

**THE PROFFER SYSTEM
IN
FAIRFAX COUNTY**

ZONING EVALUATION DIVISION
DEPARTMENT OF PLANNING AND ZONING
FAIRFAX COUNTY, VIRGINIA
NOVEMBER 1985
(REVISED AUGUST 2009)

THE PROFFER SYSTEM IN LAND USE REGULATION

IN FAIRFAX COUNTY, VIRGINIA

The proffer system has been an element of land use regulation in Fairfax County, Virginia for over twenty-five years. This paper reviews briefly the proffer system as it is currently practiced within the context of the rezoning process and highlights the major benefits of proffers.

In July 1975, "proffers" were introduced to the process for rezoning property within Fairfax County. The concept of supplementing regulations of the Zoning Ordinance by conditions proffered by an applicant seeking an amendment to the zoning map had then recently authorized in the State Code (now Sect. 15.2-2303, see Appendix A). Implicit in the term proffer, as defined by the State Code, is the understanding that proffers are voluntarily submitted by the property owner.

The proffer system continues today with support from the various participants in the rezoning process, including, the development community, citizens, the staff and County officials. The proffer system, in various forms, is in use in many jurisdictions across Virginia. On the whole, it is generally accepted that the proffer system has mutually benefited local jurisdictions, the local citizens, and the development industry.

The proffer system is an integral component of the overall rezoning process within which it operates. The County's process for processing rezoning applications is outlined in Appendix B and is discussed briefly below. Under the State Code and the County's Zoning Ordinance, the County has one year within which to act upon a rezoning application, unless a deferral is requested by the applicant.

Potential applicants are encouraged to have a pre-application meeting with staff prior to filing an application. This is intended to initiate the discussion early in the applicant's decision-making process, to assist in early identification of the issues that the proposal should address, and to identify proposals that have a limited chance of success before either staff or the developer have expended much effort on that proposal.

The Fairfax County Zoning Ordinance requires that a rezoning application include, among other things, a statement of justification, and a development plan. The statement of justification generally explains the application's conformance with the Comprehensive Plan and describes the proposed development, including its unique features and amenities.

The development plan is a graphic depiction of the proposed land use, with supporting notes and tabulations. This Plan must satisfy certain specific requirements contained in the Zoning Ordinance. (See Sect. 18-203 of the Zoning Ordinance for the submission requirements for a Generalized Development Plan, GDP, required for conventional zoning districts; see Part 5 of Article 16 for the submission requirements for Conceptual and Final Development Plans, required for the PDH, PDC and PRM Districts; see Part 3 of Article 16 for the submission requirements for a PRC District). The development plan is frequently supplemented by additional information including a landscape plan, cross-sections, enlargements of amenity areas, and building elevations. In addition, the Zoning Ordinance requires that additional information be submitted with regard to certain specific uses, such as for uses that involve construction in a floodplain. For applications of obvious complexity or controversy and where additional information will be necessary for staff analysis, long lead-time items such as traffic impact studies and noise impact analyses should be submitted in a timely manner for the staff's analysis.

Staff analysis of a rezoning application is coordinated by a "Staff Coordinator" from the Zoning Evaluation Division within the Department of Planning and Zoning who is assigned the application at the time

that it is scheduled for public hearing. The Staff Coordinator receives information and issues that have been identified from more than a dozen County, state and regional agencies and negotiates issue resolution with the applicant. The staff analysis is also guided by provisions of the Zoning Ordinance, the subdivision ordinance, the Public Facilities Manual, the Comprehensive Plan and other ordinances, regulations and policies of the County.

The Comprehensive Plan is the guide to future development of the County. In Fairfax County, a high priority is assigned to the Plan's land use recommendations; therefore, the Plan's guidance is of paramount importance during the review of any rezoning application. It is rare, if ever, that license is taken with the Plan's recommendations. A key feature of the Plan with regard to residential development is the Residential Development Criteria contained in Appendix 9 of the Land Use Element of the Policy Plan volume. The "Residential Development Criteria" (Appendix C) are a guide for evaluating residential rezoning proposals. All residential developments should satisfy the applicable development criteria to the extent possible regardless of where in the density range the proposal falls. The objective of the development criteria is to provide guidance to applicants, their agents and engineers, staff, the public, the Planning Commission and the Board of Supervisors as to what the County expects from its developments. In limited circumstances where it is warranted, a certain criterion or criteria may be given more weight than the other criteria. While these criteria apply specifically to residential development, they also serve as general guidance for evaluating the intensity of commercial or industrial development.

