

VERGENNES TOWNSHIP, KENT COUNTY, MICHIGAN
ZONING ORDINANCE AMENDMENT
Ordinance 2003-4
Adopted August 18, 2003

Wireless Communication Facilities Ordinance Amendments

An ordinance to amend portions of Chapter 2, Definitions, Chapter 3 Zoning Districts and Chapter 4 General and Special Regulations, of the Vergennes Twp Zoning Ordinance.

The Township of Vergennes hereby ordains:

Section 1. Amend Chapter 2, Section 201.202, Specific terms, to add the following terms to be listed in alphabetical order:

Support Structure or Tower. Structures or other materials attached directly to the ground which may be utilized in conjunction with the transmission or reception of radio, telephone, cellular telephone, television, microwave, or any other form of telecommunication signals. A support structure does not include any of the following, provided that they meet the requirements of the Vergennes Township Zoning Ordinance: citizen band radio facilities, short wave facilities, ham and amateur radio facilities, television reception antennas, satellite dishes, a farmer's communication system, and government facilities which are subject to state and federal law or regulations that preempt municipal regulatory authority.

Attached Communication System. The equipment (i.e. antennas, radios, cables, hangers, accessory building, enclosures and etc.) used for the transmission and/or reception of signals for radio, television, cellular telephone, microwave, enhanced mobile radio, personal communication, pagers, internet and similar devices. This definition shall not include support structures.

Wireless Communication Facility. The combination of a Support Structure, and at least one Attached Communication System. A wireless communication facility shall not be considered an essential services.

Co-Location. The activity of placing more than one Attached Communication System on a Support Structure.

Indemnity. Insurance or other forms of financial security protecting against possible damage, or loss(es), arising out of or related to the use of a wireless communication facility or the obligation to remove the same upon abandonment.

Section 2. Amend Chapter 3, Section 201.305, "R-1" Low Density Residential District, subsection C, Special Exception Uses, to read as follows:

C. *Special Exception Uses.*

1. Private two (2) family dwellings.
 2. Dog Kennel.
 3. Earth removal, quarrying, gravel processing, mining and related mineral extraction businesses.
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4. Hospitals.
5. (Removed).
6. Licensed day care facilities [being those facilities licensed or registered as a group day care home (being seven (7)--twelve (12) children in a private home) or a day care center (being any number of children in a non-home facility) by the state under Public Act 116 of 1973]; subject to the following standards:
 - A. All day care facilities must be located on a paved county primary road.
 - B. That the facility be setback as follows:
 1. Front yard setback: Seventy-five (75) feet for the main building.
 2. Side setback: Thirty (30) foot minimum from any side lot line, except that the setback shall increase to fifty (50) feet from any adjacent residential zone and one hundred (100) feet from any residences existing at the time that the special exception use is granted.
 3. Rear setback: Fifty (50) foot minimum from any rear lot line, except that the setback shall increase to one hundred (100) feet from any residences existing at the time that the special exception use is granted.
 4. Outdoor play areas shall be setback at least fifty (50) feet from the street right-of-way line and twenty-five (25) feet from the side and rear property lines.
 5. Parking areas shall be setback at least thirty-five (35) feet from the street right-of-way line and thirty-five (35) feet from any other property line.
 - C. The Township, in addition to those general standards established in Section 201.502, Special Exceptions, shall consider standards and may set conditions on the site plan and facility design to insure that on the property, and at the day care facility, there is:
 1. Adequate ingress and egress to provide separation of incoming and exiting traffic, with appropriate acceleration, de-acceleration lanes and turning lanes;
 2. Adequate off-street loading, unloading, and stacking areas for vehicles that is separated from the parking areas;
 3. Paved parking and loading areas which comply with the parking requirements for elementary schools [Section 201.417 (F)(12)];
 4. Appropriate lighting that is directed away from adjacent residential areas and the street;
 5. Adequate fencing or screening of active playground and outdoor play areas;
 6. Compliance with the institutional identification sign requirements for the R-1 District [Section 201.403 (D)(1)(a)];

7. No dormitory style facilities and that the day care facility be designed in appearance to be consistent with those uses and structures in the surrounding area.
 - D. The Township shall be provided with a copy of the state license and each re-issued license. The day care facility shall not operate without a state license.
 - E. The day care facility shall not maintain regular hours of operations before 6:00 am or after 7:00 pm.
7. Planned Unit Development (PUD) subject to Section 201.429.

Section 3. Amend Chapter 3, Section 201.306, “R-2” Medium Density Residential District, subsection C, Special Exception Uses, to read as follows:

C. *Special Exception Uses.*

1. Medical clinics and doctors' and dentists' offices for the treatment of human beings and licensed day care facilities, provided that they are constructed in appearance as a residence.
2. Farming and agricultural operations, together with a reasonable number of accessory buildings, and the right to sell products, poultry or animals produced, raised or grown upon the premises.
3. (Removed).
4. Planned Unit Development (PUD) subject to Section 201.429.
5. Open Space Preservation Development, subject to Section 4.35.

