

**VERGENNES TOWNSHIP, KENT COUNTY, MICHIGAN
ZONING ORDINANCE AMENDMENT**

**Ordinance 2003-2
Adopted 2-17-03**

An ordinance to amend certain portions of Chapter 5, Nonconforming Uses, Special Exceptions, Site Development Plans and Variances, of the Vergennes Township Zoning Ordinance.

The Township of Vergennes hereby ordains:

Amend Chapter 5, Section 201.502, Special Exception Uses, to clarify the special exception use application process and procedures, adding application submission deadlines, add unclassified special exception use procedure, add a new section 502 (C) (10), and 502 (G) (1) (2) to define a modification procedure for major and minor modifications to an approved special exception use permit.

201.502 Special exceptions.

5.02.

- A. Purpose of Special Exception Uses. In order to make this Ordinance a flexible zoning control and still afford protection of property values and orderly and compatible development of property within the Township, the Township Board is authorized to approve certain uses designated as Special Exception Uses within the various zoning districts set forth in the Ordinance.

The Special Exception Uses have been selected because of their unique characteristics which, in the particular district involved, could cause such uses to be incompatible with or detrimental to uses permitted in such district without proper controls and limitations.

The fact that any particular use is not designated as a Special Exception Use in this Ordinance shall not be deemed to suggest or imply that such use is permitted or authorized. Additional Special Exception Uses other than those enumerated in this Ordinance may be designated only by amendment to this Ordinance in the manner provided by law, or designated pursuant to section 201.401 Unclassified Special Exception Uses and any such newly designated Special Exception Uses shall thereupon become subject to all applicable provisions of this Ordinance.

- B. Standards for Approval of Special Exception Uses. A Special Exception Use is not permitted within the particular district in which it is listed unless the Township Board, in its discretion, is satisfied that such use, under the conditions, controls, limitations, circumstances and safeguards proposed by the user and/or imposed by the Township Board will be compatible with and will not be detrimental or injurious to the uses permitted within the district and will, where applicable, comply with any general or special provisions, conditions or limitations set forth in this Ordinance (e.g., where

earth removal or quarrying, etc., is proposed, the requirements of Section 4.10 [201.410] shall be met; and where septic disposal is proposed, the requirements of Section 4.09(a) [201.409] shall be met).

In determining whether to approve a proposed Special Exception Use the Township Board shall consider the following:

1. The public health, safety, peace and comfort and general welfare of the community, including:
 - a. The accessibility of the property in question to fire and police protection and to public utilities and other essential public services.
 - b. The suitability and adequacy of existing and proposed streets to carry anticipated traffic in connection with the proposed use.
2. The compatibility of the proposed use (including the type and kind of buildings and structures to be erected) with the use or development of adjacent or nearby properties, including the safety, welfare and convenience of the occupants of such adjacent or nearby properties.
3. The extent to which the proposed use may decrease or impair the value or marketability of adjacent or nearby properties, whether improved or unimproved.
4. The extent to which the proposed use is compatible with the character and adaptability of the land comprising the property in question, and is in harmony with the Vergennes Township Land Use Plan.
5. Any hazards or nuisances that may be directly or indirectly caused or created by the proposed use.

Notwithstanding anything herein to the contrary, operations in connection with any proposed Special Exception Use shall not create or emanate more noise, fumes, air or water pollution, vibration or artificial lighting than operations of any use permitted in the district in question, and no Special Exception Use Permit shall be issued for any property in respect of which there is an existing violation of this Ordinance.

