regulation of all uses of land and structures through zoning has been accomplished by assigning each use to one (1) or more use districts. However, the functions and characteristics of an increasing number of new kinds of land use combined with conclusive experience regarding some of the older, familiar kinds of uses call for a more flexible and equitable procedure for properly accommodating these activities in the community. It should be recognized that the forces that influence decisions regarding the nature, magnitude, and location of such types of land use activities are many and varied, depending upon functional characteristics, competitive situations, and the availability of land. Rather than assign all uses to special, individual and limited zoning districts, it is important to provide controllable and reasonable flexibility for the investor, but at the same time, maintain adequate provisions for the security of the health, safety, convenience and general welfare of the community's inhabitants.

(b) In order to accomplish such a dual objective, provision is made in this Ordinance for a more detailed consideration of each of certain specified activities as it may relate to proposed conditions of location, design, size, operation, intensity of use, generation of traffic and traffic movements, concentration of population, processes and equipment employed, amount and kind of public facilities and services required, together with any other public facilities and services required, and other possible factors. Land and structure uses possessing these particularly unique characteristics are designated as conditionally permitted uses and are permitted through the issuance of a conditional zoning certificate with such conditions and safeguards attached as may be deemed necessary for the protection of the public welfare.

1137.02 CONTENTS OF CONDITIONAL ZONING CERTIFICATE APPLICATION.

Any owner, or agent thereof, of property for which a conditional use is proposed shall make an application for a conditional zoning certificate by filing it with the Zoning Inspector, who shall within 7 days transmit it to the Village Planning Commission. Such application at a minimum shall contain the following information:

- (a) Name, address and phone number of the applicant(s).
- (b) Legal description of the property.
- (c) Zoning district.
- (d) Description of existing use.
- (e) Description of proposed conditional use.
- (f) A site plan, plot plan or development plan of the entire property being considered, drawn to a reasonable scale and showing the location of all existing and proposed buildings, parking and loading areas, streets and traffic accesses, open spaces, refuse and service areas, utilities, signs, yards, landscaping features, and such other information as the Planning Commission may require.
- (g) Complete construction plans and specifications for all proposed development as deemed necessary by the Planning Commission.
- (h) A list containing the names and mailing addresses of all owners of property within 500 feet of the property being considered.
- (i) A base fee of \$50.00, and when the Planning Commission finds it necessary to cause special studies to be made, the applicant shall bear all direct and related costs.
- (j) A narrative statement substantiating evidence regarding the requirements enumerated in Section 1137.09 below.

1137.03 PUBLIC HEARING.

The Village Planning Commission shall hold a public hearing within 30 days after it receives an application for a conditional zoning certificate submitted by an applicant through the Zoning Inspector.

1137.04 NOTICE OF PUBLIC HEARING.

Before conducting the public hearing required in Section 1137.03, notice of such hearing shall be given in one (1) or more newspapers of general circulation in the Village at least 10 days before the date of said hearing. The notice shall set forth the time and place of the hearing, and shall provide a summary explanation of the conditional use proposed.

1137.05 NOTICE TO PARTIES OF INTEREST.

Prior to conducting the public hearing required in Section 1137.03, written notice of such hearing shall be mailed by the Village Clerk, by first class mail, at least 10 days before the date of the hearing to all parties of interest, to include all property owners listed in the application. The notice shall contain the same information as required in Section 1137.04 for notices published in newspapers.

1137.06 ACTION BY PLANNING COMMISSION.

Within 30 days after the date of the public hearing required in Section 1137.03, the Planning Commission shall take one of the following actions:

- (a) Approve issuance of the conditional zoning certificate by making an affirmative finding in writing that the proposed conditional use is to be located in a district wherein such use may be conditionally permitted, that all conditions for approval of such use in such district have been met, and that such use will neither result in significant negative impacts upon nor conflict with surrounding uses. Such written finding may also prescribe supplementary conditions and safeguards as specified in Section 1137.07. Upon making an affirmative finding, the Planning Commission shall direct the Zoning Inspector to issue a conditional zoning certificate for such use which shall list all conditions and safeguards specified by the Planning Commission for approval.
- (b) Make a written finding that the application is deficient in information or is in need of modification and is being returned to the applicant. Such finding shall specify the information and/or modifications which are deemed necessary.
- (c) Make a written finding that the application is denied, such finding specifying the reason(s) for disapproval.

If an application is disapproved by the Planning Commission, the applicant may then seek relief through an appeal to Village Council. If Village Council does not provide satisfactory relief by adopting an amendment or repealing the provision of the zoning ordinance, the applicant may seek relief through the Court of Common Pleas. Appeals from Planning Commission decisions shall be made in the manner specified in Section 1145.11.

