

## Section 719.177 – Conditional Rezoning

- A. It is recognized that certain instances would be in the Township's best interests and advantageous to property owners seeking a change in zoning boundaries if they could propose certain conditions as part of a rezoning request. This Section intends to provide a process consistent with the provisions of Section 405 of the Michigan Zoning Enabling Act 110 of 2006, as amended, by which an owner seeking a rezoning may voluntarily propose conditions regarding the use and development of land as part of the zoning request.
- B. Application and Offer of Conditions
  - 1. An owner of land may voluntarily offer in writing conditions relating to the use or development of land for which a rezoning is requested. This offer must be made when the rezoning application is filed or by an amendment to the application for conditional rezoning made later during the rezoning process.
  - 2. The rezoning application and process for considering a rezoning request with conditions shall be the same as that for considering rezoning requests made without any offer or conditions, except as modified by the requirements of this Section.
  - 3. The owner's offer of conditions may not purport to authorize uses or developments not permitted in the requested new zoning district.
  - 4. The owner's offer of conditions shall bear a reasonable and rational relationship to the property for which rezoning is requested.
  - 5. Any use or development proposed as part of an offer of conditions that would require special land use approval under the terms of this Chapter may only be commenced if a special land use permit for such use or development is ultimately granted under the provisions of this Chapter.
  - 6. Any use or development proposed as part of an offer of conditions that would require a variance under the terms of this Chapter may only be commenced if the Zoning Board of Appeals ultimately grants a variance for such use or development per the provisions of this Chapter.
  - 7. Any use or development proposed as part of an offer or conditions that would require site plan approval under the terms of this Chapter may only

be commenced if site plan approval for such use or development is ultimately granted under the provisions of this Chapter.

8. 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 before the final rezoning action of the Township Board provided that, if such withdrawal occurs after 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. The Planning Commission, after public hearing and consideration of the factors for rezoning outlined in this Chapter, 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. The applicant shall pay for any additional administrative costs incurred by the Township when reviewing the application for conditional rezoning.
  - D. 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.
  - E. 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 to the provisions of this Section.
    2. The Statement of Conditions shall:
      - a. Be in a form recordable with the Macomb County Register of Deeds, or the alternative, be accompanied by a recordable Affidavit of Memorandum prepared and signed by the owner giving notice of the Statement of Conditions in a manner acceptable to the Township Board.
      - b. Contains a legal description of the land to which it pertains.
      - c. Contains a statement acknowledging that the Certificate of Conditions runs with the land and is binding upon successor owners of the land.

- d. Incorporate by attachment of reference any diagram, plans, or other documents submitted or approved by the owners that are necessary to illustrate the implementation of the Statement of Conditions.
  - e. Contains a statement acknowledging that the Statement of Conditions or an Affidavit or Memorandum of Understanding giving notice thereof may be recorded by the Township with the Macomb County Register of Deeds.
  - f. Contain 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.
- 3. Upon the rezoning taking effect, the Zoning Map shall be amended to reflect the new zoning designation and the designation with which the land was rezoned, accompanied by a Statement of Conditions.
  - 4. Upon the rezoning taking effect, the use of the land so rezoned shall conform thereafter to all the requirements regulating use and development within the new zoning district as modified by any more restrictive provisions contained in the Statement of Conditions.

F. Compliance with Conditions

- 1. Any person who establishes a development or commences a use upon land rezoned with conditions shall continuously operate and maintain the development or use in compliance with all the conditions outlined in the Statement of Conditions. Any failure to comply with the conditions 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.
- 2. No permit or approval shall be granted under this Chapter for any use or development contrary to the applicable Statement of Conditions.

G. Period for Establishing Development or Use

1. Unless another period is specified in the conditions of rezoning the subject land, the approved development or use of land must commence within 18 months after the rezoning took effect.
  2. This time limitation may, upon a written request to the Township Board, be extended for just cause.
- H. If the approved development or use of the rezoned land does not occur within the time frame specified in Subsection G above, the land shall revert to its former zoning classification.
- I. Nothing in the Statement of Conditions nor the provisions of this Section shall be deemed to prohibit the Township from rezoning all or any portion of land subject to a Statement of Conditions to another zoning classification.
- J. The Township shall not require a property owner to offer conditions for rezoning.