

CHAPTER 28

CONDITIONAL REZONING

SECTION 28.01 INTENT. It is recognized that there are certain instances where it could be in the best interests of the Township, as well as advantageous to property owners seeking a change in zoning boundaries, when certain conditions are voluntarily proposed by property owners as part of a request for a rezoning. It is the intent of this Section to provide a process consistent with the provisions of Section 405 of the Michigan Zoning Enabling Act, as amended, by which an owner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request.

SECTION 28.02 APPLICATION AND OFFER OF CONDITIONS.

- (a) An owner of land may voluntarily offer conditions in writing relating to the use and/or development of land for which a rezoning is requested. This offer may be made either at the time the application for rezoning is filed or may be made at a later time during the rezoning process.
- (b) The required application and process for considering a rezoning request with conditions shall be the same as that for considering rezoning requests made without any offer of conditions, except as modified by the requirements of this Section.
- (c) The owner's offer of conditions may not purport to authorize uses or developments not permitted in the requested new zoning district.
- (d) Any use or development proposed as part of an offer of conditions that would require a special land use permit under the terms of this Ordinance may only be commenced if a special land use permit for such use or development is ultimately granted in accordance with the provisions of this Ordinance.
- (e) Any use or development proposed as part of an offer of conditions that would require a variance under the terms of this Ordinance may only be commenced if a variance for such use or development is ultimately granted by the Zoning Board of Appeals in accordance with the provisions of this Ordinance.
- (f) Any use or development proposed as part of an offer of conditions that would require site plan approval under the terms of this Ordinance may only be commenced if site plan approval for such use or development is ultimately granted in accordance with the provisions of this Ordinance.
- (g) The offer of conditions may be amended during the process of rezoning consideration provided that any amended or additional conditions are entered voluntarily by the owner. An owner may withdraw all or part of its offer of conditions any time prior to final rezoning action of the Township Board provided that, if such withdrawal occurs subsequent to the Planning Commission's public hearing on the original rezoning request, then the rezoning application shall be referred to the Planning Commission for a new public hearing with appropriate notice and a new recommendation.

SECTION 28.03 PLANNING COMMISSION REVIEW. The Planning Commission, after public hearing and consideration of the factors for rezoning set forth in Chapter 33 of this Ordinance, may recommend approval, approval with recommended changes or denial of the

rezoning; provided, however, that any recommended changes to the offer of conditions are acceptable to and thereafter offered by the owner.

SECTION 28.04 TOWNSHIP BOARD REVIEW. After receipt of the Planning Commission's recommendation, the Township Board shall deliberate upon the requested rezoning and may approve or deny the conditional rezoning request. The Township Board's deliberations shall include, but not be limited to, a consideration of the factors for rezoning set forth in Chapter 28 of this Ordinance. Should the Township Board consider amendments to the proposed conditional rezoning advisable and if such contemplated amendments to the offer of conditions are acceptable to and thereafter offered by the owner, then the Township Board may, in accordance with Section 401 of the Zoning Enabling Act, refer such amendments to the Planning Commission for a report thereon within a time specified by the Township Board and/or otherwise proceed in accordance with said statute to deny or approve the conditional rezoning with or without amendments.

SECTION 28.05 APPROVAL.

- (a) If the Township Board finds the rezoning request and offer of conditions acceptable, the offered conditions shall be incorporated into a formal written "Statement of Conditions" acceptable to the owner and conforming in form to the provisions of this Section. The "Statement of Conditions" shall be incorporated by attachment or otherwise as an inseparable part of the ordinance adopted by the Township Board to accomplish the requested rezoning.
- (b) The Statement of Conditions shall:
 - (1) Be in a form recordable with the Allegan County Register of Deeds or, in the alternative, be accompanied by a recordable Affidavit or Memorandum prepared and signed by the owner giving notice of the Statement of Conditions in a manner acceptable to the Township Board.
 - (2) Contain a legal description of the land to which it pertains.
 - (3) Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land.
 - (4) Incorporate by attachment or reference any diagram, plans or other documents submitted or approved by the owner that are necessary to illustrate the implementation of the Statement of Conditions. If any such documents are incorporated by reference, the reference shall specify where the document may be examined.
 - (5) Contain a statement acknowledging that the statement of conditions or an affidavit or memorandum giving notice thereof may be recorded by the Township with the Allegan County Register of Deeds.
 - (6) Contain the notarized signatures of all of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provisions contained within the Statement of Conditions.
- (c) Upon the rezoning taking effect, the Zoning Map shall be amended to reflect the new zoning classification along with a designation that the land was rezoned with a Statement of Conditions. The Township Clerk shall maintain a listing of all lands rezoned with a Statement of Conditions.

