

ARTICLE XXV

AMENDMENTS AND PUBLIC NOTICE

SECTION 25.01 CHANGES AND AMENDMENTS

Only the Township Board may amend this Ordinance. Proposals for amendments or changes may be initiated by the Township Board on its own motion, by the Planning Commission, or by petition of one (1) or more owners of property to be affected by the proposed amendment.

SECTION 25.02 PROCEDURES

The procedure for making amendments to this Ordinance shall be in accordance with the Michigan Zoning Enabling Act, PA 110 of 2006 (MCL 125.3301 et seq.), as amended.

Owners of property to be affected by the proposed amendment may submit a petition, together with a completed and signed application and fees, to the Township Clerk. The Zoning Administrator shall review the application as to form and, when it is approved, transmit same to the Township Planning Commission for review and report. The Township Board and the Township Planning Commission may initiate changes under their own authority without formal application.

Upon receipt of a proposed change to the Zoning Ordinance, the Planning Commission shall establish a date for a public hearing and shall make proper public notice of the hearing as required by Section 25.04 of this Ordinance and PA 110 of 2006.

[amended October, 2006]

SECTION 25.03 INFORMATION REQUIRED

The petitioner shall submit a detailed description of the petition to the Township Zoning Administrator. When the petition involves a change in the Zoning Map, the petitioner shall submit the following information:

- A. The street address (if any) of the property.
- B. A legal description of the property.
- C. A scaled map of the property, correlated with the legal description, and clearly showing the property's location.
- D. The name and address of the petitioner.
- E. The petitioner's interest in the property, and if the petitioner is not the owner; the name and address of the owner.

- F. Signature(s) of petitioner(s) and owner(s) certifying the accuracy of the required information.
- G. Describe the desired change and reasons for the requested change. *[Oct. 2006]*

SECTION 25.04 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.

- A. *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 South Haven Township and mailed or delivered as provided in this Section.
- B. *Content:* All mail, personal and newspaper notices for public hearings shall:
 - 1. *Describe the nature of the request:* Identify whether the request is for a rezoning, text amendment, special land use, planned unit development, variance, appeal, ordinance interpretation or other purpose.
 - 2. *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, but not limited to, tax parcel identification number, identifying the cross street, or including a map showing the location of the property. No street addresses must be listed 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.
 - 3. *When and where the request will be considered:* Indicate the date, time and place of the public hearing(s).
 - 4. *Written comments:* Include a statement describing when and where written comments will be received concerning the request.
- C. *Personal and Mailed Notice*
 - 1. *General:* When the provisions of this Ordinance or state law require that personal or mailed notice be provided, notice shall be provided to:
 - a. The owners of the property for which approval is being considered.
 - b. 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 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 South Haven Township. If the name of the occupant is not known, the term “occupant” may be used in making notification. In the case of a single structure containing more than four (4) dwelling units or other distinct spatial areas owned or leased by different individuals, partners, businesses, or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.

- c. All neighborhood organizations, public utility companies, railroads and other persons which have requested to receive notice pursuant to Section 26.02, Registration to Receive Notice by Mail.
 - d. Other governmental units or infrastructure agencies within two (2) miles of the property involved in the application.
2. *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.

- D. *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 as follows:

For a public hearing on an application for a rezoning, text amendment, special land use, planned unit development, variance, appeal, or ordinance interpretation: not less than fifteen (15) days before the date the application will be considered for approval. [Oct. 2006]

SECTION 25.05 REGISTRATION TO RECEIVE NOTICE BY MAIL

- A. *General:* Any neighborhood organization, public utility company, railroad or any other person may register with the Township Clerk to receive written notice of all applications for development approval pursuant to Section 25.01, C. Personal and Mailed Notice, or written notice of all applications for development approval within the zoning district in which they are located. The Township Clerk shall be responsible for providing notification. Fees may be assessed for the provision of notice, as established by the Township Board.
- B. *Requirements:* The requesting party must provide the Township Clerk information on an official form to ensure notification can be made. All registered persons must re-register annually to continue notification pursuant to this Section.

SECTION 25.06 FINDINGS OF FACTS REQUIRED

In reviewing an application for the rezoning of land, whether the application be made with or without an offer of conditions, factors that should be considered by the Planning Commission and the Township Board include, but are not be limited to, the following:

- A. Whether the rezoning is consistent with the policies and uses proposed for that area in the Township's Master Land Use Plan;
- B. Whether all of the uses allowed under the proposed rezoning would be compatible with other zones and uses in the surrounding area;
- C. Whether any public services and facilities would be significantly adversely impacted by a development or use allowed under the requested rezoning; and
- D. Whether the uses allowed under the proposed rezoning would be equally or better suited to the area than uses allowed under the current zoning of the land.

SECTION 25.07. CONDITIONAL REZONING.

It is recognised that there are certain instances where it would be in the best interests of the Township, as well as advantageous to property owners seeking a change in zoning boundaries, if certain conditions could be 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 (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.

- A. Application and Offer of Conditions.
 - 1. An owner of land may voluntarily offer in writing conditions 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.
 - 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.
 - 3. The owner's offer of conditions may not purport to authorise 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 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.
6. 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.
7. 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 review approval for such use or development is ultimately granted in accordance with the provisions of this Ordinance.
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 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.

B. Planning Commission Review.

The Planning Commission, after a public hearing and consideration of the factors for rezoning set forth in 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.

C. 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 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 shall, in accordance with Section 401 of the Michigan Zoning Enabling Act (MCL 125.3401), refer such amendments to the Planning Commission for a report thereon within a time specified by the Township Board

and proceed thereafter in accordance with said statute to deny or approve the conditional rezoning with or without amendments.

D. 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.
2. The Statement of Conditions shall:
 - a. Be in a form recordable with the Van Buren County Register of Deeds or, in the alternative, be accompanied by a recordable Affidavit or Memorandum prepared and signed by the owner(s) giving notice of the Statement of Conditions in a manner acceptable to the Township Board.
 - b. Contain a legal description of the land to which it pertains.
 - c. Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land.
 - d. 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.
 - e. 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 Van Buren County Register of Deeds.
 - f. Contain the notarised signatures of all 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 classification along with the 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.
4. The approved Statement of Conditions or an Affidavit or Memorandum giving notice thereof shall be filed by the Township with the 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 document be of no material benefit to the Township or to any subsequent owner of the land.

5. 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.

E. 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 the Zoning Ordinance and be punishable accordingly. Additionally, any such violation shall be deemed a nuisance per se and be subject to judicial abatement and/or specific performance 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.

F. 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 twelve (12) 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 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.

G. Reversion of Zoning.

If approved development and/or use of the rezoned land does not occur within the time frame specified under Subsection F. above, then the land shall revert to its former zoning classification. 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 classification. The procedure for considering and making this reversionary rezoning shall thereafter be the same as applies to all other rezoning requests.

H. 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 G. 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 a notice that the Statement of Conditions is no longer in effect.

I. Amendment of Conditions.

1. During the time period for commencement of an approved development or use 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.

J. 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 (MCL 125.3101 et seq.).

K. 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 the owner's rights under this Ordinance.

[subsection 25.07 added October 2006]