1137.07 SUPPLEMENTARY CONDITIONS AND SAFEGUARDS.

In granting approval for any conditional use, the Planning Commission may prescribe appropriate conditions and safeguards in conformance with this Ordinance. Any violation of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be punishable under Section 1149.14.

1137.08 EXPIRATION OF CONDITIONAL ZONING CERTIFICATE.

A conditional zoning certificate shall be deemed to authorize only one (1) particular conditional use, and said certificate shall automatically expire if such conditionally permitted use has not been instituted or utilized within one (1) year of the date on which the certificate was issued, or if for any reason such use shall cease for more than two (2) years.

1137.09 GENERAL STANDARDS FOR ALL CONDITIONAL USES.

In addition to the specific requirements for conditionally permitted uses as specified in Section 1137.10, the Village Planning Commission shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use on the property being considered:

- (a) Is in fact a conditional use as established under the provisions of Section 1113.02 et seq., and appears on the Official Schedule of District Regulations adopted for the zoning district involved.
- (b) Will be harmonious with and in accordance with the general objectives or with any specific objectives of the McClure Comprehensive Plan when adopted.
- (c) Will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the same area.
- (d) Will not be hazardous or disturbing to existing or future neighboring uses.
- (e) Will not be detrimental to property in the immediate vicinity or to the community as a whole.
- (f) Will be served adequately by essential public facilities and service such as highways, streets, police and fire protection, drainage structures, refuse disposal, schools; or that persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service.
- (g) That all included structures, roads and utilities shall be in compliance with the Village of McClure Subdivision Regulations, the Board of Public Affairs and the Village Building Code.
- (h) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets or roads.

1137.10 SPECIFIC REQUIREMENTS FOR CONDITIONAL USES.

The following are specific requirements and criteria for conditional uses permitted in this Ordinance as provided for in Section 1113.02 et seq.: Official Schedule Of District Regulations. Nothing in this Section shall prohibit the Planning Commission from prescribing supplementary conditions and safeguards in addition to these requirements in accordance with Chapter 1117.

- (a) In the case of group housing or other multi-family dwelling structures the lot size and lot frontage requirements may be reduced provided that the net residential population density will not exceed that indicated in the "Purpose" of that district in which the proposed group housing district is to be located.
- (b) All structures, except minor structures such as utility poles and meters, and activity areas shall be located at least 25 feet from all property lines.
- (c) Loud speakers which cause a hazard or annoyance shall not be permitted.
- (d) Recreational facilities shall be provided as deemed necessary in the opinion of the Planning Commission.
- (e) All points of entrance or exit shall be located no closer than 100 feet from the intersection of two streets.
- (f) There shall be no more than one (1) directional advertisement oriented to each abutting road identifying the activity.
- (g) No lighting shall constitute a nuisance and shall in no way impair safe movement of traffic on any street or highway.
- (h) Such use shall not require costly or uneconomical extensions of utility services at the expense of the community.
- (i) All site plans for group housing developments and apartment houses shall be approved by the Planning Commission.

- (j) All permitted installations shall be maintained in a neat, orderly condition so as to prevent injury to any single property, any individual or to the community in general.
- (k) Garage, Service Station:
 - (1) Provided that such facilities be located at the extremity of the business district so as not to interfere with the pedestrian interchange between stores in the district, and provided further that it would not limit expansion of the pedestrian oriented facilities.
 - (2) That such facilities shall be for the purpose of servicing motor vehicles under one and one-half (P12) tons rated capacity including the dispensing of fuel and lubricants, cooling system and ignition service, sale and installation of batteries, lamps, fan belts, spark plugs, tires and accessories not requiring a change in the chassis, body or engine of the vehicle and the repairing of flat tires.
 - (3) That all activities, except those required to be performed at the fuel pumps, and car washing shall be carried on inside a building; if work is performed on a vehicle, such vehicle shall be entirely within a building.
 - (4) That no more than two (2) driveway approaches shall be permitted directly from any thoroughfare, each of which shall not exceed 30 feet in width at the property line. If the property fronts on two (2) or more streets, the driveways shall be located as far from the street intersection as practical, but in no case shall the driveway be closer than 30 feet from the right-of-way line of the intersecting street.

At least a six inch high pedestrian safety curb shall be installed along all street lines except at driveway approaches.
- (l) Mobile Home Parks.
 - (1) Each boundary of the park must be at least 200 feet from any permanent residential building outside the park, unless separated therefrom by a natural or artificial barrier.
 - (2) The park shall be graded to be well drained.
 - (3) Trailer spaces shall be a minimum of 4,000 square feet for each space and at least 50 feet wide and clearly defined.
 - (4) There shall be at least a 20 foot clearance between trailers. No trailer shall be closer than 20 feet from any building within the park or 10 feet from any property line bounding the park.
 - (5) All trailer spaces shall abut upon a driveway of not less than 34 feet in pavement width, which shall have unobstructed access to a public thoroughfare. All paving shall meet the requirements of Henry County street standards and lighted at night with electric lamps of not less than 2,000 lumens spaced at intervals of not more than 120 feet. Lighting shall be shielded so as to direct light on to the roads.
 - (6) All trailers shall have a minimum width of 8 feet and a minimum floor area of 400 square feet.

