

## **Section 24.04      Conditional Rezoning**

A. **Intent.** There may be certain instances where it would be in the best interests of the Township, as well as advantageous to the property owner to request a change in zoning boundaries if certain conditions are proposed by the property owner as part of the rezoning request. It is the intent of this Section to provide a process and procedure for conditional rezoning consistent with the provisions of Section 405 of the Michigan Zoning Enabling Act (MZEA) (MCL 125.3405) 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. This option shall apply site planning criteria to achieve integration of the development project into the fabric of the project area.

B. **Application and Offer of Conditions.**

1. An owner of land may voluntarily offer, in writing, conditions 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 at a later time during the rezoning process prior to the public hearing.
2. 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. All of the application materials required by Section 24.03.B shall be submitted for a conditional rezoning in addition to any other materials described in this Section. The required procedure for a conditional rezoning shall be the same as a conventional rezoning, as provided in Section 24.03 except as modified in this Section.
3. The owner's offer of conditions may not purport to authorize uses or densities not permitted in the requested new zoning district.
4. A conditional rezoning plan (CR plan), drawn to scale, shall be submitted with the conditional rezoning application. The CR plan shall provide the location, size, height, design, architecture, and other measures and features of buildings, structures, and improvements on, and in some cases adjacent to, the subject property. The detail to be offered for inclusion on a CR plan shall be determined by the applicant, subject to review and approval by the Planning Commission and Township Board. The CR plan shall be used to communicate the site specific conditions in the Statement of Conditions and shall be attached by reference to the final rezoning agreement. The CR plan shall not replace the subsequent requirements for site plan, subdivision, or other similar zoning review and approvals.
5. Any use or development proposed as part of an offer of conditions that would require a Special Exception Use Permit under the terms of this Ordinance may only be commenced if a Special Exception Use Permit for such use or

development is ultimately granted in accordance with the provisions of Article 16 of this Ordinance. Review of the Special Exception Use Permit should occur subsequent to the review of the rezoning.

6. Any 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 development is ultimately granted in accordance with the provisions of Article 23 of this Ordinance. Review of the Variance should occur subsequent to the review of the rezoning.
7. 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 amendment 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.

C. **Planning Commission Review.** The Planning Commission, after holding a public hearing and consideration of the factors for rezoning set forth in Section 24.03.E 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.

1. Prior to Planning Commission consideration, the proposed conditional rezoning application and associated materials shall be forwarded to Township officials and staff for preliminary review and comment. If it is determined that the application is not complete, then the applicant shall be contacted to inform them of the additional information that is required.
2. If deemed necessary by the Zoning Administrator or Planning Commission, the proposed application shall be forwarded to the Township Board, Township consultants, and/or other applicable outside agencies for further review, recommendation, and advice, with any additional costs borne by the applicant.
3. **Public Hearing.** The conditional rezoning application shall be placed on the agenda for Planning Commission review and scheduled for a public hearing according to the notice requirements and procedures of Section 24.03.E above.
4. **Action by the Planning Commission.** Following the hearing on the proposed amendment, the Planning Commission shall within a reasonable time, make findings of fact based on the review criteria in Section 24.03E. It shall transmit these findings to the Township Board, together with the comments made at the public hearing and its recommendation.

D. **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, in accordance with the procedures in Section 24.03.C. The Township Board's deliberations shall include, but not be limited to, a consideration of the factors for rezoning set forth in Section 24.03.E 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 refer the proposed amendments to the Planning Commission for consideration and comment within a specified time or may hold an additional public hearing, either of which shall be in compliance with Section 401 of the MZEA (Public Act 110 of 2006, as amended).

E. **Elements of a Conditional Rezoning Application.** The following elements shall be reviewed and approved as an integral part of the conditional rezoning application:

1. **CR Plan.** A Conditional Rezoning Plan (CR Plan), with such detail as proposed by the applicant and approved by the Township Board in accordance with this Section (see B.4 above). The CR Plan shall not replace the requirements for site plan, subdivision or condominium approval, as the case may be.
2. **Rezoning Conditions.** Rezoning conditions, shall not propose uses or development not permitted in the intended zoning district and shall not permit uses or development expressly or implicitly prohibited in the Statement of Conditions. Rezoning conditions may include some or all of the following:
  - a. The location, size, height, and setbacks of buildings, structures, and improvements.
  - b. The maximum density or intensity of development (e.g., units per acre, maximum usable floor area, hours of operation, etc.).
  - c. Measures to preserve natural resources or features.
  - d. Facilities to address storm water drainage and water quality.
  - e. Facilities to address traffic issues, for example, through road paving or other road improvements.
  - f. Open space preservation provisions.
  - g. Minimum landscaping, buffering and screening provisions.
  - h. Added landscaping, above and beyond what is required by the Zoning Ordinance.
  - i. Building design, materials, lighting and sign criteria.