Section 4. Amend Chapter 3, Section 201.306A, “R-3” Special Residential, subsection C, Special Exception Uses, to read as follows:

C. *Special Exception Uses.*

1. Medical clinics and doctors' and dentists' offices, nursing and convalescent homes for the treatment and care of human beings, and licensed day care facilities, provided they are constructed in appearance as a residence.
2. Multiple family dwellings.
3. Hotels, motels, lodging houses, and other transient-type residential buildings.
4. Private clubs, fraternities and lodges, excepting those of which the chief activity is a service customarily carried on as a business.
5. (Removed).
6. Planned Unit Development (PUD) subject to Section 201.429.
7. Open Space Preservation Development, subject to Section 4.35.

Section 5. Amend Chapter 3, Section 201.308, “C” Commercial District, subsection C, Special Exception Uses, to read as follows:

C. *Special Exception Uses.* The following commercial uses shall require a Special Exception Use application and approval and site plan review and approval pursuant to Section 502.

1. Funeral parlors.
2. Restaurants, with drive through facilities.
3. Indoor theaters.
4. Hotels and motels.
5. Churches.
6. Veterinary Hospitals.
7. Dog or animal kennels and pet shops.
8. Cider mill.
9. Nursery and greenhouses.
10. Automatic dry cleaning or laundry facilities.
11. Bait houses.
12. Gasoline stations and grocery and convenience stores with gasoline sales.
13. Automobile repair garages.
14. Outdoor automobile sales.
15. Lumber yards.
16. Indoor commercial recreation facilities.
17. Accessory buildings and uses customarily incidental to the special uses when located on the same lot or parcel of land.
18. Residential uses, consisting of private single-family dwellings including earth-bermed dwellings, home occupations and customary incidental accessory buildings and uses when located on the same lot or parcel of land.
19. Any commercial building with a proposed building footprint or ground floor coverage in excess of fifteen thousand (15,000) square feet.
20. Adult Businesses, subject to Section 201.433.
21. Planned Unit Development (PUD) subject to Section 201.429.

Section 6. Amend Chapter 3, Section 201.309, "I" Industrial District, subsection B, 1, i, to read as follows:

- i. Wireless communication facilities which are sited as principal uses and subject to Section 201.432.

Section 7. Amend Chapter 3, Section 201.309, "I" Industrial District, subsection C, Special Exception Uses, to read as follows:

- C. *Special exception uses.* Land and/or buildings may be utilized for the following special exception uses subject to the procedures for approval of special exception uses itemized in [sub]section D below and any specific standards adopted for the special exception use.
1. Any industrial use itemized as a permitted use in subsection B above which exceeds twenty eight thousand (28,000) square feet of floor area or employs more than thirty (30) persons on-site during any one shift.
 2. Land developments creating two (2) or more industrial lots or building sites which under the terms of this Ordinance will entail or require the construction of a public or private street or road in order to achieve the required street frontage or legal access to each lot or building site.
 3. Planned Unit Development (PUD) subject to Section 201.429.
 4. Wireless communication facilities which are sited as secondary uses subject to Section 201.432.

Section 8. Amend Chapter 4, Section 201.432, Wireless Communication Facilities, to read as follows:

201.432 Wireless communication facilities.

4.32.