- C. *Procedure for Obtaining Special Exception Use Permit.* No use other than those uses expressly permitted by this Ordinance or designated pursuant to section 201.401 Unclassified Special Exception Uses and no designated Special Exception Use is permitted in any zoning district in the Township unless a Special Exception Use Permit covering the proposed use shall have first been issued by the Township Board after consideration of the application for the proposed use in light of the foregoing standards. The burden of establishing the feasibility and permissibility of a Special Exception Use under the foregoing standards shall be upon the applicant. The following procedures shall govern all special exception use applications:

1. All applications for Special Exception Use Permits shall be filed in writing with the Township Zoning Administrator a minimum of 5 days prior to the next Township Board meeting and shall include all pertinent plans, specifications, and other data upon which the applicant intends to rely in requesting a Special Exception Use permit and shall also include a site plan in conformity with the requirements of 201.502 D. Upon receipt of an application the Zoning Administrator shall endorse the date of receipt thereon, and shall forward the same to the Township Board. The Zoning Administrator may set a public hearing at the next Township Board meeting based on the nature of the application and consultation with the Township Supervisor and Clerk.

If the Zoning Administrator determines that an application for a special exception use should be determined as an unclassified special exception use pursuant to section 201.401 then the application will be transmitted directly to the Planning Commission. The application deadline for unclassified special exception uses is a minimum of 10 days before the next Planning Commission meeting. The Planning Commission will apply the standards of section 201.401 and determine the application's suitability to the zoning district and related uses. If the standards are favorably met then the Planning Commission shall set a public hearing date and proceed with the application by holding the hearing and making a recommendation to the Township Board.

2. The Township Board may, upon receipt of the application in proper form accompanied by the required plans and specifications and permit fees, hold the public hearing if previously scheduled, or set a future public hearing date or submit the same to the Township Planning Commission for its review and recommendation.
3. Following such submission, the Planning Commission shall review the application and make its recommendation in writing to the Township Board after a public hearing has been held and shall briefly state the reasons for its recommendation. In making its recommendation, the Planning Commission shall consider the Standards for Approval of Special Exception Uses hereinabove set forth, together with all other applicable provisions of this Ordinance.
4. Upon receipt of the application in proper form accompanied by the required plans and specifications and permit fees, and a public hearing date has been determined; notice that the application has been received shall be published in a newspaper of general circulation in the Township and sent by mail or personal delivery to (i) the owners of property for which approval of the Special Exception Use is being considered, (ii) to all persons to whom real property is assessed within three hundred (300) feet of the boundary of the property in question, and (iii) to the occupants of all structures within three hundred (300) feet of such boundary.

The notice shall be given not less than five (5) nor more than fifteen (15) days before the date the application will be considered. If the name of the occupant is not known, the term "occupant" or "current resident" may be used in making notification. The notice shall:

- a. Describe the nature of the application for Special Exception Use Permit.
 - b. Indicate the property which is the subject of the application.
 - c. State when, where and by which body the application will be considered.
 - d. Indicate when and where written comments will be received concerning the application.
 - e. Indicate that a second public hearing on the application may be requested in writing by the owner of any property or the occupant of any structure located within three hundred (300) feet of the boundary of the property being considered for a Special Exception Use Permit.
5. At the initiative of the Zoning Administrator or Planning Commission or the Township Board, or upon the request of the applicant, or upon written request of an owner of property or the occupant of a structure located within three hundred (300) feet of the boundary of the property being considered for a Special Exception Use, a public hearing shall be held before a decision is made on the application. A notice of public hearing on the application shall be given in the manner provided by Section 5.02 [201.502]C.4.
 6. Following receipt of the recommendation of the Planning Commission (if requested or required) and after the public hearing, the Township Board shall consider the application for Special Exception Use Permit. The Township Board shall in writing either grant, deny or approve with conditions a permit for the proposed Special Exception Use. The decision of the Township Board shall be incorporated into a statement containing the conclusions relative to the application under consideration, which specifies the basis for decision and any conditions imposed. The statement may be set forth in the minutes of the meeting at which the decision is made, or may be otherwise prepared, as deemed appropriate by the Township Board.
 7. All conditions, limitations and requirements upon which any Special Exception Use Permit is granted shall be specified in the permit, and the permit shall be filed with the minutes of the Township Board with a copy to the Township Zoning Administrator. All conditions shall remain unchanged except upon the mutual consent of the landowner and the Township Board.
 8. The Township Board shall have the right to limit the duration of a

