

## CHAPTER 19

### CONDITIONAL USE PERMIT REVIEW PROCEDURES

#### SECTION 19.01 CONDITIONAL USE PERMIT REVIEW

The Township Board, upon recommendation by the Planning Commission, shall have the following specific powers and duties concerning conditional use approvals.

- A. **Statement of Intent.** The procedures and standards set forth in this Chapter are intended to provide a consistent and uniform method for review of proposed plans for conditional land uses.

In hearing and deciding upon conditional use permit requests, the Township Board shall base its actions, and the Planning Commission shall base its recommendations, on the theory that the development and execution of a comprehensive zoning ordinance is founded upon the division of the Township into districts, within each district the use of land and buildings and the bulk and location of buildings and structures in relation to the land are substantially uniform. It is recognized, however, that there are variations in the nature of conditional uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts without consideration in each case of the impact of those uses upon neighboring land and of the public need for the particular use at the particular location.

- B. **Application.** The application for conditional land use review shall be made on the forms and according to the guidelines provided by the Zoning Administrator and/or Township Clerk and shall be submitted to the Township Clerk accompanied with the appropriate fees. Each application shall be accompanied by the following:

1. The Chapter of this Ordinance under which the conditional land use is sought.
2. A site plan which shall include all the information required by this Ordinance in Chapter 18, or a sketch at the discretion of the Township Board or Planning Commission.
3. A letter describing the proposed use of the property.
4. Other information which the Planning Commission and/or Township Board may reasonably deem necessary for adequate review.

The application shall be submitted by the owner having an interest in land for which the conditional land use approval is sought, or by the owner's designated agent. The applicant or a designated representative shall be present at all scheduled review meetings or consideration of the proposal may be tabled due to lack of representation.

- C. **Public Hearing.** Upon receipt of a complete application, site plan, and attachments, if any, the Township shall schedule a public hearing on the request. The notice shall be given in accordance with the requirements in D below.
- D. **Public Notice.** All applications for development approval requiring a public hearing shall comply with the Michigan Zoning Enabling Act, PA 110 of 2006 and the other provisions of this Section with regard to public notification.
  - 1. **Responsibility.** When the provisions of this Ordinance or the Michigan Zoning Enabling Act require that notice be published, the Township Clerk shall be responsible for preparing the content of the notice, having it published in a newspaper of general circulation in the Township and mailed or delivered as provided in this Section.
  - 2. **Content.** All mail, personal, and newspaper notices for public hearings shall:
    - a. **Describe nature of the request.** Identify the planning or zoning action being requested that requires the public hearing.
    - b. **Location.** Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the subject property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used such as a tax parcel identification number, identifying the nearest cross street, or including a map showing the location of the property. (No street addresses are required when eleven (11) or more adjacent properties are proposed for rezoning, or when the request is for an ordinance interpretation not involving a specific property.)
    - c. **When and where the request will be considered.** Indicate the date, time, and place of the public hearing(s).

- d. **Written comments.** Include a statement describing when and where written comments will be received concerning the request. Include a statement that the public may appear at the public hearing in person or by counsel.
  - e. **Handicap access.** Information concerning how handicap access will be accommodated if the meeting facility is not handicap accessible shall be provided in the notice.
3. **Personal and Mailed Notice.**
- a. **General.** Except as otherwise provided in this Ordinance and State Law, notice shall be provided to:
    - i. The owners of property for which approval is being considered, and the applicant, if different than the owners(s) of the property.
    - ii. Except for rezoning requests involving eleven (11) or more adjacent properties or an ordinance interpretation request that does not involve a specific property; to all persons to whom real property is assessed and occupants within three hundred (300) feet of the boundary of the property subject to the request, regardless of whether the property or occupant is located within the boundaries of the Township. If the name of the occupant is not known, the term “occupant” may be used in making notification.
    - iii. All neighborhood organizations, public utility companies, railroads and other persons which have requested to receive notice pursuant to Section 19.01.D.5, Registration to Receive Notice by Mail.
  - b. **Notice by mail/affidavit.** Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, postage paid. The Clerk shall prepare a list of property owners and registrants to whom notice was mailed, as well as of anyone to whom personal notice was delivered.
4. **Timing of Notice.** Unless otherwise provided in the Michigan Zoning Enabling Act, PA 110 of 2006, or this Ordinance where applicable, notice of a public hearing shall be provided for a public hearing on an application

for a rezoning, text amendment, conditional use, planned unit development, variance, appeal, or ordinance interpretation not less than fifteen (15) days before the date the application will be presented at a public hearing.

5. **Registration to Receive Notice by Mail.** Any neighborhood organization, public utility company, railroad, or any other person may register with the Clerk to receive written notice of all applications for development approval pursuant to Section 19.01.D.3, Personal and Mailed Notice, or written notice of all applications for development approval within the zoning district in which they are located.

a. The Clerk shall be responsible for providing this notification. Fees may be assessed for the provision of this notice, as established by the legislative body.

b. The requesting party must provide the Clerk information on an official form to ensure notification can be made. All registered persons must re-register annually to continue to receive notification pursuant to this Section.