- j. Permissible and prohibited uses of the property.
- k. Provisions to preserve historic farms, barns and other buildings to preserve the history of the Township.
- l. Measures to protect the rural view shed, which is an undeveloped area adjacent to the road right-of-way, having a depth of at least two hundred (200) feet, where existing natural features, such as wetlands, woodlands, hedgerows, undulating landforms, and scenic vistas are preserved and incorporated into the landscape.
- m. Reclamation and reuse of land, where previous use of land has caused severe development difficulties, or has caused blight.
- n. Drainage improvements, beyond what is required by ordinance, using best management practices.
- o. Such other conditions as deemed important to the development by the applicant.

3. **Statement of Conditions.** The Statement of Conditions, which shall be prepared by the applicant (or designee), with the assistance of the Township Planner or Attorney as desired, shall incorporate the CR Plan and set forth the Rezoning Conditions, together with any other terms mutually agreed upon by the parties, including the following terms and requirements:

- a. Agreement and acknowledgement that the conditional rezoning was proposed by the applicant to induce the Township to grant the rezoning, and that the Township relied upon such proposal and would likely not have granted the rezoning but for the terms in the Statement of Conditions.
- b. Agreement and acknowledgement that the conditions and Statement of Conditions are authorized by all applicable state and federal laws and constitution, and that the Statement of Conditions is valid and was entered into on a voluntary basis, representing a permissible exercise of authority by the Township.
- c. Agreement and understanding that the property in question shall not be developed or used in a manner that is inconsistent with the CR Plan and Statement of Conditions.
- d. Agreement and understanding that each of the requirements and conditions in the Statement of Conditions represents a necessary and reasonable measure which, when considered with all other conditions and requirements, is roughly proportional to the increased impact created by

the use represented in the approved conditional rezoning, taking into consideration the changed zoning district classification and the specific use authorization granted.

- e. The Statement of Conditions shall be in a form recordable with the Branch 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.
- f. Contain a legal description of the land to which it pertains.
- g. Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land, unless otherwise agreed upon.
- h. Incorporate by attachment or reference the CR Plan and any other 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.
- i. 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 Register of Deeds of Branch County.
- j. 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.

## **F. Approval**

- 1. 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. Final approval of the conditional rezoning shall not be granted until the Statement of Conditions has been submitted to the Board for review.
- 2. 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. All parcels involved in a conditional rezoning shall be designated with the suffix “-CR” following the conventional zoning district

designation. The Zoning Administrator shall maintain a listing of all lands rezoned with a Statement of Conditions.

3. The approved Statement of Conditions or an Affidavit or Memorandum giving notice thereof shall be filed by the Township with the Register of Deeds of Branch County. 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.
4. 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 provisions contained in the Statement of Conditions.

**G. Rejection of Request.** As provided in Section 24.03.D, an applicant is not required to wait for 365 days to resubmit a conditional rezoning application if denied by the Planning Commission or Township Board as long as the application includes a significant revision to the Statement of Conditions. Otherwise, 365 days is required between applications.

**H. Compliance with Conditions.**

1. 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 as provided in Sections 1.14 and 1.15 of this Ordinance. Additionally, any such violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law.
2. No permit or approval shall be granted under this Ordinance for any use or development that is contrary to an applicable Statement of Conditions.

**I. 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 eighteen (18) months after the rezoning took 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. The extension may be for up to twelve (12) months, and only one such extension may be granted.

- J. **Reversion of Zoning.** If approved development and/or use of the rezoned land does not occur within the time frame specified under Subsection I above, then the land shall revert to its former zoning classification as set forth in MCL 125.3405. 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 as provided in Section 24.03.
- K. **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 Subsection J 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 Register of Deeds of Branch County that the Statement of Conditions is no longer in effect. The rezoning process shall be the same as for all other rezoning requests as provided in Section 24.03.
- L. **Amendment of Conditions.**
  - 1. During the time period for commencement of an approved development or use specified pursuant to Subsection I 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.
  - 2. The Statement of Conditions may be amended thereafter in the same manner as was prescribed for the original rezoning and Statement of Conditions.
- M. **Township Right to Rezone.** Nothing in the Statement of Conditions or 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 MZEA (Public Act 110 of 2006, as amended).
- N. **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.