Special Exception Use Permit where the proposed use is of a temporary nature or is approved only as a temporary Special Exception Use. The Township Board may also reserve the right to review annually the permittee's compliance with the conditions and limitations imposed in the permit. If the holder of a Special Exception Use Permit shall fail to comply with any conditions and limitations of a permit, the Township Board may revoke the permit after a hearing called upon the Board's own initiative or upon application of any aggrieved party. Upon a finding by the Township Board that there has been a violation of any term, condition or limitation of a Special Exception Use Permit, corrective remedies pursuant to the zoning ordinance or other laws may be initiated or the permit may be canceled and the Special Exception Use permitted thereby shall thereupon cease to be a lawful use.

9. In the event that any property which is the subject of a Special Exception Use Permit has not been used for the purposes for which such permit was granted for a period of six (6) months or more after approval of the special exception use permit, even though improvements may have been made to the site (except where such non-use is shown to be due to causes or circumstances beyond the owner's control), the Special Exception Use Permit shall be subject to revocation on written notice by the Township Board to the holder of the permit. Following such revocation, the Special Exception Use permitted by the revoked permit shall cease to be a lawful use.
10. Amendments. Except as provided in Section 5.02, G, of this Zoning Ordinance, amendments to an approved Special Exception Use application shall be processed as a new application pursuant to this Section 5.02.

D. *Site Plan Review Procedures.*

1. *Filing Requirements.* When a final site development plan is required, and unless such requirements are modified or waived by the approving body or official, the applicant shall file the following:
 - a. A review fee as determined by resolution of the Township Board based upon the cost of processing the review.
 - b. Ten (10) copies of the complete application form for site plan review which shall contain as a minimum the following:
 - (i) the name and address of applicant;
 - (ii) the legal description of the subject parcel of land;
 - (iii) the area of the subject parcel of land stated in acres or, if less than an acre, in square feet;
 - (iv) the present zoning classification of the subject parcel; and

- (v) a general description of the proposed development.
- c. Ten (10) copies of the proposed site development plan which shall include as a minimum the following:
 - (i) a scale drawing of the site and proposed development thereon, including the date, name and address of the preparer, showing the topography of the site and its relationship to adjoining land;
 - (ii) existing man-made features;
 - (iii) dimensions of setbacks, locations, heights and size and structures and other important features;
 - (iv) percentage of land covered by buildings and that reserved for open space or to be restricted from development by a recorded conservation easement.
 - (v) dwelling unit density where pertinent;
 - (vi) location of public and private right-of-way, driveways and easements contiguous to and within the proposed development which are planned to be continued, created, relocated, or abandoned, including grades and type of construction of those upon the site;
 - (vii) curb-cuts, driving lanes, parking and loading areas;
 - (viii) location and type of drainage, sanitary sewers, storm sewers, and other facilities;
 - (ix) fences;
 - (x) landscaping;
 - (xi) screening;
 - (xii) proposed earth changes;
 - (xiii) environmental impact of the project;
 - (xiv) signs and on-site illumination; and
 - (xv) any other requirements specified by ordinance for a special exception use permit if such a permit is being pursued;
 - (xvi) such additional material information necessary to consider the impact of the project upon adjacent or nearby properties and the general public as may be requested by the reviewing and/or approving official or body.
- d. Provide an open space or conservation easement agreement if applicant elects to do so. The agreement,

when approved by the Approving body or official, shall be executed by the applicant and all others claiming an interest in the property, and shall be in recordable form or in a master deed to be recorded and shall, at a minimum, set forth the following:

