

# Planning and Zoning for Everyone

Good development, however you define it, is achieved when a local government (city, township, village, and sometimes county) plans for it, and then adopts codes and a process to implement that plan. State law provides a framework, but most of the work is decided locally.

This workshop is designed for residents and business people to help you understand land development and the legal framework within which decisions are made. Understanding basic planning and zoning processes, and when your input is most valuable and impactful, sets the stage for informed decision making.

This publication is intended to complement and reinforce the Michigan Association of Planning's presentation, Planning and Zoning for Everyone, so that you can easily reference what action is being proposed and determine your role. It highlights details on master plans, zoning ordinances, and the different types of development/land use review. Each of these is defined and includes the following information:



Is it required?



Where can I find it?



Who decides?



Do citizens have a say?



How would I hear about it?

The **Michigan Association of Planning (MAP)** is a 501c3 nonprofit membership organization that meets the educational needs of professional community planners; elected officials like city councils and city commissions; and planning commissioners and zoning board members. We exist to help community leaders create successful, healthy, safe and attractive communities built first and foremost on quality community planning.

To begin receiving valuable benefits that will help your community thrive, join MAP today by visiting [planningmi.org/membership](http://planningmi.org/membership) OR emailing MAP at [info@planningmi.org](mailto:info@planningmi.org).



# Master Plan

A master plan is also referred to as a comprehensive plan or future land use plan. It is an official document authorized by Michigan law to serve as the basis for zoning. It also guides decisions on development and public capital improvements. Planning allows a community to prepare for changing conditions and to reflect the public's values and priorities.

The master plan can be viewed as a blueprint for the community's future. The typical master plan:

- Identifies and evaluates existing conditions and trends.
- Establishes goals with public input.
- Considers alternatives and provides recommendations for the physical development or redevelopment of the community.



## Is it required?

No. But if the community adopts a zoning ordinance, it should be based upon a master plan. Maintaining these documents protects a community from litigation and losing that litigation.



## Where can I find it?

The master plan is public information and available for review. It is typically found on the local government's website. If not, the master plan will be at the government office.



## Who decides?

The planning commission is the body that adopts the master plan unless the legislative body has decided to do so.



## Do citizens have a say?

Because the master plan is the basis for the zoning ordinance and development in a community, changes to the master plan often involve more community engagement than other processes in land use and development. At least one public hearing (see public meeting and public hearing sidebar, page 8) is required before adopting a master plan.



## How would I hear about it?

If an update or new master plan is being undertaken, you may find a webpage devoted to it, invitations on social media to complete surveys, or invitations to attend meetings.

# Zoning Ordinance and Map

Zoning is the public regulation of the use of land. It involves the adoption of an ordinance that divides a community into various districts, or zones, and describes regulations on use, buildings, structures and land within the various zones. The zoning ordinance also includes an official zoning map, which depicts graphically the physical location of the various zoning designations. Zoning is considered a "police power" regulation, one of a number of laws (such as building and health codes) which are adopted to protect the public health, safety and general welfare.



### **Is it required?**

No. If a community does adopt a zoning ordinance, state law says it must be based upon an adopted master plan (see above). Not keeping these documents up to date can open up a community to litigation and losing that litigation.



### **Where can I find it?**

The zoning ordinance and map are public information and available for review. Hard copies will be at the government office. You can usually find the ordinance and map on the local government's website. An amendment to an ordinance is public information, so you can review what is being proposed. If a change is adopted, the new ordinance is published like other new laws. If your community has GIS or an online building permit system, you can find information on the zoning of individual parcels.



### **Who decides?**

A rezoning (map amendment) can be initiated by the property owner or by the local government. A text amendment (changing the ordinance language) may be suggested by a citizen, but is initiated by the local government (typically staff or a consultant). While the planning commission makes a recommendation on any proposed changes, the final decision is up to the legislative body.



### **Do citizens have a say?**

A public hearing is required (see public meeting and public hearing sidebar, page 8). For rezonings, there are typically adopted standards that must be met before a rezoning is granted.



### **How would I hear about it?**

A public hearing is required (see public meeting and public hearing sidebar, page 8).

## **Additional Legal Considerations**

While zoning is a type of police power--like health, nuisance, and building codes--federal and state laws, as well as court decisions can impact how much zoning can and cannot do. For instance:

- The federal law, The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), establishes that a zoning ordinance must allow a religious place of assembly wherever other places of assembly (e.g., fraternal organizations) are allowed.
- Michigan's Right to Farm Act of 1981 restricts local regulation of agricultural uses.
- The U.S. Supreme Court in *Dolan v. City of Tigard*, 1994 limited the ability of government to use zoning to compel property owners to make unrelated public improvements as a condition of approval.
- The State Court of Appeals in *Charter Township of Northville et al. v. Northville Public Schools*, 2003 determined that public school additions or new construction are not subject to local zoning approval.