- A. *Intent:* It is the intent of this Section to provide regulations controlling the placement, design, and construction of wireless communication facilities including their accessory uses and attached communication systems. Changing technologies in the field of communications has resulted in a reliance upon more versatile and convenient forms of communication. Businesses, individuals and government have all developed a dependence upon the capability to contact others. The demand for this communication service has placed a burden on local communities in their ability to regulate wireless communication facilities. This ordinance intends to reduce the impact of these communication elements on adjacent land uses by reasonably regulating their location, height, safety, general appearance, and eventual removal. Additionally, this Ordinance intends to promote and encourage the co-location of attached communication systems on existing support structures.
- B. *Regulations.* The following regulations shall govern the placement, design and construction of wireless communication facilities including their accessory uses, attached communication systems and co-location.
1. *Permitted Uses.*
 - a. *Rural Agricultural District.* Within the “RA” Rural-Agricultural District, a Wireless Communication Facility shall be permitted as a special exception use if it meets the requirements of the RA District, the requirements of Section 201.502D Site Plan Review, and the requirements of Section 201.432 C and D and, with the approval of a Special Exception Use Permit.
 - b. *Industrial District.* Except as provided in subparagraph c of this section, within the “I” Industrial District, a Wireless Communication Facility shall be a permitted principal use if it meets the requirements of the Industrial District, the requirements of Section 201.502D Site Plan Review, and the requirements of this section 201.432.
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- c. *Secondary Use.* Within the Industrial and the Rural-Agricultural Districts, not more than one (1) Wireless Communication Facility may be permitted as a special exception use to occupy a lot with another existing use permitted in the District, however, provided that not more than one (1) Wireless Communication Facility shall be permitted on any lot in the Industrial or the Rural-Agricultural District. A Wireless Communication Facility proposed as a secondary use with another permitted use shall meet the requirements of the zoning district in which it is located, the requirements of Section 201.502D Site Plan Review, and the requirements of Section 201.432 D and E and with the approval of a Special Exception Use Permit. A Wireless Communication Facility proposed as a secondary use with another permitted use shall meet the following additional requirements.
- (i) The ownership interest of the land proposed to be occupied by a Wireless Communication Facility as a secondary use shall at all times be identical to the ownership interest of the entire parcel.
 - (ii) The land area occupied by a Wireless Communication Facility approved as a secondary use shall not be sold or otherwise conveyed independent of the principal use on the property, except as a part of a legal land division that results in a new lot and a remainder parcel that meet all the requirements of this Zoning Ordinance.
2. *Co-location.* Attached communication systems which are proposed to be attached to existing support structures, in any zone, shall be approved by the Zoning Administrator if they meet all the conditions established by any existing Special Use Exception Permit that may apply, the requirements of the district in which they are located, and the applicable requirements of Section 201.432.C. and D.
3. *Failure to Cooperate in Co-location.* If a party who owns and/or otherwise controls a support structure shall fail or refuse to alter a structure so as to accommodate a proposed and otherwise feasible co-location, such failure or refusal shall be deemed a violation of this Zoning Ordinance, subject to the penalties provided in Section 603 of this Ordinance and the revocation of any approved application. Co-location shall be deemed to be "feasible" for the purposes of this Section where all of the following are met:
- a. The applicant under consideration for co-location shall undertake to pay market rent or other market compensation for co-location.
 - b. The Support Structure on which co-location is being considered, taking into consideration reasonable modification or replacement of a facility, is able to provide structural support.
 - c. The co-location being considered is technologically reasonable, e.g., the co-location will not result in unreasonable interference, given appropriate physical and other adjustments in relation to the structure, antennae, and the like.
 - d. The height of the structure necessary for co-location will not be increased beyond a point deemed to be permissible by the Township,
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taking into consideration the several standards contained within this subsection.

- C. *Application Requirements.* All applications for Wireless Communication Facilities and/or Attached Communication Systems, regardless of the zoning district in which they are proposed to be located, constructed or modified, shall include the following information and agreements:
1. *Site Plan.* A plan which meets the requirements of section 201.502 (D). The site plan shall include the location of the Wireless Communication Facility, the height and type of construction.
 2. *Proposed Use.* A complete written and graphic description of the proposed Wireless Communication Facility and/or Attached Communication System. This written and graphic description shall include an explanation of the existing technology which is being proposed.
 3. *Location Justification.* A written explanation of the reason for the proposed location with reference to the coverage area and capacity.
 4. *Ownership Interest.* The nature and extent of the applicant's ownership or lease interest in the property, building or structure upon which the facilities are proposed for placement; and, if a leasehold interest, the name and address of the owner of the lot and any other principal use on the lot. Both the lessee and the owner of the property must sign the application.
 5. *Other Support Structure Locations.* A map showing existing and known proposed Support Structures within Vergennes Township and adjoining jurisdictions. The map shall also show existing buildings and/or other structures of the same approximate height as the proposed Wireless Communication Facility within a two (2) mile radius of the proposed site which could accommodate a feasible co-location of the applicant's proposed Antenna. To the extent the information required is on file with the Township, the applicant shall be required only to update as needed.
 6. *Co-Locations.* Applications for Wireless Communication Facilities must be accompanied by documentation that the applicant has investigated the potential of co-location with other owners who have Wireless Communication Facilities or other reasonable Support Structures in Vergennes Township or neighboring communities. The documentation must include written evidence that the applicant has had direct communication and response regarding the potential for co-location with the owners/operators of such other Wireless Communication Facilities. All applications for construction of a Wireless Communication Facility will be required to provide plans for future co-location with other owners/operators at a fair and reasonable rental rate.
 7. *Engineering Certification.* The applicant shall provide verification with a certified, sealed print that the Attached Communication System and the support structure have been reviewed and approved by a professional engineer and that the proposed installation is in compliance with all the applicable codes.
 8. *Liability.* The applicant shall provide documentation that indemnity and insurance coverage exist for the Wireless Communication Facility in the event that damage or personal injury occurs or the provider abandons the structure. Such indemnity and insurance shall name the Township as an additional insured.
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The specific dollar amount of the indemnity and insurance coverage shall be approved by the Township and the cancellation of such policy shall not be effective without the approval of the Township.

