

**FAIRFAX COUNTY PLANNING COMMISSION
LAND USE PROCESS COMMITTEE
THURSDAY, SEPTEMBER 14, 2017**

PRESENT: James T. Migliaccio, Lee District, Chairman
Ellen J. Hurley, Braddock District
John C. Ulfelder, Dranesville District
Earl L. Flanagan, Mount Vernon District
Phillip A. Niedzielski-Eichner, Providence District
Peter F. Murphy, Springfield District
James R. Hart, Commissioner At-Large

ABSENT: Karen A. Keys-Gamarra, Sully District
Janyce N. Hedetniemi, Commissioner At-Large

OTHERS: Frank A. de la Fe, Hunter Mill District
Jill G. Cooper, Director, Planning Commission
Inna Kangarloo, Senior Deputy Clerk, Planning Commission
Kevin Guinaw, Zoning Evaluation Division, Department of Planning and Zoning
(DPZ)
Fred Selden, Director, DPZ
Tracy Strunk, ZED, DPZ
Barbara Byron, Office of Community Revitalization

ATTACHMENTS:

- A. Zoning Ordinance Modernization Project – Minor Modifications Amendment
- B. Proffered Condition Regulations

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Chairman James T. Migliaccio called the meeting to order at 7:00 p.m. in the Board Conference Room, 12000 Government Center Parkway, Fairfax, Virginia, 22035.

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Barbara Byron, Office of Community Revitalization, and Kevin Guinaw, Zoning Evaluation Division, Department of Planning and Zoning, briefed the Committee on the proposed Minor Modifications Amendment in the scope of the Zoning Ordinance Modernization Project. The discussion included the following topics:

- Citizens outreach and engagement since last meeting on May 25, 2017;
- Background of the amendment;
- Minor modifications by the Zoning Administrator;
- Minor variations by the Board of Supervisors; and
- Further steps.

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The meeting was adjourned at 8:01 p.m.
James T. Migliaccio, Chairman

An audio recording of this meeting is available in the Planning Commission Office, 12000
Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Inna Kangarloo

Approved: December 7, 2017



John W. Cooper, Clerk to the
Fairfax County Planning Commission



Zoning Ordinance Modernization Project



Minor Modifications Amendment

Planning Commission Land Use Process Committee
September 14, 2017

Kevin Guinaw, ZED/DPZ
Barbara Byron, Director, OCR

ATTACHMENT A

Minor Modifications Amendment

Outreach and Engagement Since Last Meeting (May 25, 2017)

- Citizen Advisory Group - June 28 and August 10, 2017
- Public Meeting North - July 10, 2017
- Public Meeting South - July 12, 2017
- NVBIA/NAIOP – July 13, 2017
- Land Use Attorneys Advisory Group - July 26 and Aug. 9, 2017
- Zoning Open House - July 26, 2017
- Tysons Partnership - August 24, 2017
- Lee Land Use Committee – September 11, 2017
- PC Land Use Process Review Committee – September 14, 2017

Background

- The proposed amendment adds flexibility to the current Ordinance to allow additional minor changes to rezonings, special exceptions and special permits to be considered and approved without the requirement of a formal zoning amendment application
- These provisions are designed to address final engineering and design issues, or other changes that occur over time
- They do not change the fact that proffers and development conditions are part of the zoning regulations of a property, unless changed by a subsequent zoning action by the Board
- The proposed amendment also streamlines and reformats the text to be more user friendly; eliminates duplicate text and unnecessary verbiage; uses more understandable language

Minor Modifications by the Zoning Administrator

The proposed amendment continues to allow the Zoning Administrator to permit certain administrative changes as “Minor Modifications” provided that they are in substantial conformance with the approval, remain true to the intent of the approved proffers or development conditions, and do not adversely impact the adjacent properties. It would add more staff flexibility to the existing provisions in five areas:

1. Increases in building height up to 10 feet and increases in percentages of rooftop coverage for solar collectors and other innovative energy and environmental technologies
2. Allow reductions in setback dimensions up to 10%
3. Excludes any incidental increase in interior space created by the replacement of a façade material on an existing building from gross floor area
4. Allow changes to color and typeface of signs to be considered as long as the character of sign is not changed
5. Increases the allowable size for minor building additions and simplifies the provisions

