

## **CHAPTER 33**

### **ORDINANCE AMENDMENT**

### **AND UNLISTED LAND USES**

**SECTION 33.01 INITIATION OF AMENDMENTS.** Amendments to this Ordinance may be initiated by the Township Board or by any interested person or persons by petition to the Township Board in the manner described below and as provided by law in the Michigan Zoning Enabling Act.

**SECTION 33.02 AMENDMENT PETITION.** All petitions for amendment to this Ordinance shall be in writing, signed and filed in triplicate with the Township Clerk for presentation to the Township Board. Such petitions shall include the following:

- (a) The petitioner's name, address, and interest in the petition as well as the name, address, and interest of every person having a legal or equitable interest in any land which is to be rezoned;
- (b) The nature and effect of the proposed amendment;
- (c) If the proposed amendment would require a change in the Zoning Map, a fully dimensioned map showing the land which would be affected by the proposed amendment, a legal description of such land, the present zoning district of the land, the zoning district of all abutting lands, and all public and private right-of-way and easements bounding and intersecting the land to be rezoned;
- (d) The alleged error in the Ordinance which would be corrected by the proposed amendment, with a detailed explanation of such alleged error and detailed reason why the proposed amendment will correct the same;
- (e) The changed or changing conditions in the area or in the Township that make the proposed amendment reasonably necessary to the promotion of the public health, safety, and general welfare;
- (f) All other circumstances, factors, and reasons which the petitioner offers in support of the proposed amendment.

**SECTION 33.03 AMENDMENT PROCEDURE.** After initiation, amendments to this Ordinance shall be considered in accordance with the requirements of the Michigan Zoning Enabling Act, as it may be amended from time to time. Notice of the public hearing required before the Planning Commission, and any other associated public hearings to be held concerning an amendment, shall be given in accordance with the provisions of Section 31.01 of this zoning ordinance.

**SECTION 33.04 REZONING CRITERIA.** In reviewing an application for the rezoning of land, whether the application is 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 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 33.05 USES NOT LISTED OR ADDRESSED IN THE ZONING ORDINANCE.**

- (a) In recognition that not all potential land uses can be specifically addressed in this Zoning Ordinance, this Section establishes the procedures under which the Township shall proceed in settling the question of “unlisted land uses”:
  - (1) The Planning Commission shall at the request of the Zoning Administrator or applicant, first make a finding that the proposed or subject use is, or is not’ listed or addressed as a “Permitted Use” or “Authorized Special Land Use” in any zoning district.
  - (2) If the use is not listed or addressed in the Zoning Ordinance the Planning Commission may find that the use closely resembles a “permitted use” or a class of uses allowed as matter of right in at least one zoning district. If such a finding is made, the Planning Commission shall also find that the subject use is a “permitted use” in each district where such finding is applicable. Any subsequent application for a review or an official authorization of the use shall be under the same standards and requirements generally applicable to the type of permitted land use that it most closely resembles.
  - (3) If the Planning Commission finds that the use requires special consideration because of its unique characteristics in relation to the welfare of adjacent properties and the community as a whole, the Planning Commission may determine that the use should be regulated as a special land use. If the Planning Commission also finds that the use closely resembles at least one other special land use or class of special land uses allowed in at least one zoning district, the Planning Commission shall consider the use as an authorized special land use. Final authorization of the use shall subsequently be determined under the same procedures, standards and requirements applicable to the special land use that it is found to most closely resemble.
- (b) The determination as to whether a proposed use is similar in nature and class to other principal uses permitted by right or as a special land use within a particular district is not to be considered an expansion of the use regulations, but an interpretation of a particular type of use or class of uses. However, a use determined by the Planning Commission to be a "similar land use” as a use listed shall thereafter be noted in the public record and shall be considered for subsequent formal codification as such by the Township Board.
- (c) The Planning Commission’s determination of a “similar land use” may be appealed to the

## Zoning Board of Appeals.

- (d) If the Planning Commission finds that because of its unique characteristics an unlisted use does not closely resemble a listed permitted use or a listed authorized special land use in any zoning district, the Planning Commission shall, in accordance with the Zoning Ordinance Amendment procedures required under Michigan Zoning Enabling Act, make one of the following additional determinations, as appropriate:

- (1) That the land use should be added to the zoning ordinance in one or more zoning districts. If such finding is made the Planning Commission shall forward its finding to the Township Board along with a recommendation as to the district or districts in which it should be included along with the recommended manner in which it should be regulated and any general or specific standards; or
- (2) That the use should be prohibited entirely based on findings there is not an appropriate location within the community or the use is unlawful.

In accordance with the Michigan Zoning Enabling Act, a Zoning Ordinance or zoning decision may totally prohibit the establishment of a requested land use within its boundaries if there is not an appropriate location within the community or the use is unlawful, even if there is a demonstrated need for that land use either in the municipality or surrounding area.

In making a determination of whether there is or is not an appropriate location for an unlisted “legal” land use within the Township, the Planning Commission shall consider the following:

- a. The type of products sold, produced, manufactured or stored and/or services performed as part of the use, if any.
- b. The land area required by the proposed use.
- c. The internal and external operational aspects of the use that determine the overall character of the use and whether such characteristics would, if allowed be unique to the zoning district in question.
- d. The typical site layout and building form that characterizes the use.
- e. The population or market served by the use.
- f. Potential environmental hazards that may be generated by the use.
- g. Anticipated peak and average daily traffic generation by type of vehicle.
- h. For each zoning district, an evaluation of the potential impacts and compatibility of the use on the typical types of land uses permitted in the district that might adjoin the unlisted use if it were allowed. Factors considered shall include hours of operation, pedestrian activity, traffic generation, noise, vibration fumes, lighting, property valuation and views.
- i. Demand and capacity of utilities and municipal services to support the proposed use.
- j. Any applicable general or specific policy direction contained in the Heath

Township Master Plan.

- (e) The Planning Commission's determination of a "prohibited land use" may be appealed to the Zoning Board of Appeals.