

ARTICLE 36

CONDITIONAL REZONING

SECTION 36.01. Intent

The Township recognizes that in certain instances, it is advantageous to the Township and to property owners seeking rezoning if the application for rezoning is accompanied by a site plan and is subject to certain conditions. Accordingly, it is the intent of this Section to implement the provisions of Michigan Zoning Enabling Act (Public Act 110 of 2006, as amended), authorizing an owner to voluntarily offer and a township to approve, certain use and development of land as a condition to the rezoning of such land (“Conditional Rezoning”). It is the intent of the Township that a petition for Conditional Rezoning be considered only in the event that the conditions offered by the petitioner are voluntary, and are adequate, in the opinion of the Township, to address any otherwise potentially negative effects of the rezoning on the health, safety, general welfare, and comfort of the residents of the abutting property, neighborhood and Township.

SECTION 36.02. Definitions

For purposes of this Section, these terms shall be defined as follows:

- A. Conditional Rezoning Agreement.** An agreement between the property owner and the Township setting forth the terms and conditions of the Conditional Rezoning, as offered by property owner and approved by the Township, which agreement shall be executed by both parties, and recorded in the Oakland County property records. The agreement shall specifically include an acknowledgement that the terms and conditions contained therein shall be binding covenants, as set forth below.
- B. Conditional Rezoning Plan.** A plan for re-zoning of a property, subject to certain conditions proposed by the property owner, including legal descriptions, drawings and narrative descriptions of the proposed development, and a timetable, as set forth below.

SECTION 36.03. Eligibility

The following conditions of eligibility shall apply to a petition for Conditional Rezoning (“Petition”):

- A.** A Petition may be submitted only by the owner of the land proposed for rezoning. The owner shall attest to his authority to subject the land to the conditions offered, by execution and recordation of such conditions, covenants, and restrictions as may be required to legally and permanently bind the owner, its heirs, assigns, and successors in interest. The Petition shall be accompanied by a Title Insurance Commitment showing title in the name of Petitioner(s).
- B.** A Petition may be considered for land in any zoning district, for rezoning to any other zoning district, provided such rezoning shall meet or exceed the Minimum Standards set forth below.

- C. A Petition shall propose a rezoning of the land to a new zoning classification, and shall, as part of such proposal, include certain voluntary site-specific development and/or use conditions materially restricting the development and/or uses otherwise allowable under the proposed new zoning classification. The petition shall not propose any development and/or use not otherwise allowable under the proposed new zoning classification
- D. A Conditional Rezoning Plan shall be considered by the Township Board only in conjunction with approval, on recommendation of the Planning Commission and the Township Attorney, of a corresponding Conditional Rezoning Agreement.
- E. Approval of the Conditional Rezoning Plan and Agreement shall effect the rezoning of the property, subject to the conditions imposed therein, and subject to such site plan, special land use, plat, and/or condominium approvals as may be required.

SECTION 36.04. Minimum Standards

A Petition shall be considered for approval only when it is determined by the Township, in its sole discretion, that the Conditional Rezoning meets or exceeds the following minimum standards:

- A. The proposed rezoning will benefit the public interest, such that the expected benefits of the rezoning, subject to the conditions offered, clearly outweigh any reasonably foreseeable detriment.
- B. The proposed rezoning shall include conditions sufficient to assure the integration of the proposed development and use with the surrounding land uses and to protect the public health, safety, and welfare.
- C. The specific uses proposed in conjunction with the rezoning do not adversely affect the public utility or traffic systems, drainage or the environment.

SECTION 36.05. Permitted Conditions and Limitations

The following conditions of use and/or development of the land proposed for rezoning may be included in the petition for Conditional Rezoning, provided such conditions are voluntarily proposed by the petitioner; are in response to, and roughly proportionate to, the impacts of the proposed development and use of the property; and otherwise satisfy the conditions and standards set forth above:

- A. Conditions detailing the permitted uses of the development.
- B. Conditions on the location, size, height, or other physical characteristics of any structures or improvements proposed for development on the land.
- C. Conditions limiting the density of development or the intensity of the use, including but not limited to the specific types of uses and hours of operation, of the land proposed for rezoning.

- D. Conditions related to drainage, water and sewer capacity and quality, and adequacy and effect on other public utilities in the area.
- E. Conditions related to traffic volume, flow, and management affected by the proposed development and use.
- F. Conditions related to the preservation of natural features, resources, open space, and buffers located on, or impacted by development of the land proposed for rezoning, including provisions to assure permanent maintenance of the same.
- G. Such other conditions as may be deemed important to the development and to the protection of public interests.

SECTION 36.06. Conditional Rezoning Petition and Review Process

Subject to the criteria for eligibility and standards set forth above, a Petition may, at the sole election of the petitioner, voluntarily offer any conditions and/or limitations on the development and/or use of the land proposed for rezoning, as set forth above. Such Petition shall be entitled a Petition for Conditional Rezoning, and shall be subject to the review procedures, requirements, and approvals set forth herein.

A. Petition Requirements.

The Petition for Conditional Rezoning shall contain or be accompanied by:

1. A Conditional Rezoning Plan for development and use drafted by an architect or engineer, which plan shall include drawings and descriptions in sufficient detail for the Planning Commission to identify areas of potential concern in the proposed development and use of the land and to preliminarily evaluate the adequacy of the proposed conditions to address those concerns. The Conditional Rezoning Plan shall not replace the requirement for site plan, special land use, subdivision, or condominium approval as applicable, but shall, generally, contain those provisions required by Article 35.
2. A narrative description of the proposed development and use, and all proposed conditions and limitations thereon.
3. A narrative analysis of the anticipated impact of the proposed development and use on the community, as well as the relationship of proposed conditions and limitations to these anticipated impacts. Such analysis shall include a review of surrounding zoning classifications, adequacy of existing and proposed infrastructure, utilities, and services, traffic volume and flow, access management, air quality, noise levels, and other related factors affecting the health, safety and welfare of the community.
4. A proposed timetable for completion of the development.
5. A legal description of the land to which it pertains.

