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.

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.
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
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.

Variance. 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.

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.
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?