Laws can change abruptly, making local ordinances ineffective or unconstitutional. Your municipal planner or municipal attorney is probably aware of any changes, but you can always request a report on how your community will be affected by a change in the law.

# Development Permitted By Right or By Permit

Development permitted by right or by permit are those uses and types of construction that a community has decided to allow, but do not require site plan review. It is up to the community to decide, but typically detached dwelling units, building additions, accessory buildings, signs, or a change of use where there is no change to the outside of the building are not required to have site plan review. These are small projects with no likely impact on surrounding properties. While they may not require site plan review, the state construction code may require that a permit be obtained for the construction being proposed.



## Is it required?

In Michigan, the construction code is adopted at the state level, and for now communities are not able to change these codes. If they choose not to enforce them, the state (or the county) will enforce those laws instead. The state construction code stipulates what type of work or structures require a permit, but it does not address whether or not the use is allowed, where on the property the building is allowed, or its design. Those requirements are found in the local zoning ordinance.



## Where can I find it?

Permits and construction plans are public information. You can often see what permits have been obtained for a given property online or you can go to your government office and ask to see the plans and the permitting history for a given property. Once a permit has been obtained, the plans are public information and can be viewed.



## Who decides?

While the state construction code dictates how a building is constructed, it does not address whether or not the use is allowed, where on the property the building is allowed, or its design. Those requirements are found in the local zoning ordinance (see Zoning Ordinance above).



## Do citizens have a say?

If a proposed project complies with the zoning ordinance and the construction code, the citizens do not have a say.



## How would I hear about it?

If a proposed project complies with the zoning ordinance and a site plan was not required or a site plan was already approved, no notice to the neighbors about the upcoming construction is typically required.

# Site Plan Review

Site plan review is the process of reviewing a site plan to ensure that it meets all zoning and other regulatory requirements for development. A site plan is a drawing showing what an applicant wants to do on a parcel, including existing and proposed structures, natural features, parking, utilities, and much more. According to Michigan's Zoning Enabling Act, a site plan includes "the documents and drawings required by the zoning ordinance to ensure that a proposed land use or activity is in compliance with local ordinances and state and federal statutes."



### **Is it required?**

State law requires site plan review for any uses that are classified as special land uses or planned unit developments (described in detail below). Most communities adopt an ordinance that requires a site plan review for at least the most complex or largest developments, but some communities require site plan review for small projects too, including detached dwelling units.



### **Where can I find it?**

Once application for site plan review is made, the case is public information and is available to review. Planning commission agendas are posted at government offices and on the government's website. Decisions on site plan reviews are part of the public record.



### **Who decides?**

When they are required and who reviews site plans is determined by the community. Your zoning ordinance will outline exactly what type of development requires site plan review and who is responsible for review and approval. In most communities in Michigan, the planning commission is responsible for site plan reviews. If the site plan complies with the zoning ordinance, the approving body (planning commission or zoning officer or building official) is obligated to approve it.



### **Do citizens have a say?**

It's important to understand that site plan review is not related to the proposed use—the use is permitted if a site plan is being considered. If you want to make changes to the ordinance to not allow certain uses or you want different standards (for example, different landscaping or screening required), those changes involve text amendments to the ordinance (see Zoning Ordinance section above).



### **How would I hear about it?**

Some communities require a public hearing for all site plan reviews, but most do not. It's important to know that if you were notified about a site plan review, you will not be notified after the decision has been made.

## **Special Land Use**

Special land use is a use that is generally considered compatible with other uses in the zoning district, in some, but not all locations in that district, and may have impacts on an adjacent area and so are allowed only if certain conditions are met. Additional review is required to ensure that potential negative impacts are addressed. Common uses considered special land uses include places of worship in residential districts or gas stations in commercial districts.



### **Is it required?**

No. Local units of government may create an ordinance that classifies some uses as special land uses, but they are not required to do so. If they do create special land uses, the special land uses must be named in the ordinance, along with any conditions that the use must meet, and the entity or official responsible for review and approval. It is common for an ordinance to include standards that must be met in order to approve the use and conditions. State law requires a site plan review for any special land use.



### **Where can I find it?**

Once application for special land use is made, the case is public information and is available to review.



### **Who decides?**

The community determines where special land uses are allowed and who reviews and approves them. Your zoning ordinance will outline the process and standards for approval.



### **Do citizens have a say?**

Unlike a site plan, a special land use application is related to the use being proposed and there are often standards that a special land use must meet which are outlined in the zoning ordinance.



### **How would I hear about it?**

State law requires that a notice be posted at your government office, published in the local newspaper, and a notice mailed to all property owners and renters within at least 300 feet of the property where the special land use is being proposed, and most communities require a public hearing. If not, you can request one according to state law (see public meeting and public hearing sidebar, page 8).