- B. Fees.** The Petition shall also be accompanied by the fees set forth in the Charter Township of Commerce Fee Ordinance, which fees shall be sufficient to defray the costs of the review of the Petition by the Planning Commission, and the expenses incurred by the Township for consultant review, drafting, publication, hearings, recordation, and other related expenses.
- C. Preliminary Conference.** On receipt of a Petition that meets the requirements of Article 36, the Planning Director shall schedule a preliminary conference with the petitioner, the Township Supervisor, and the Township Attorney, to determine the eligibility of the petition and the validity of the conditions for rezoning.
- D. Optional Preliminary Review.** Following a determination of eligibility, the Petition may be forwarded for preliminary review by the Planning Commission. If requested by the petitioner, the Planning Commission shall review the Petition and informally address any concerns relative to the development or use proposed in the Petition. No opinion expressed by the Planning Commission shall be construed as an approval, or guarantee of approval, of the rezoning.
- E. Formal Planning Commission Review.** Upon completion of the preliminary conference and optional preliminary review, if elected, a Petition meeting the petition and eligibility requirements shall be submitted to the Planning Commission for formal consideration pursuant to Article 3. Following notice and a hearing in accordance with M.C.L. §125.3103 *et. seq.*, the Planning Commission shall complete its review of the Petition, and shall report its findings of fact along with its recommendations to the Township Board.
- F. Conditional Rezoning Agreement.** Upon favorable recommendation of the Planning Commission, the Township Attorney shall draft a Conditional Rezoning Agreement meeting the requirements of this Ordinance and setting forth the conditions and limitations proposed by the petitioner. The Conditional Rezoning Agreement shall be executed by the petitioner and forwarded to the Township Board for consideration along with the findings and recommendations of the Planning Commission.
- G. Township Board Review.** Upon receipt of the Planning Commission's recommendations to the Township Board, and the proposed Conditional Rezoning Agreement executed by the petitioner, the Petition for rezoning shall be scheduled for consideration by the Township Board. Based on the findings of fact reported by the Planning Commission, and approval of the Conditional Rezoning Agreement by the Township Attorney, the Township Board may, in its sole discretion, and based upon the standards set forth in herein, approve or deny the petition. The Township Board shall state its decision along with the basis for the decision on the record.

SECTION 36.07. Conditional Rezoning Agreement

The Conditional Rezoning Agreement shall be prepared by the Township Attorney in consultation with the petitioner. The Agreement shall include, but shall not be limited to, the following recitations.

- A. Authority.** That the petitioner has the authority to request, and to submit the land to, the rezoning.
- B. Voluntary Conditions.** That the petitioner acknowledges that the conditions of rezoning are offered voluntarily by the petitioner and that all conditions and limitations are in response to, and roughly proportionate to, the impacts of the proposed development and use of the property.
- C. Time Period.** That failure of the petitioner to satisfy the conditions and requirements of development within the time period set forth therein shall constitute a breach of the Agreement, which breach shall result in a reversion to the former zoning classification, unless the Township Board agrees in writing to extend the time period. The Township Board may extend the time period 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 conditional rezoning incompatible with other zones and uses in the surrounding area or otherwise inconsistent with sound zoning policy. In the event of an extension, reversion shall occur if all conditions and requirements are not satisfied within the agreed upon extended time period.
- D. Binding Covenants.** That the Agreement touches and concerns the rezoned land and that the petitioner intends that the covenants and restrictions contained therein shall run with the land and shall be binding on petitioner's heirs, assigns, and successors in interest.
- E. Reversion.** That any breach of the Agreement by the petitioner, or by its heirs, assigns or successors in interest, or any other act or event resulting in the Agreement becoming void, shall, at the discretion of the Township, void the rezoning, and result in a suspension of any and all rights to development and use until such time as a new zoning classification is established for the land. That any such breach or act shall not void the terms and conditions of the Agreement relative to the costs of the rezoning, or to the mechanisms for enforcement of the Agreement.

SECTION 36.08. Implementation and Enforcement

Following approval of a Conditional Rezoning by the Township Board, the Township shall implement and enforce the rezoning pursuant to the terms of the Zoning Ordinance, and shall also provide notice and monitor compliance as follows:

- A. Zoning Map.** The zoning map shall be amended to indicate the new zoning, along with a notation that the zoning is "Conditional." The new zoning classification shall govern development and use of the land, subject to all terms and conditions contained in the Conditional Rezoning Agreement.

- B. Conditional Rezoning Agreement.** The Township Attorney shall oversee recordation of the Conditional Rezoning Agreement in the offices of the Register of Deeds of Oakland County.
- C. Enforcement.** The Planning Director shall review all development and use of the property for compliance with the new zoning classification, subject to the terms and conditions of the Conditional Rezoning Agreement. Any development or use of the land in violation of the terms and conditions of the Rezoning Agreement, or of the new zoning classification, shall, in the sole discretion of the Township Board, result in reversion to the zoning classification applicable just prior to the Conditional Rezoning. Reversion shall be accomplished in accordance with Article 3, except that the findings of fact necessary to support reversion shall be limited to those evidencing a breach of the Conditional Rezoning Agreement. Upon rezoning following a breach of the Conditional Rezoning Agreement, the property shall be returned to a state of compliance with the Zoning Classification and Ordinance provisions then applicable.