E. **Impact Statement.** For Conditional Uses, the Planning Commission may require the applicant prepare an Impact Assessment in accordance with the requirements in Section 13.03.E. Based on the results of the Impact Assessment, the Planning Commission may recommend and Township Board may approve a bond or escrow fee be required to ensure the restoration of the site upon completion of the proposed use to a condition where it may be feasibly used for one of the permitted uses in the subject zoning district.

F. **Planning Commission Recommendation.** Following the public hearing, the Planning Commission shall review the application for the conditional land use permit, together with the public hearing findings and reports and recommendations of Township staff, consultants and other reviewing agencies. The Planning Commission shall make a recommendation to the Township Board to deny, approve, or approve with conditions, requests for conditional land use approval.

G. **Township Board Review and Approval.** The Planning Commission shall forward their recommendation, the minutes and findings of the public hearing, and any reports and recommendations from the Township Staff and Consultants to the Township Board for their review. Within a reasonable time, the Board shall make a decision to deny, approve, or approve with conditions the conditional use

permit. The review and decision shall be based upon the standards provided in Section G below. The decision shall include the findings of fact, conclusions, and any conditions attached to the approval, if applicable.

H. **Standards for Granting Conditional Use Approval.** Approval of a conditional land use permit shall be based on the determination that the proposed use will comply with all requirements of this ordinance, including site plan review criteria set forth in Chapter 18.01. In addition, the following standards shall be met:

1. The location, scale, and intensity of the proposed use shall be compatible with adjacent uses and zoning of land.
2. The proposed use shall promote the use of land in a socially and economically desirable manner. The proposed use shall not adversely impact the social and economic well-being of those who will use the proposed land use or activity; residents, businesses, and landowners immediately adjacent; or the Township as a whole.
3. The proposed conditional land use shall be compatible with and in accordance with the general principles and future land use configuration of the Township Master Plan and shall promote the intent and purpose of this Ordinance.
4. The proposed use shall be designed, constructed, operated and maintained so as to assure long-term compatibility with surrounding land uses. Consideration shall be given to:
  - a. The size, placement, and materials of construction of the proposed use in relation to surrounding uses.
  - b. The location and screening of vehicular circulation and parking areas in relation to surrounding development.
  - c. The location and height of buildings; the location, nature and height of walls and fences; and the nature and extent of landscaping.
  - d. The location and screening of outdoor storage, outdoor activity or work areas, and mechanical equipment in relation to surrounding development.

- e. The hours of operation of the proposed use. Approval of a conditional land use may be conditioned upon operation within specified hours considered appropriate to ensure minimal impact on surrounding uses.
- 5. The location of the proposed conditional land use within the zoning district shall minimize the impact of the traffic generated by the proposed use. Consideration shall be given to the following:
  - a. Proximity and access to major thoroughfares.
  - b. Estimated traffic generated by the proposed use.
  - c. Proximity and relation to intersections.
  - d. Location of and access to off-street parking.
  - e. Required vehicular turning movements.
  - f. Provision for pedestrian traffic.
- 6. The proposed conditional land use shall be consistent with existing and future capabilities of public services and facilities affected by the proposed use.
- 7. The proposed use shall not involve any activities, processes, materials, equipment, or conditions of operation, and shall not be located or designed so as to be detrimental to public health, safety, and welfare. Site layout shall be such that operations will not be objectionable to nearby dwellings by reason of noise, fumes, glare or flashing lights.
- 8. The proposed use shall be compatible with the natural environment.
- I. **Recording of Township Board Action.** Each action taken with reference to a conditional land use proposal shall be duly recorded in the minutes of the Township Board. The minutes shall record the findings of fact relative to each conditional land use proposal, the grounds for action taken, and any conditions imposed in conjunction with approval. All records of proceedings shall be kept on file in the Clerk's office and made available to the public after publication.
- J. **Effective Duration of Conditional Use Approval.** Conditional use approvals shall run with the owner/operator granted permission and may be issued for

specified periods based upon the impacts of the proposed use to surrounding property. The sale, transfer or conveyance of the property on which the conditional land use is located shall nullify the conditional use approval. Any new proposed owner or operator shall be required to submit an application for a conditional use permit and be recommended by the Planning Commission and approved by the Township Board for a new conditional use permit in order to continue said operation or activity.

- K. **Amendments to Conditional Land Uses.** When an application is received to expand or change the use, traffic pattern, or other elements of a conditional land use, the application shall be subject to the same procedures followed for an original conditional approval of land use. The denial of an application to amend an existing Conditional Use Permit shall not nullify or cause to prohibit the applicant from continuing to operate in compliance/conformance within the specifications of the original (existing) Conditional Use Permit approval.
  
- L. **Revocation of Conditional Land Use Approval.** Approval of a conditional land use permit and site plan may be revoked by the Township Board if construction is not in conformance with the approved plans. In such a case, the Zoning Administrator shall place the conditional land use on the agenda of the Township Board for consideration, and give written notice to the applicant at least five (5) days prior to the meeting. The applicant shall be given the opportunity to present information to the Township Board and answer questions. The Township Board may revoke approval if it finds that a violation exists and has not been remedied prior to the hearing.