- (i) a description of the areas of the development that shall be conserved as open spaces or for recreational areas;
- (ii) preclude development of the open spaces and set forth the uses for which the open spaces may be utilized;
- (iii) specify who and how the open spaces will be maintained and provide the Township with the right to maintain the open spaces if not adequately maintained and then with the right to place a lien against such open spaces and foreclose upon the property unless waived by the Township Board;
- (iv) specify that the easement shall not preclude the transfer of such property, but will bind future grantees and require that notice of such transfer be provided to the Township;

2. *Optional Sketch Plan Review.* Preliminary sketches of a proposed site development plan may be submitted for review in connection with any application for Special Exception Use Permit or where a site development plan is otherwise required by this Ordinance. The purpose of such procedures is to allow discussion between an applicant, the Township Board, the Planning Commission or the Zoning Administrator to better inform the applicant of the acceptability of his proposed plans prior to incurring extensive engineering and other costs which might be necessary for final site development plan approval. Such sketch plans shall include as a minimum the following:

- a. The name and address of the applicant or developer, including the names and addresses of any officers of a corporation or partners of a partnership.
- b. A legal description of the property.
- c. Sketch plans showing tentative site and development plans.

The Township Board, the Planning Commission and the Zoning Administrator shall not be bound by any tentative approval given in connection with the review of an optional sketch plan.

3. *Criteria for Review of Site Development Plan.*

- a. In reviewing a site development plan, the approving and/or reviewing body or official shall consider the standards of

the ordinance provisions requiring site plan approval, other standards and requirements of the zoning ordinance, township planning documents, other applicable ordinances and state and federal statutes and in addition, shall be governed by the following criteria:

- (i) That there is a proper relationship between the existing streets and highways and proposed deceleration lanes in the vicinity of the proposed site development so as to service drives, entrance and exit driveways and parking areas to assure the safety and convenience of existing and anticipated pedestrian and vehicular traffic.
- (ii) That the buildings, structures and entryways thereto proposed for the site development are so situated and designed as to minimize adverse effects upon owners and occupants of adjacent and nearby properties.
- (iii) That as many natural landscape features as possible in the site development area shall be retained where they furnish a barrier or buffer between the proposed site development and adjoining properties used for dissimilar purposes and where they assist in preserving the general appearance of the vicinity or help control erosion or discharge of storm waters.
- (iv) That any adverse effects of the proposed site development and any noise, light or activities expected to emanate therefrom upon adjoining residents or owners shall be minimized by appropriate screening, fencing or landscaping.
- (v) That all provisions of this Ordinance are complied with unless an appropriate variance therefrom has been granted by the Township Board.
- (vi) That all buildings and structures are accessible to emergency vehicles.
- (vii) That sanitary facilities have been provided for which meet the requirements and specifications prescribed by the Kent County Health Department, as evidenced by a permit issued by said department.
- (viii) That the plan as approved is consistent with the intent and purpose of zoning to promote public health, safety, morals and general welfare; to encourage the use of lands in accordance with their character and adaptability; to avoid the overcrowding of population; to lessen congestion

on the public roads and streets, to reduce hazards to life and property; to facilitate adequate provisions for a system of transportation, sewage disposal, safe and adequate water supply, education, recreation and other public requirements; to conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources and properties; to conserve property values and natural resources; and to give reasonable consideration to the character of a particular area in light of its peculiar suitability for the particular use proposed.

- b. The approving body or official shall approve the site plan if all provisions of the Ordinance are complied with unless an appropriate variance therefrom has been granted by the Township Zoning Board of Appeals.
 - c. One copy of each approved final site development plan shall be maintained as part of the Township records for future review and enforcement. One copy shall be returned to the applicant. Each copy shall be signed and dated with the date of approval by the approving body or official. The signature(s) and date is for the purpose of identifying the final approved plan.
4. Approving Body or Official. The Planning Commission shall review and recommend (if requested or required) to the Township Board by either 1. approval, 2. approval with conditions or 3. denial of a site plan for uses designated in the Ordinance for site plan review pursuant to section 201.502 (D). The Township Board has the final authority to grant, grant with conditions or deny Special Exception Use Permits after consideration of Planning Commission recommendation, if any.