A proffer statement is not a requirement of the process; however in practice, virtually all applicants submit a proffer statement in support of their application. The proffers, development plan and all other supporting information submitted by the applicant are used in the review of the proposal and in identifying development issues. Such issues may include: how the application conforms to the recommendations of the Comprehensive Plan, how the development proposal fits in with existing and planned development in the neighborhood; transportation impacts, which may include traffic volumes, access issues, internal circulation, and/or adequacy of the road network; non-motorized transportation and transit such as pedestrian facilities and connections to mass transit; environmental protection and the amelioration of adverse environmental impacts created by the development proposal; the preservation of trees and other environmental amenities; and the appropriate provision of stormwater management facilities and best management practices for the protection of water quality, including the location of outfalls and the impacts on the receiving channels.

The conditions in a proffer statement typically address issues including the following:

- Layout of the proposed features of the site
- Proposed environmental protection
- Noise mitigation measures to be employed
- Tree preservation
- Buffering, landscaping, urban design features, architectural elements, and other similar design elements;
- Use of the property;
- Commitments to address transportation impacts
- Commitments to address public facility impacts

A staff report is published two weeks prior to the Planning Commission's public hearing on an application. The staff report describes the proposal, identifies issues related to the proposal, evaluates the commitments made by the applicant to address the identified issues, and describes issues that have not been satisfactorily addressed. Staff may change its recommendation in the form of an addendum to the staff report should subsequent commitments and/or information warrant a changed position. It is important to note that

delays in providing responses to issues identified during the process are likely to result in deferrals of the scheduled hearing dates.

The rezoning process emphasizes applicant/staff/community dialogue. This includes negotiations regarding the nature, extent and wording of the proffered conditions and specific features and details to be included on a proffered development plan. The rezoning process in Fairfax County includes substantial public participation, through meetings that the applicant holds with the affected communities, with groups that have been established changes to proffers, the County, such as revitalization districts; and with land use committees or other bodies. An applicant should contact the District Supervisor's office early in the process to determine what community outreach is appropriate.

The rezoning process includes two public hearings: the first one before the Planning Commission, which makes a recommendation on the application to the Board of Supervisors; and the second before the Board of Supervisors, who approves or denies the request. Notice to adjacent property owners, legal advertising in a newspaper, and posting of the property with public notice signs is required for each public hearing. Rezoning applications will generally be scheduled for a public hearing before the Planning Commission within five months of the date that the application is accepted, which means the date that all submission requirements have been adequately addressed; it is not the date that the application is delivered to the Zoning Evaluation Division. The hearing before the Board of Supervisors is typically scheduled after the Planning Commission makes its recommendation, which may or may not occur on the same date as the public hearing.

The State Code requires that the proffer statement be submitted in writing and signed in advance of the public hearing before the governing body (the Board of Supervisors). To facilitate a smooth public hearing process and to minimize deferrals of applications, the Board of Supervisors has adopted procedures that require that signed proffers be submitted to staff at least 31 days before Board of Supervisors scheduled public hearing. Proffers are required to be signed by all owners and contract purchasers of property subject to the rezoning application. Once a rezoning is approved, the proffers become a part of the zoning for the property involved and must be complied with as would any other zoning requirement.

Copies of the Board action, including the proffer statement and the development plan (if it was proffered), are distributed to those agencies that will review subsequent subdivisions plats or site plans, review and approve building permits, perform inspections and issue occupancy permits (known as Residential Use Permits and Non-residential Use Permits in Fairfax County). A copy of the proffered conditions and development plans are required to be included on the subdivision plat or site plan submission and all future development and activities must be in "substantial conformance" (as defined by the Zoning Ordinance) with the proffered conditions.

The Zoning Ordinance recognizes that during the subsequent stages of the development process, as final engineering of the site is undertaken, new information and issues may arise. Therefore, the Zoning Ordinance allows requests for "minor modifications" to be reviewed and approved administratively. These requests are known as proffer interpretations and are typically initiated by letter which includes all necessary supporting documentation, including a plan illustrating the proposed change. By the Zoning Ordinance, the task of interpretation is assigned to the Zoning Administrator. In practice, the Zoning Administrator has delegated authority for interpretations to the Director of the Zoning Evaluation Division who relies on the precise wording of the proffers and the record of the application to determine whether a proposed revision is in substantial conformance with the proffers. Under the Zoning Ordinance, staff has only limited flexibility in allowing administrative changes. When a modification that is not in substantial conformance with a proffered condition is requested and approval cannot be granted administratively, a further rezoning action is required to effectuate the change through the submission and approval of a proffered condition amendment application,

which is subject to the same procedures as a rezoning application. The exact type of application necessary to effectuate such a change is based on the specifics of the original approval and the type of change being requested.