- (d) The approved Statement of Conditions or an affidavit or memorandum giving notice thereof shall be filed by the Township and with the Allegan County Register of Deeds. The Township Board shall have authority to waive this requirement if it determines that, given the nature of the conditions and/or the time frame within which the conditions are to be satisfied, the recording of such a document would be of no material benefit to the Township or to any subsequent owner of the land.
- (e) Upon the rezoning taking effect, the use of the land so rezoned shall conform thereafter to all of the requirements regulating use and development within the new zoning district as modified by any more restrictive provisions contained in the Statement of Conditions.

SECTION 28.06 COMPLIANCE WITH CONDITIONS.

- (a) Any person who establishes a development or commences a use upon land that has been rezoned with conditions shall continuously operate and maintain the development or use in compliance with all of the conditions set forth in the Statement of Conditions. Any failure to comply with a condition contained within the Statement of Conditions shall constitute a violation of this Zoning Ordinance and be punishable accordingly. Additionally, any such violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law.
- (b) No permit or approval shall be granted under this Ordinance for any use or development that is contrary to an applicable Statement of Conditions.

SECTION 28.07 TIME PERIOD FOR ESTABLISHING DEVELOPMENT OR USE.

Unless another time period is specified in the Ordinance rezoning the subject land, the approved development and/or use of the land pursuant to building and other required permits must be commenced upon the land within 18 months after the rezoning takes effect and thereafter proceed diligently to completion. This time limitation may upon written request be extended by the Township Board if (1) it is demonstrated to the Township Board's reasonable satisfaction that there is a strong likelihood that the development and/or use will commence within the period of extension and proceed diligently thereafter to completion and (2) the Township Board finds that there has not been a change in circumstances that would render the current zoning with Statement of Conditions incompatible with other zones and uses in the surrounding area or otherwise inconsistent with sound zoning policy.

SECTION 28.08 REVERSION OF ZONING. If the approved development and/or use of the rezoned land does not occur within the time frame specified under Section 28.07 above, then the land shall revert to its former zoning classification as set forth in Section 405 of the Zoning Enabling Act, as amended. The reversion process shall be initiated by the Township Board requesting that the Planning Commission proceed with consideration of rezoning of the land to its former zoning classification. The procedure for considering and making this reversionary rezoning shall thereafter be the same as applies to all other rezoning requests.

SECTION 28.09 SUBSEQUENT REZONING OF LAND.

When land that is rezoned with a Statement of Conditions is thereafter rezoned to a different zoning classification or to the same zoning classification but with a different or no Statement of Conditions, whether as a result of a reversion of zoning pursuant to Section 28.08 above or otherwise, the Statement of Conditions imposed under the former zoning classification shall

cease to be in effect. Upon the owner's written request, the Township Clerk shall record with the Allegan County Register of Deeds a notice that the Statement of Conditions is no longer in effect.

SECTION 28.10 AMENDMENT OF CONDITIONS. During the time period for commencement of an approved development or use specified pursuant to Section 28.07 above or during any extension thereof granted by the Township Board, the Township shall not add to or alter the conditions in the Statement of Conditions.

The Statement of Conditions may be amended thereafter in the same manner as was prescribed for the original rezoning and Statement of Conditions.

SECTION 28.11 TOWNSHIP RIGHT TO REZONE. Nothing in the Statement of Conditions nor in the provisions of this Section shall be deemed to prohibit the Township from rezoning all or any portion of land that is subject to a Statement of Conditions to another zoning classification. Any rezoning shall be conducted in compliance with this Ordinance and the Michigan Zoning Enabling Act, as amended.

SECTION 28.12 FAILURE TO OFFER CONDITIONS. The Township shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect an owner's rights under this Ordinance.

Eff. 12-28-11

CHAPTER 29 RESERVED FOR FUTURE USE