E. *Reserved.*

F. *Conformity of Approved Site Development Plan.*

1. Property which is the subject of an approved site development plan must be developed in strict compliance with the approved plan. The approving body or official may require a Performance Bond in connection with the Site Plan.
2. If construction and development does not conform with the approved site plan, all work, construction or development under which the site plan is based shall be forthwith terminated by the Zoning Administrator by written stop order posted upon the premises involved and mailed to the applicant at his last known address. Upon such termination all further construction activities shall cease upon the site, other than for the purpose of correcting the violation. However, the Township Board may, upon proper written application by the applicant and after a hearing, approve a modification in the site plan to coincide with the developer's

construction provided such construction complies with the criteria contained in the site plan approval provisions and with the spirit, purpose and intent of this Ordinance.

3. Approval of the site development plan shall be valid for a period of one year after the date of approval provided development actually commenced within such one-year period. Once expired a new site plan shall be required before any construction or development is commenced.

G. *Amendment to Site Plan.* A proposed amendment, modification or alteration of a previously approved site development plan shall be processed as follows:

1. A minor amendment shall be reviewed by the Zoning Administrator and shall be approved if the Zoning Administrator finds that such changes will not adversely affect the initial reasons for granting approval, significantly alter the nature of the project or limit or relax any condition of approval approved by the Township Board. For the purposes of this paragraph, minor amendments shall be limited to the following:
 - a. Moving or adjusting condominium unit lot lines, lot lines or proposed buildings to accommodate a natural impediment such as soil conditions or subsurface geology or a standard of a public regulatory agency, providing that such change does not reduce the area of any condominium unit or lot below the standards of the zoning district and provided the change does not result in a change in the total number of units or total square footage approved.
 - b. Moving the ingress and egress drive a distance up to one hundred (100) feet, if required by the Kent County Road Commission or Michigan Department of Transportation.
3. Substituting a landscape material provided a nurseryman or landscape architect certifies that the substituted species is of a similar nature and quality.
 - d. Changing the location and/or design of exterior light fixtures provided that there will be no change in the intensity of site lighting and the location conforms to the requirements of this Ordinance.
 - e. Changing the dimensions or location of approved signage provided that the sign conforms to the requirements of this Ordinance.
 - f. Altering the location of an accessory structure that is less than one hundred (100) square feet in area provided that the location does not encroach on any approved parking, loading, or landscape areas and otherwise conforms to the requirements of this Ordinance.
 - g. Changing the height and/or material of fencing provided

that the height conforms to the requirements of the Ordinance and that any substituted material is similar in character and quality.

2. Other amendments. Any proposed changes to an approved Site Development Plan, other than minor amendments as defined in Section 201.502, G, 1, shall be submitted to the same approving body or official who initially approved the site plan for review in the same manner as the original application was submitted and reviewed.

(Amended: Ord. of 12-11-89; Ord. No. 99-1, § 9, 2-15-99; Ord. No. 99-9, 12-20-99, Ord. No. 2000-4, 10-16-00, Ord. No. 2001-3, 07-16-01)

Conflicts. If any provision of the Vergennes Township Zoning Ordinance conflicts with this amendment to the Zoning Ordinance, the most restrictive provision shall be applied.

Severability. Should any section or part of this ordinance be declared unconstitutional, null or void by a court of competent jurisdiction, such declaration shall not have any effect on the validity of the remaining sections or parts of this ordinance.

Effective Date. This ordinance shall become effective eight (8) days after its publication in a newspaper of general circulation in the Township.

Certification

I, Mari C. Stone, Township Clerk of the Township of Vergennes, hereby certify that Ordinance 2003-2 was adopted at a regular meeting of the Vergennes Township Board on February 17, 2003, and the Ordinance or a summary of the ordinance was published in the Lowell Ledger, a newspaper of general circulation in the Township of Vergennes, on February 26, 2003.

Mari C. Stone

Date