- (7) Each park may provide service buildings to house laundry, storage facilities and offices. Walkways not less than 3 feet wide and paved shall be provided from the trailer spaces to the service buildings. A central vehicle parking area shall be provided to supply off-street parking at a ratio of one (1) space for each three (3) trailer spaces.
- (8) An electric outlet supplying at least 220 volts shall be provided for each trailer space.
- (9) Each trailer space shall be provided a water tap to supply pure and adequate water for drinking and domestic purposes.
- (10) Each trailer space shall be provided a sewer tap at least six (6) inches in diameter which connects with a centralized disposal system.
- (11) Adequate garbage and rubbish cans shall be provided not further than 300 feet from any trailer space.
- (12) An open space recreation area shall be provided within the boundaries of the trailer park. The size of the area shall be one (1) acre for the first 10 trailer spaces plus 1/20 of an acre for each additional trailer space in the park.
- (13) Each park shall be equipped at all times with adequate fire extinguishing equipment as determined by the fire prevention officer.
- (14) Keeping of pets must comply with the regulations of the Village.
- (15) The operator of the park, or a duly authorized attendant or caretaker shall be in charge at all times to keep the trailer park, its facilities and equipment in a clean and sanitary condition and free from any condition that will menace the health of any occupant or the public or constitute a nuisance.

1137.11 CONTINUATION OF EXISTING USE CONDITIONALLY PERMITTED.

All existing uses that become conditionally permitted in their respective district at the time of passage or amendment of this Ordinance, shall be issued a conditional zoning certificate within 60 days of said passage or amendment. This provision shall apply only to commercial and industrial uses. The certificate shall be issued by the Zoning Inspector.

1137.12 PROCEDURE AND REQUIREMENTS TO DETERMINE THAT A USE IS SUBSTANTIALLY SIMILAR.

(a) Where a specific use is proposed that is not listed in this Ordinance as provided for in Section 1113.02: Official Schedule Of District Regulations, the Planning Commission may make a determination, upon appeal, that the proposed use is substantially similar to a specific use that is listed or provided for in the Official Schedule of District Regulations. If the Commission finds that a use is substantially similar to a specific use listed in this Ordinance, the substantially similar use is deemed to be a substantially similar permitted use in those districts where the specific use is a permitted use, and a substantially similar conditional use in those districts where the specific use is a conditionally permitted use.

(b) In formulating a determination that a proposed use is a substantially similar use, the Commission shall follow the procedures relating to appeals and variances as specified in Chapter 1133. Upon making a determination that a proposed use is substantially similar, the Commission shall notify the Village Council of its decision and shall include in its written findings the reasoning upon which the decision is based. Unless the decision is rejected within 30 days of its receipt by the Village Council, such substantially similar use determination by the Commission shall become effective.

1137.13 REMEDY BY APPLICANT FOR AMENDMENT.

If the Commission determines that a proposed use is not substantially similar, such determination shall not be appealed to the Village Council, but remedy may be sought by the appellant through the submission of an application for amendment as prescribed in Sections 1141.04 and 1141.05.

1137.14 STANDARDS FOR CONSIDERATION OF SUBSTANTIALLY SIMILAR USES.

The following standards shall be considered by the Commission when making a determination that a use is substantially similar to a permitted or a conditional use within a specific district.

- (a) The compatibility of the proposed use with the general use classification system as specified in this Ordinance.
- (b) The nature, predominant characteristics, and intensity of the proposed use in relation to those uses specified by this Ordinance as being permitted, or in the case of a conditional use, conditionally permitted, in that district.
- (c) The size, dimensional requirements, parking requirements, traffic generation potential, and other regulatory considerations normally associated with uses as specified in this Ordinance.

1137.15 EFFECT OF DETERMINATION THAT A USE IS SUBSTANTIALLY SIMILAR.

Should a use be determined to be substantially similar to a specific permitted or conditionally permitted use provided for in this Ordinance, it shall then be permitted in the same manner and under the same conditions and procedures as the use is permitted to which it has been found to be substantially similar.

1137.16 RECORD OF SUBSTANTIALLY SIMILAR USES.

The Zoning Inspector shall maintain as a public record a listing of all uses which have been determined to be substantially similar. For each such use, the record shall include the use as listed in the Ordinance, the use unlisted in the Ordinance about which the determination of substantial similarity was made, and the dates of any actions thereupon by the Planning Commission or the Village Council. This record shall also contain the same information for all uses which have been determined not to be substantially similar. The Zoning Inspector shall consult this record in the process of issuing future permits.