9. *Landscaping Plan.* Applications for a Wireless Communication Facility must be accompanied by a plan for landscaping, screening, fencing and buffering the site. The plans shall take into consideration any existing vegetation and any other natural features of the site.
10. *Visual Impact.* The applicant shall demonstrate how the visual impact of the proposed Wireless Communication Facility will be reduced through the use of color or other techniques.
11. *Acknowledgment.* The owner and lessee shall sign an acknowledgment and agreement to the following: (a) that a lien and other costs may be imposed upon the property pursuant to Section 201.432 (D) (5), and (b) that the owner and lessee shall consent to a co-location as provided in this ordinance.

D. *Performance Standards for Wireless Communication Facilities.* Wireless Communication Facilities must meet the following applicable performance standards:

1. *Site Plan Review and Special Exception Use Permit.* A Wireless Communication Facility application must receive a Special Exception Use Permit and Site Plan approval from the Planning Commission and/or Township Board as set forth by the ordinance. Applications for approval of an Attached Communication System shall be approved by the Zoning Administrator.
 2. *Engineering Certification.* The application shall provide verification that the antenna mount and structure have been reviewed and approved by a professional engineer and that the proposed installation is in compliance with all the applicable codes. The Wireless Communication Facility must be set back from all property lines a distance equal to its height, unless engineering specifications certified by a licensed structural engineer and reviewed by the Township Engineer document a lesser fall zone. The applicant shall incur all cost associated with the Township engineering review. Such engineering certification must also provide that the final design meets all requirements of the Federal Communications Commission, the National Environmental Policy Act of 1969 and the Federal Aviation Administration and other applicable statutes and regulations.
 3. *Height.* The maximum height of a Wireless Communication Facility shall be 200 feet. A Wireless Communication Facility greater than 200 feet may be permitted, if in the opinion of the Planning Commission, the applicant has sufficiently demonstrated that a proposed Wireless Communication Facility in excess of 200 feet will reduce the total number of potential Wireless Communication Facilities within Vergennes Township and the surrounding areas.
 4. *Accessory Structures.* Accessory structures are limited to the use associated with the operation of the Wireless Communication Facility. Accessory structures shall not exceed 600 square feet in area and a height of 20 feet. Accessory structures shall not be located closer than 50 feet from all property lines.
 5. *Abandonment.* The Wireless Communication Facility shall be removed by the property owner or lessee within three (3) months of being abandoned. The Wireless Communication Facility shall be removed to the top of the footing. If
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the tower has not been removed within the period specified, the Township Supervisor, with the approval of the Township Board, may take all steps necessary to have the structure removed. All costs relating to the removal (including attorney fees) shall be charged to the owner and/or lessee of such Wireless Communication Facility and shall become a lien on the property until paid in full together with any and all costs of collection and the Township may record a lien against the property and proceed to foreclose upon the lien according to the laws of judicial foreclosure.

6. *Unsafe and Unlawful Wireless Communication Facilities.* When any Wireless Communication Facility is determined to be unsafe or is unlawfully erected or maintained and is found to be in violation of the provisions of this ordinance the use of the Wireless Communication Facility shall be discontinued until all violations are corrected or it shall be removed.
7. *Additional Equipment.* Wireless Communication Facility owners shall provide disclosure of additional Attached Communications Systems whenever installed on an existing structure.
8. *Additional Performance Requirements.* The following and additional regulations pertaining to Wireless Communication Facilities shall apply:
 - a. All Support Structures shall be equipped with an anti-climbing device to prevent unauthorized access.
 - b. Antennae and metal structures shall be grounded for protection against a direct strike by lightning and shall comply as to electrical wiring and connections with all applicable local statutes.
 - c. All Wireless Communication Facilities shall be located so that they do not interfere with radio, television, telephone and other reception in nearby residential areas. In the event a Wireless Communication Facility causes interference, the applicant, or his/her agent shall take all steps necessary to correct and eliminate such interference.
 - d. Wireless Communication Facilities shall not be artificially lighted unless required by the Federal Aviation Administration and if so required, the Wireless Communication Facility shall be equipped with the form of lighting deemed by the Planning Commission to be least intrusive. White strobe obstruction lighting shall not be permitted. No part of a Wireless Communication Facility shall be used for advertising visible from adjacent lands.
 - e. The Site of a Wireless Communication Facility shall not serve as a regular place of employment for any employees of the owner or lessee of the Wireless Communication Facility.
 - f. The Wireless Communication Facility shall incorporate a color scheme which reduces visual impact.

Section 9. 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.

Section 10. 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.

SECTION 11. 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 2003-4 was adopted at a regular meeting of the Vergennes Township Board on August 18, 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 August 27, 2003.

Date_____