BENEFITS OF THE PROFFER SYSTEM

Implementation of the Comprehensive Plan

The Fairfax County Comprehensive Plan places land throughout the County into several land classification types (see the excerpt from the Concept for Future Development and Land Classification System in Appendix D). This identifies centers where growth is to be targeted such as the Tysons Corner Urban Center, ten Community Business Centers, six Suburban Centers and six Transit Station Areas. The Plan also includes polices to protect stable residential areas, which are classified as Suburban Neighborhoods and Low Density Residential Neighborhoods such as Great Falls, the Occoquan basin and Mason Neck. In addition, Industrial Areas and Large Institutional Areas, such as Fort Belvoir and George Mason University, are identified.

More specific recommendations are found in the five volumes of the Plan. The first, the Policy Plan, addresses Countywide Planning Objectives and Policies in the following functional areas: land use, transportation, housing, environment, economic development, heritage resources, public facilities, human services and parks and recreation. The other four volumes include recommendations that are specific to certain portions of the County. The County is divided into four Planning Areas, designated Area I, Area II, Area III and Area IV. Each area is contained in a separate volume of the Plan and is divided into Planning Districts, which are then divided into Community Planning Sectors. Special Areas such as transit station areas and the Tysons Corner Urban Center are addressed by specific plan text. The latter four volumes contain the specific land use, transportation, public facility and recreation recommendations; identify environmental assets, heritage resources and other features of note; and include specific urban design recommendations.

The proffer system is the major tool that the County uses to implement the recommendations of the adopted Comprehensive Plan. It is a flexible tool that allows staff, the community, the applicant, the Planning Commission and the Board of Supervisors to address the unique circumstances of a particular property and to implement the diverse recommendations of the Plan. Through the proffer system the County is able to obtain commitments to the following among other things:

- implement specific land use recommendations for a particular property;
- ensure that new residential development, especially infill development, does not adversely impact the neighborhood where it is proposed through the evaluation of the Residential Development Criteria contained in the Policy Plan;
- implement urban design recommendations in areas including the Tysons Corner Urban Center, and Community Business Centers;
- implement the environmental recommendations of the Plan by, among other things, preserving stream valleys and/or other eco-systems, implementing water quality protections which ultimately affects areas including the Chesapeake Bay, protecting residents from highway and aircraft noise and from glare;
- preserve and/or document heritage resources that are potentially affected by development;
- obtain commitments for affordable dwelling units or funds for the County's Housing Trust Fund;
- obtain commitments that offset the proposal's impact on the public facilities such as schools and parks;

- and address specific community concerns related to a development proposal.

Other Benefits

In addition, because the proffer system has been accepted by the community and the development industry and because implementation has been consistently enforced, the system has generated a confidence and credibility in the Comprehensive Plan and in the proffer system as a tool to implement the Plan. Developers have developed a confidence that the quality of development to which they have committed will be replicated on the vacant parcel adjacent to their property. Most importantly, since the written proffered conditions are legally binding and run with the land, commitments made during the rezoning process become part of the record and regulations governing the development of that property.

Administratively, the legal requirement that any proffers must be submitted before the Board of Supervisors public hearing and the Board policy that proffers must be included in the Board Package (the materials delivered to each member one and a half weeks before a Board of Supervisors meeting) imposes a discipline on the process. In practice, most if not all of the issues associated with a case are resolved through proffered commitments prior to the Planning Commission making its recommendation to the Board regarding a specific case. The net effect is that the majority of the applications are resolved before the Board's public hearing and that the application can be heard quickly and decisively.

Areas for Improvement

With all the substantial benefits which accrue from the proffer system, there remain some areas for improvement. Administratively, the major problem relates to timing: applicants are not always willing to volunteer commitments early in the process before they know the full extent of the issues that may be identified or whether or not staff will be recommending approval of their proposal. This reluctance may lead to delays in resolving the issues. In addition, some applicants are reluctant to make certain commitments until they ascertain whether staff's identification and evaluation of development issues is shared by the public and by the District Supervisor and Planning Commissioner. Both of these issues can best be addressed through close communication among the various participants in the application.

An additional area for improvement is the need for elimination of ambiguity in proffered conditions and the deletion of caveats that effectively counter the purpose of the proffers. Terms like ". . . to the extent possible, if economically feasible," may make a proffer statement difficult to enforce and can result in delays for the applicant during subsequent stages of the development process.

SUMMARY

On the whole, the proffer system has proven to be a workable, flexible and practical tool in the regulation of development in Fairfax County. Consistent and reasonable implementation of the system has generated public confidence, enhanced public/private sector cooperation and resulted in developments that are individually tailored and responsive to the particular circumstances of the site. The proffer system has allowed the County to be assured of site specific commitments in a manner that reliance merely on general Zoning District regulations cannot. While improvements to and evolutions of the system have occurred and are inevitable in the future, the proffer system as it is practiced today is a significant tool in the implementation of the vision for the future development of Fairfax County that is embodied in the adopted Comprehensive Plan and other policy statements of the Board of Supervisors as the representatives of the citizens of the County.