## **Conditional Rezoning**

Conditional rezonings have been permitted in Michigan since 2004, if a community wants to allow them. Unlike other approvals, conditional rezonings are different because the planning commission or legislative body cannot impose conditions, the applicant must offer them. Conditional rezoning is a way to tie the exact proposed use of the property to the proposed design and to the proposed rezoning.



### **Is it required?**

No. Local units of government may create an ordinance that allows them, but they are not required to do so.



### **Where can I find it?**

Once application for conditional rezoning is made, the case is public information and is available to review.



### **Who decides?**

A public hearing is held by the planning commission or legislative body. The legislative body has the final say.



### **Do citizens have a say?**

A conditional rezoning is about the proposed use, as well as the site design. There are often adopted standards to consider with a rezoning; these will be considered along with adopted site plan review standards since they are being considered simultaneously.



### **How would I hear about it?**

A public hearing is required (see public meeting and public hearing sidebar, page 8).

## Planned Unit Development (PUD)

Planned unit developments (PUDs) permit flexibility in the regulation of land development. It should encourage innovation in land use; variety in design, layout, and type of structures constructed; useful open space; and better housing, employment, and shopping opportunities. A PUD is a way to connect the proposed use of the property to the proposed design.



### Is it required?

No. Local units of government may create an ordinance that allows them, but they are not required to do so.



### Where can I find it?

Once application for PUD is made, the case is public information and is available to review.



### Who decides?

The community determines where PUDs are allowed and who reviews and approves them. Your zoning ordinance will outline the process and standards for approval.



### Do citizens have a say?

The PUD connects the proposed use and the design. There are often several discretionary standards that the approving body must consider.



### How would I hear about it?

Under state law, at least one public hearing must be scheduled (see public meeting and public hearing sidebar, page 8).

## Variances (Use and Non-Use)

Use variances allow a use that isn't permitted in the zoning district. Non-use variances allow a property owner to vary dimensional requirements of the ordinance (for example: setbacks, height, area, or number of parking spaces). To receive a use variance, an undue hardship must be proven. To receive a nonuse variance, a practical difficulty must be proven. Variances are a way of granting relief for properties that are unique and can't be developed or used in accordance with the zoning ordinance.



### Is it required?

If your community has a zoning ordinance, state law says that the community must establish a zoning board of appeals (ZBA or BZA) and allow for variances and appeals requests of the zoning ordinance. State law allows a legislative body to name itself as the ZBA or it can create a separate board and appoint members to it.



### Where can I find it?

The process and standards for variances are adopted as part of the zoning ordinance. Once an application for a variance is made, the case is public information, so you can review the request.



### **Who decides?**

The ZBA is the final decision maker on variances. While the ZBA is appointed by the legislative body, the legislative body cannot undo a decision made by the ZBA. ZBA decisions can only be appealed to circuit court.



### **Do citizens have a say?**

There are standards the ZBA must consider. In addition to the ones in the local zoning ordinance, there is case law that dictates the standards to use when considering variance requests.



### **How would I hear about it?**

A public hearing is required (see public meeting and public hearing sidebar, page 8).

## **Public Meetings and Public Hearings**

All public hearings are also public meetings, but not all public meetings are also public hearings.

All public meeting agendas must be posted at government offices and on the government's website.

Public hearings have additional notice requirements. Notices for public hearings must be posted at government buildings and also must be published in the local newspaper. They are usually posted on the government's website, too. When public hearings are required for a case involving a particular property, the law also requires that notices are sent to everyone (property owners, renters of residential property, and business owners who rent) within 300 feet of a subject property.

If you receive a notice in the mail or hear about a proposed change or a new development, it is best to do a little bit of homework before coming to the hearing or meeting. Don't believe everything you see or hear on social media. There is a lot of disinformation. If it isn't clear from the notice, find out for yourself what exactly is being considered and conversely what is not.

Review the application package so you are not forced to "wing it" the night of the meeting. The hearing is not the time to get questions answered—it's the time for the officials considering the application to hear what you think about the application.

It is better to ask your community's staff about the review and what is being proposed ahead of time. Then when the time comes to speak at the public hearing, you can do so with confidence about what is being proposed and whether or not it is good development that the community planned for.

### **At the meeting or hearing:**

Public hearings are public, so anyone can come to the hearing, even those who didn't receive notice. There is a designated time when the public is invited to comment. There are often rules about how many times you can speak on a single item and for how long. These rules are often posted on the website, on the back of the meeting agenda, or posted in the meeting room. You can also write a letter or an email regarding the case or issue and request that the letter or email be read into the record as part of public comment.

### **After the meeting or hearing:**

Decisions made during meetings will be found in the meeting minutes, which are part of the public record. The law does give a reasonable period of time for the clerk to type draft minutes before they are available to review.

It's important to know that if you were notified that your neighbor was requesting something (variance, site plan, special land, PUD, or a rezoning), you will not be notified after the decision has been made.