## **SECTION 19.02 PERFORMANCE GUARANTEES**

- A. **Purpose.** To insure compliance with the provisions of this Ordinance and any conditions imposed hereunder, the Planning Commission or Zoning Board of Appeals may require that a performance guarantee be deposited with the Township to insure the faithful completion of improvements, in accordance with the provisions of the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended. Improvements for which the Township may require a performance guarantee include, but are not limited to, landscaping, berms, walls, lighting, surfacing of drives, parking, and acceleration/deceleration lanes, traffic control devices, sewer or water line expansion, storm water retention areas and land reclamation activities.
  
- B. **Scope of Requirement.** The performance guarantee can apply only to those specific features and actions which the Planning Commission or Zoning Board of Appeals considers necessary to protect natural resources or the health, safety, or

welfare of residents, project users, or the general public. A performance guarantee may not be required for the entire project. The guarantee is limited to those project components specifically designated by the Planning Commission or Zoning Board of Appeals.

C. **General Requirements.** A performance guarantee shall be required by the Planning Commission on the applicable portion(s) of a site plan under any of the following circumstances:

1. To meet the costs of improvements required to be made by the applicant to public facilities owned by the Township as a condition of site plan approval.
2. To ensure the completion of the common elements of site plan affecting two or more parties.
3. To ensure the completion of those portions of a site plan which will not be completed by the applicant prior to a request for occupancy.

The Planning Commission may require a performance guarantee on any other specific improvement when determined by resolution that the guarantee is necessary to protect the natural resources of the Township or the health, safety, or welfare of residents, project users, or the general public.

D. **General Conditions:**

1. The performance guarantee shall be submitted at the time of issuance of the permit authorizing the activity or project. No building permit or related Township permit shall be issued unless the Zoning Administrator is satisfied that the guarantee is in full compliance with this Article.
2. The performance guarantee shall be in the form of:
  - a. A cash deposit or deposit by certified check drawn on a bank authorized to do business in the State of Michigan, or
  - b. An irrevocable letter of credit issued on behalf of the Township by a bank authorized to do business in the State of Michigan, or
  - c. A surety bond in a form and manner acceptable to the Township Attorney. The costs of the review of a surety bond by the

Township Attorney shall be paid by the applicant as part of the issuance of a permit.

3. The amount of the performance guarantee shall be sufficient to cover the estimated cost of the improvements associated with a project for which site plan approval or zoning variance has been obtained. Accordingly, the applicant shall provide an itemized listing of estimated costs and a proposed time schedule to complete all of the improvements determined to require a performance guarantee. The Zoning Administrator shall review the submitted costs for reasonableness and shall determine an accurate amount for the performance guarantee. In determining the amount, the Zoning Administrator may consider signed contracts or sub-contracts supplied by the applicant or the Zoning Administrator may secure or require that the applicant secure a sealed statement from a licensed architect or engineer verifying the estimates.
4. Cash funds or a certified check made payable to the Township shall be deposited by the Township into an account in a financial institution with which the Township regularly conducts business.
5. In the case of a guarantee exceeding \$2000, and by request of the applicant, the guarantee may be released to the applicant in an amount proportional to the work completed on various elements, provided that a minimum of ten percent (10%) shall be retained on each element until the satisfactory completion of the entire project. The amount of work completed shall be based upon an inspection and determination by the Zoning Administrator.
6. An amount not to exceed the actual cost of the installation of landscape materials may be retained by the Township for at least one (1) year following the installation of said materials to insure proper maintenance and, if necessary, replacement. This amount shall be released to the applicant upon certification by the Zoning Administrator that all landscape materials are being maintained in good condition.
7. The unexpended balance of a performance guarantee, including interest accrued, shall be returned to the applicant following inspections by the appropriate Township officials and a positive determination by the Zoning Administrator that the required improvements have been satisfactorily completed and that all other requirements of this Chapter are met.

- E. **Unsatisfactory Completion of Improvements.** When required improvements are not installed or maintained within the time stipulated or are not completed in accordance with the standards set forth within this Ordinance or as agreed upon at the time of conditional use permit approval, the Planning Commission or the Zoning Administrator may order the improvements completed by the Township or by an independent contractor or that the site be returned to its original condition.

The Zoning Administrator shall order the completion of the improvements and so notify the applicant by certified mail at least thirty (30) calendar days prior to the undertaking of completion. During this time period, the applicant may seek an order from a court of competent jurisdiction to prevent the action by the Township.

All costs incurred by the Township for the completion of the improvements or the restoration of the site, including direct administrative costs, shall be assessed against the performance guarantee including any interest accrued on any funds deposited in escrow.

- F. **Subdivision Improvements.** This Chapter shall not be applicable to improvements for which a cash deposit, certified check, irrevocable bank letter of credit, or surety bond has been deposited with the Township by the applicant pursuant to the Subdivision Control Act (P.A. 288 of 1967, as amended).