

Proffered Condition Regulations

5. Notwithstanding the provisions of Part 4 of Article 1, minor modifications to the proffered conditions may be permitted when it is determined by the Zoning Administrator that such are in substantial conformance with the proffered conditions and that such: are in response to issues of topography, drainage, underground utilities, structural safety, layout, design, vehicular circulation, or requirements of the Virginia Department of Transportation or Fairfax County; or are accessory uses; or are accessory structures or minor building additions as permitted by Par 5A(7) or 5B(7) below.
 - A. For proffered rezonings for all uses, other than churches, chapels, temples, synagogues and other such places of worship (hereinafter places of worship) or places of worship with a child care center, nursery school or private school of general or special education, the modifications shall, in no event:
 - (1) Change the amount of land area or permit a more intensive use from that approved pursuant to the proffered conditions; or
 - (2) Result in an increased parking requirement, except for any additional parking which may be required for any building additions or modifications permitted under Par. 5A(7) below; or
 - (3) Permit uses other than those approved pursuant to the proffered conditions, except that accessory uses in accordance with this paragraph may be permitted; or
 - (4) Reduce the effectiveness of approved transitional screening, buffering, landscaping or open space; or
 - (5) Permit changes to bulk, mass, orientation or location which adversely impact the relationship of the development or part thereof to adjacent property; or
 - (6) Result in an increase in the amount of clearing and/or grading for a stormwater management facility, including any clearing and/or grading associated with spillways, inlets, outfall pipes or maintenance roads, that reduces non-stormwater management open space, tree save and/or landscaping area on the lot; or
 - (7) Include the addition of any building or additions to buildings except that accessory structures clearly subordinate to the use and minor additions to buildings may be permitted, provided that the sum total of all such structures or additions shall not exceed the following:
 - (a) five (5) percent of the approved gross floor area or 500 square feet of gross floor area, whichever is less, when the total gross floor area shown on the proffered development plan is less than 50,000 square feet; or

- (b) one (1) percent of the approved gross floor area when the total gross floor area shown on the proffered development plan is 50,000 square feet or more; or
- (c) 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; and
- (d) the maximum permitted density; or
- (e) the maximum permitted FAR for the zoning district in which located.

B. For proffered rezonings for places of worship and places of worship with a child care center, nursery school or private school of general or special education, the modifications shall, in no event:

- (1) Permit an expansion of the hours of operation from that approved pursuant to the proffered conditions; or
- (2) Permit an increase in the number of seats, parking spaces or students, if applicable, which exceeds more than ten (10) percent of the amount approved pursuant to the proffered conditions; or
- (3) Permit uses other than those approved pursuant to the proffered conditions, except that accessory uses in accordance with this paragraph may be permitted; or
- (4) Reduce the effectiveness of approved transitional screening, buffering, and landscaping or open space; or
- (5) Permit changes to bulk, mass, orientation or location which adversely impact the relationship of the development or part thereof to adjacent property; or
- (6) Result in an increase in the amount of clearing and/or grading for a stormwater management facility, including any clearing and/or grading associated with spillways, inlets, outfall pipes or maintenance roads, that reduces non-stormwater management open space, tree save and/or landscaping area on the lot; or
- (7) Include the addition of any building or additions to buildings except that accessory structures clearly subordinate to the use, and minor additions to buildings may be permitted, provided that:
 - (a) the sum total of all such structures or additions shall not exceed the greater of 500 square feet of gross floor area, or five (5) percent of the approved gross floor area up to a maximum of 2500 square feet of gross floor area; and

- (b) the maximum permitted FAR for the zoning district shall not be exceeded.
- C. For all proffered rezonings, any request for an addition shall require the provision of written notice by the requester in accordance with the following:
 - (1) the notice shall include the letter of request with all attachments as submitted to the Zoning Administrator, a statement that the request has been submitted, and where to call for additional information; and
 - (2) the notice shall be sent to the last known address of the owners, as shown in the real estate assessment files of the Department of Tax Administration, of all property abutting and across the street from the site, or portion thereof, which is the subject of the request, and shall be delivered by hand or sent by certified mail, return receipt requested.

The request for an addition submitted to the Zoning Administrator shall include: an affidavit from the requester 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. No request for an addition shall be considered by the Zoning Administrator unless the affidavit has been provided in accordance with this paragraph.

When it is determined by the Zoning Administrator that a modification is not in substantial conformance with the proffered conditions, such modification shall require the resubmission and amendment of the proffered conditions in accordance with the provisions of Par. 6 below.

Notwithstanding the above, any modification to a proffered condition to provide an accessibility improvement shall be permitted and shall not require approval of a proffered condition amendment.

- 6. Once conditions have been approved, and there is cause for an amendment which would not be in substantial conformance with the proffered conditions, or there is a request to proffer conditions on a parcel not currently the subject of a proffered condition, then an application shall be filed for an amendment. An amendment application may be filed on a portion of the property subject to proffered conditions, upon a determination by the Zoning Administrator that the amendment (a) would not adversely affect the use of the property subject to the proffered conditions but not incorporated into the amendment application, (b) would not inhibit, adversely affect, or preclude in any manner the fulfillment of the proffered conditions applicable to the area not incorporated into the amendment application, (c) would not adversely affect the vehicular and pedestrian circulation, connectivity, landscaping and streetscape applicable to the area not incorporated into the amendment application, and (d) would not increase the overall approved density/intensity for the development, provided however, within the PTC District, for a multiple phased development, an increase in the intensity may be approved for any portion of such development, provided it does not adversely affect the intensity applicable to the area not incorporated into the amendment application. Previously approved proffered conditions which are not subject to the amendment request shall remain in full force and effect. If the amendment concerns an approved generalized development plan, such application

shall include the submission requirements for a generalized development plan set forth in Sect. 202 above, except the Zoning Administrator may waive any submission requirement if such requirement is not necessary for an adequate review of the generalized development plan amendment application. Such amendment shall be the subject of public hearing in accordance with the provisions of Sect. 205 below.

7. The Zoning Administrator shall be vested with all necessary authority on behalf of the Board to administer and enforce proffered conditions. Such authority shall include the ability to order, in writing, the remedy of any noncompliance with a proffered condition and the ability to bring legal action to insure compliance including injunction, abatement, or other appropriate action or proceedings, as provided for in Part 9 of this Article.
8. The Zoning Administrator, or his agent, may require a guarantee, satisfactory to the Board, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the proffered conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee may be reduced or released by the Board or agent thereof, upon the submission of satisfactory evidence that the construction of such improvements has been completed in whole or in part.
9. Failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any permits, Building Permits, Residential and Non-Residential Use Permits as may be deemed appropriate by the Zoning Administrator.
10. Any person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal such decision to the Board. Such appeal shall be filed within thirty (30) days from the date of the decision appealed by filing a notice of appeal with the Clerk to the Board and a notice and filing fee as provided for in Sect. 106 above with the Zoning Administrator. Such notice shall be a written statement specifying the grounds on which aggrieved and the basis for the appeal.