



Conditions



**MICHIGAN ECONOMIC
DEVELOPMENT CORPORATION**

What you will learn:

When conditions can be used

How to use conditions in an approval

Benefits

Potential problems

Land development is complicated, and while we adopt codes and regulations to provide consistency and predictability, and to implement the community vision as articulated in the master plan, there are exceptions to the rules. Conditions are the solution to these situations.

Approval of site plans, special land uses and variances can all have conditions placed on them. Most rezonings cannot, unless a community allows consideration of conditional rezonings.

Conditional Rezoning

Since 2004, the state of Michigan has permitted conditional rezonings if a community wants to allow them. Conditional rezonings are different from other approvals in that the commission or legislative body cannot impose conditions, the applicant must offer them.

If a motion includes conditions, they must be:

- Reasonable and intended to protect natural resources, the health, safety, and welfare, and the social and economic well being of people.
- Related to a valid exercise of the police power.
- Necessary to meet the intent and purpose of the zoning ordinance; related to the standards established in the ordinance for the land use or activity under consideration; and necessary to ensure compliance with those standards.

What the Law Says:

The Michigan Zoning Enabling Act :

Use and development of land as condition to rezoning.

(1) An owner of land may voluntarily offer in writing, and the local unit of government may approve, certain use and development of the land as a condition to a rezoning of the land or an amendment to a zoning map.

(2) In approving the conditions under subsection (1), the local unit of government may establish a time period during which the conditions apply to the land. Except for an extension under subsection (4), if the conditions are not satisfied within the time specified under this subsection, the land shall revert to its former zoning classification. (3) The local government shall not add to or alter the conditions approved under subsection (1) during the time period specified under subsection (2) of this section.

(4) The time period specified under subsection (2) may be extended upon the application of the landowner and approval of the local unit of government.

(5) A local unit of government shall not require a landowner to offer conditions as a requirement for rezoning. The lack of an offer under subsection (1) shall not otherwise affect a landowner's rights under this act, the ordinances of the local unit of government, or any other laws of this state.

Site Plan

A site plan shall be approved if it contains the information required by the zoning ordinance and is in compliance with the conditions imposed under the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes.

Standards

Data Submission Requirements. These are often included in an ordinance as "required information" for applications. Examples: property description, location of structures within 100 feet.

Non Discretionary Standards. Nondiscretionary standards are the rules typically associated with an ordinance. They are not subject to interpretation. Examples: size of parking spaces, required setbacks, permitted uses.

Discretionary Standards. Most often associated with special land uses, but sometimes with other approvals. These require interpretation on the part of the approving body. Examples: preserve native landscaping, or the site encourages pedestrian activity.

When a case is before the approving body, rigorous deliberation and fact finding should make it clear if the standards for approval have been met. When considering whether to attach a condition, first consider the request without the condition. Would the review standards be met? If not, then a condition can be attached.

How to Use Conditions

Special Land Use. Special land uses are discretionary. A community's ordinance stipulates overall standards of approval for any special land use, but may also have additional standards for particular land uses such as day care centers, drive through restaurants or adult uses. This means that the characteristics of the proposed use, as well as those of the proposed site, all factor into whether the use would be a good fit at this location. Conditions can assist in making a special land use a good fit. For example, a drive through restaurant which abuts a residential district may be approved on

Special Land Uses

A request for approval of a land use or activity shall be approved if the request is in compliance with the standards stated in the zoning ordinance, the conditions imposed under the zoning ordinance, other applicable ordinances, and state and federal statutes.

Reasonable conditions may be required with the approval of a special land use, planned unit development, or other land uses or activities permitted by discretionary decision. The conditions may include conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

1. Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
2. Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
3. Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the approving authority and the landowner. The approving authority shall maintain a record of conditions which are changed.

the condition that the drive through speaker is shut off after 10 PM and all orders between 10 PM and 2 PM are placed at the window.

Site Plan Review. An ordinance should have detailed standards to determine whether or not a site plan should be approved. See sidebar on Standards. A site plan for a permitted use is not discretionary. Generally, as long as an applicant complies with the provisions of your municipal ordinances, you must recommend or grant approval of a site plan. Any standards and conditions that a municipality applies and requires for plan approval must benefit the public health, safety, and welfare. Requiring what is not authorized could result in litigation. But a condition of approval may allow the site plan to be approved that evening, rather than postponing the case until a revised site plan can be submitted. For example, the site plan is approved on the condition that the screenwall be changed from the proposed 5 foot height to the required 6 foot height

Variances. If the ZBA finds that a practical difficulty (non-use variance) or undue hardship (use variance) has been proven, conditions can be included in the approval. For example, the variance to build a garage in the required side yard is approved based upon a practical difficulty being proven on the condition that it be constructed with a reverse gable roof to minimize stormwater runoff on the neighboring property.

Conditional Rezoning. Under a conditional rezoning, the *applicant* must offer the conditions. The planning commission or legislative body cannot impose conditions for this type of approval. An applicant may request a rezoning from residential to business zone on the condition that a dentist office be developed subject to site plan approval. In this case, the developer has offered to lock in the particular use of the property when a standard rezoning would have allowed any number of uses permitted by right under the ordinance.

How many conditions is too many?

Different communities have different levels of comfort when it comes to the number of conditions attached to a project/case. Some communities want a plan to come before them that meets every standard, and will move to postpone until the perfect plan is presented. This can be time consuming. Other communities are comfortable approving with many conditions. This can be burdensome for staff to interpret and enforce. When deciding whether to approve with a number of conditions or postpone with issues to be addressed at the next meeting, a commission needs to consider the following:

- Does the community have adequate staff to address conditions and ensure they are met after commission approval?
- Will conforming to the conditions markedly change the project to the extent that it is an entirely new project, in which case an additional public meeting would be appropriate?
- Are the conditions relatively minor and delaying approval would result in a major delay to construction?

This tear sheet was developed by the Michigan Association of Planning (MAP) for the Michigan Economic Development Corporation (MEDC). The Michigan Association of Planning is a 501 c 3 organization, dedicated to promoting sound community planning that benefits the residents of Michigan. MAP was established in 1945 to achieve a desired quality of life through comprehensive community planning that includes opportunities for a variety of lifestyles and housing, employment, commercial activities, and cultural and recreational amenities.

