

WEXFORD COUNTY
WEXFORD COUNTY JOINT PLANNING COMMISSION

AN ORDINANCE TO AMEND THE WEXFORD JOINT ZONING ORDINANCE OF 2017 BY ADDING NEW SECTION 9802A AUTHORIZING THE CONDITIONAL REZONING OF LAND, ESTABLISHING THE PROCEDURES AND CONDITIONS THEREFORE AND REPEALING ALL ORDINANCES IN CONFLICT HEREWITH

The Township of _____ hereby ORDAINS:

Section 1. The Wexford Joint Planning Ordinance of 2017 is hereby amended by the addition of a new Section 9802A, which shall read, in its entirety, as follows:

9802A. Conditional Zoning Map Amendment

- A. It is recognized that there are certain instances when it would be in the best interests of the participating municipalities, as well as advantageous to property owners seeking a change in zoning classification, if certain conditions are proposed by property owners as part of a request for a zoning map amendment, otherwise referred to as rezoning. It is the intent of this section to provide a process consistent with the provisions of the Michigan Zoning Enabling Act **MCL 125.3405, as amended.** 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.
- B. All owners 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 may be made at a later time during the rezoning process.
- C. 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 9802A. All other provisions of this section shall apply.
- D. Hearing notices shall clearly indicate the proposed zoning amendment is a conditional rezoning amendment, which is specific to property that is indicated in the notice. The notice shall also indicate the condition(s), or zoning amendment request may be rejected, approved or modified by the participating municipalities.
- E. The **landowner's** offer of conditions may not purport to authorize uses or developments not permitted by right or by special use in the requested new zoning district.
- F. The **landowner's** offer of conditions shall bear a reasonable and rational relationship to the property for which rezoning is requested.

- G. 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.
- H. 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 first granted by the Zoning Board of Appeals in accordance with the provisions of this Ordinance.
- I. 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 approval for such use or development is ultimately granted in accordance with the provisions of this Ordinance.
- J. The offer of conditions may be amended during the process of rezoning consideration provided that any amended or additional conditions are offered voluntarily by the **landowner**. A **landowner** may withdraw all or part of its offer of conditions any time prior to final rezoning action by the participating municipalities provided that, if such withdrawal occurs subsequent to the **Joint Planning** Commission's public hearing on the original conditional rezoning request, then the rezoning application shall be referred to the **Joint Planning** Commission for a new public hearing with appropriate notice and a new recommendation without consideration of the withdrawn conditions, and a new application fee will be charged to the owner to cover the costs of the additional public hearing.
- K. A conditional zoning proposal shall not be accepted for consideration if the proposed statement of conditions contains provisions, which are less restrictive than those found in the proposed zoning district. Such requests shall be pursued as a variance.
- L. The **Joint Planning** Commission, after 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 **landowner**.
- M. After receipt of the **Joint Planning** Commission's recommendation, the participating municipality(-ies) shall deliberate upon the requested conditional zoning proposal and may approve or deny the request. Should the participating municipality(-ies) 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 **landowner**,

then the participating municipality(-ies) may accept such amendments without referral back to the **Joint Planning** Commission.

- N. The Statement of Conditions shall:
- (a) Be in a form recordable with the Wexford 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 participating municipalities.
 - (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 **Joint Planning** Commission with the Wexford County Register of Deeds.
 - (f) 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.
 - (g) Upon approval of a conditional zoning amendment, the statement of conditions shall be recorded in the Wexford County Register of Deeds office. Upon approval of a conditional zoning amendment, the boundary of the parcel(s) subject to the conditional rezoning shall be shown on the zoning map with a symbol (such as but not limited to an asterisk) to indicate a statement of conditions exists for the parcel(s).
- O. Enforcement of provisions: If the terms of the Statement of Conditions in an approved conditional rezoning are violated and enforcement efforts have not been successful in correcting the violations, then the **Joint Planning** Commission shall initiate, and the participating municipalities shall adopt, a zoning amendment to revert the zoning classification of the subject land back to what it was prior to adoption of the conditional zoning. In doing so, the same process for amending the Zoning Ordinance in this Article shall be followed, except for the requirement of a finding of compliance with the plan.
- P. Compliance with Conditions:

- (a) 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 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.
- (b) No permit or approval shall be granted under this Ordinance for any use or development that is contrary to an applicable Statement of Conditions.

Q. 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 shall be commenced upon the land within 18 months after the effective date of the ordinance conditionally rezoning the land and thereafter proceed diligently to completion. This time limitation may upon written request be extended by the **Joint Planning** Commission if:

- (a) It is demonstrated to the **Joint Planning** Commission'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
- (b) The **Joint Planning** Commission 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.

R. Reversion of Zoning:

- (a) If approved development and/or use of the conditionally rezoned land does not occur within the timeframe specified under Subsection Q above, then the land shall revert to its former zoning classification, as set forth in the Michigan Zoning Enabling Act MCL 125.3405, as amended. The reversion process may be initiated by the participating municipality(-ies) in which the conditionally rezoned land is located requesting that the **Joint Planning** Commission proceed with consideration of rezoning of the land to its former zoning classification or it may be initiated by the **Joint Planning** Commission. The procedure for considering and making this reversionary rezoning shall thereafter be the same as applies to all other rezoning requests.

- S. 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 R. above or otherwise, the Statement of Conditions imposed under the former zoning classification shall cease to be in effect. The Zoning Administrator shall record with the Wexford County Register of Deeds a notice that the Statement of Conditions is no longer in effect.
- T. Amendment of Conditions:
- (a) During the time period for commencement of an approved development or use specified pursuant to Subsection Q above or during any extension thereof granted by the **Joint Planning Commission**, the participating municipalities and **Joint Planning Commission** shall not unilaterally add to or alter the conditions in the Statement of Conditions.
 - (b) The Statement of Conditions may be amended thereafter in the same manner as was prescribed for the original rezoning and Statement of Conditions as set forth in Subsection J. above.
- U. Nothing in the Statement of Conditions nor in the provisions of this Section shall be deemed to prohibit the participating municipality(-ies) 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, P.A 110 of 2006, as amended.
- V. The participating municipality(-ies) 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.

Section 2. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of the conflict.

Section 3. This ordinance shall take effect at 12:01 a.m. on the 8th day following its approval by all of the participating municipalities.

END