

DRAFT AMENDMENT TEXT FOR DISCUSSION PURPOSES

May 23, 2017

18-204 Proffered Condition Regulations

Proffered conditions include any statement, plan and other materials which are submitted with a rezoning application and referenced in a written statement signed by the applicant, the owner and any contract purchaser(s). For condominiums, the written statement of proffers must be signed in accordance with Sect. 2-518.

Proffered conditions are subject to the following:

1. Proffered conditions must be signed before the Board's public hearing begins. Once the public hearing has begun, no change or addition to any proffer is allowed without a second public hearing before the Board and, at the option of the Board, a second public hearing before the Planning Commission.
2. If an amendment to the Zoning Map is adopted subject to proffered conditions, the property shall be annotated as such on the Zoning Map.
3. Proffered conditions become a part of the zoning regulations applicable to the property, unless changed by a subsequent amendment approved by the Board. Once an application with proffered conditions is approved, any site plan, subdivision plat, or development plan submitted for the development of the property must be in substantial conformance with all proffered conditions and no County official may approve any development without such substantial conformance, except as may be permitted by Paragraphs 4, 5 and 6, below.
4. Minor modifications to the proffered conditions are allowed when the Zoning Administrator determines that they substantially conform to the proffered conditions and do not materially alter the character of the approved development. In making this determination, the Zoning Administrator may consider factors such as topography, engineering and design. Minor modifications are not amendments or variations to the proffered conditions.

Minor modifications may not:

- A. Remove any land from or add any land to the area subject to the proffered conditions;
- B. Create, intensify, or expand any nonconformity with maximum or minimum requirements of the zoning district;
- C. Exceed the maximum allowable density or FAR in the zoning district or under the proffers, whichever is more restrictive, however, any increase in floor area resulting solely from replacing the materials of an existing building façade is not included in the calculation of FAR;

- D. Result in an increased parking requirement, except for any additional parking required for building additions or modifications permitted under Par. 4 (5) and 4 (11) below;
- E. Permit a more intensive use than that approved in the proffered conditions, except that Places of Worship or Places of Worship with a Child Care Center, Nursery School, Private School of General or Special Education, may increase the number of seats, parking spaces, and/or students up to ten (10) percent of the proffered amount, if not expressly prohibited by the proffered conditions;
- F. Permit uses other than those approved pursuant to the proffered conditions except that accessory uses may be permitted;
- G. Reduce the effectiveness of approved transitional screening, buffering, landscaping, and/or open space;
- H. Permit changes to bulk, mass, orientation, or location that adversely impact the relationship of the development to adjacent property, except that:
 - (1) Modifications that reduce proffered yards up to 10% may be considered, provided that they do not adversely impact adjacent property; and
 - (2) Increases in height up to 10 feet and/or percentages of rooftop may be permitted to exempt solar collectors and other innovative technologies.
- I. Increase the amount of clearing or grading for a stormwater management facility, including any clearing or grading associated with spillways, inlets, outfall pipes, or maintenance roads that reduces non-stormwater management open space, tree save area, or landscaping area on the lot;
- J. Expand any proffered limits on the hours of operation;
- K. Expand the area of signage approved, although changes to color and typeface may be permitted;
- L. Include the addition of or to any building, except that accessory structures clearly subordinate to the principal use and minor building additions, including those for cellar space, may be permitted, provided that the total of all such structures or additions cannot exceed the following:
 - (1) Five (5) percent of the approved gross floor area up to 2500 square feet.
 - (2) 250 square feet of gross floor area of accessory storage structure uses when the total gross floor area shown on the proffered development plan is 10,000 square feet or less.

Anyone requesting a minor modification for a building addition must send notice of the request to the owners of all property abutting and across the street from the site, or portion thereof, to the last known address, as shown in the real estate assessment files of the Department of Tax Administration.

The notice must be delivered by hand or sent by certified mail, return receipt requested and include the letter of request submitted to the Zoning Administrator with all attachments, a statement that the request has been submitted, and where to call for additional information.

An affidavit from the requester must be sent to the Zoning Administrator affirming: that the required notice has been provided in accordance with the above; the date that the notice was delivered or sent; the names and addresses of all persons notified; and, the Tax Map references for all parcels notified. The Zoning Administrator will not consider any request for an addition that omits this affidavit.

5. The Board may approve certain requests in accordance with the following:
 - A. Such requests cannot materially affect density, FAR, or conditions of use, and is permissible only in one or more of the following circumstances.
 - (1) To add or modify a use, provided that the proffered conditions do not specifically preclude such use and that the applicant demonstrates that the new use would have no greater land use impacts than the approved uses would in terms of parking, trip generation, vehicular circulation, or hours of operation.
 - (2) To increase permitted building height provided the resultant height does not exceed 15% of the approved building height, exceed the maximum height of the zoning district, add a story, or materially impact adjacent properties.
 - (3) To modify proffered minimum yard dimensions, building setbacks or distances from peripheral lot lines shown on an approved development plan, but only if the modified dimensions would not adversely impact adjacent properties or other proffered conditions.
 - (4) To delete or modify active recreation uses shown on the development plan.
 - (5) To modification proffer commitments to transportation demand measures, including commitments to alternative transportation modes, such as shuttle service, that are underutilized or have become ineffective as development circumstances have changed.
 - B. Anyone making such a request to the Board must send notice in accordance with Virginia Code Section 15.2-2204(B).

6. An adjustment or variation to proffered conditions that cannot be accomplished as a minor modification or minor amendment requires approval of a proffered condition amendment after a public hearing before the Board in accordance with Sect. 18-205 below.
 - A. An application for such an amendment may cover all or a portion of the property subject to proffered conditions, or it may request to proffer conditions on a parcel not currently the subject of any proffered condition. To approve an application that does not cover all of the property subject to proffered conditions, the Board must determine that the amendment would not adversely affect the remainder of the property in terms of the following:
 - (1) The approved use.
 - (2) Fulfillment of applicable proffered conditions.
 - (3) Vehicular and pedestrian circulation, connectivity, landscaping and streetscape.
 - (4) The approved density or intensity.

After approval of an amendment, all other previously approved proffered conditions remain in full force and effect.
 - B. Any modification to a proffered condition to provide an accessibility improvement shall be permitted and shall not require approval of a proffered condition amendment.
7. The Zoning Administrator is vested with all necessary authority on behalf of the Board to administer and enforce proffered conditions. Such authority includes the ability to remedy, by written order, any noncompliance with a proffered condition and the ability to bring legal action to insure compliance, as provided for in Part 9 of this Article.
8. Failure to meet or comply with any proffered condition is sufficient cause to deny the issuance of any permits, including Building Permits and Residential and Non-Residential Use Permits, as the Zoning Administrator may deem appropriate.
9. Any person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal that decision to the Board. The appeal must be filed within thirty (30) days from the date of the decision being appealed by filing with the Clerk to the Board and the Zoning Administrator a notice of appeal specifying the grounds on which aggrieved. The notice of appeal filed with the Zoning Administrator must include a filing fee, as provided for in Sect. 106, above.