Minor Building Additions

Current Provisions		Proposed Provisions	
Places of Worship and Places of Worship with child care centers/schools ("Places of Worship")	The greater of 500 square feet or 5% of the total approved floor area up to a maximum of 2500 square feet	All Uses up to 250,000 square feet GFA	The greater of 500 square feet or 5% of the approved floor area up to a maximum of 2500 square feet
All Other Uses (50,000 square feet GFA or less)	5% of the approved floor area up to a maximum of 500 square feet		
All Other Uses (more than 50,000 square feet GFA)	1% of the approved floor area		
		All Uses more than 250,000 sq. ft. GFA	1% of the approved floor area

The proposed amendment would simplify the provisions by treating all uses the same. The change would apply the same formula used for Places of Worship to all uses in developments that do not exceed 250,000 square feet.

This change will increase the allowable size of a minor building addition which could be permitted in uses other than Places of Worship, as indicated in the table below, provided that the additions are otherwise in substantial conformance with the approved zoning and would not intensify the use.

Proposed Minor Building Addition Size Allowed (sq. ft.) for All Uses

Development Size	Current Z.O.	Proposed	Change
1500	75	500	+425
5000	250	500	+250
10000	500	500	0
20000	500	1000	+500
30000	500	1500	+1000
40000	500	2000	+1500
50000	500	2500	+2000
60000	600	2500	+1900
100000	1000	2500	+1500
150000	1500	2500	+1000
200000	2000	2500	+500
250000	2500	2500	0
300000	3000	3000	0

For proffered developments exceeding 250,000 square feet, a minor building addition greater than 2500 square feet could be requested under the current Zoning Ordinance; therefore, the current 1% formula is not changed. It is important to note that a minor building addition cannot exceed the maximum density or FAR allowed in the zoning district or by proffered conditions.

The current Zoning Ordinance requires that anyone requesting a minor modification for a minor building addition must send notice to the owners of all property abutting and across the street from the site. The proposed amendment does not change this requirement.

Minor Variations by the Board of Supervisors

The proposed amendment would create a new avenue for the Board to act on certain requests for “Minor Variations” to proffered conditions. (Does not apply to Special Exceptions and Special Permits) The proposed process would allow the Board to approve a Minor Variation as an Action Item at a Board meeting, based upon the facts and context of the approved zoning, and without a public hearing in the six circumstances outlined below. Public notice to the adjacent property owners would be required.

1. The addition or modification of a use provided the proffered conditions do not preclude such use and the new use would have no greater land use impact than the approved uses
2. A minor increase in building height up to 15% of the approved building height but no greater than 15 feet and no greater than the maximum height of the zoning district
3. Modification to proffered yard dimensions and setbacks
4. Modification or deletion of community/HOA active or passive recreation fuses
5. Modification of proffer commitments to technologies or services that are underutilized, have become ineffective or obsolete
6. Modify architectural design features, building materials and signs

Notes

- Anyone requesting a minor variation to a proffered condition by the Board of Supervisors must send notice to the surrounding property owners in accordance with Virginia Code Section 15.2-2204(B). This is the same notification that would be required for a proffered condition amendment public hearing.
- Approval of a request for a minor modification or a minor variation is not a matter of right. County staff will evaluate each request on its merits based upon the approved zoning, the proffers or development conditions, and the provisions of the Zoning Ordinance, in making a substantial conformance determination on a minor modification or making a recommendation to the Board on a minor variation. As is current practice for interpretations, the review of each request will be coordinated with the respective Board Member and Planning Commissioner.

Schedule - Minor Modification Amendment

- BOS Development Process Committee September 19, 2017
- BOS Authorization September 26, 2017
- Planning Commission Public Hearing October 26, 2017
- BOS Public Hearing November 21, 2017

18-204 Proffered Condition Regulations (Draft Aug. 31, 2017)

Proffered conditions may 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), and accepted by the Board in conjunction with the approval of a rezoning. For condominiums, the written statement of proffers must be signed in accordance with Sect. 2-518.

Proffered conditions are subject to the following:

1. 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 must be annotated as such on the Zoning Map.
3. Proffered conditions become a part of the zoning regulations applicable to the rezoned property, unless changed by a subsequent amendment approved by the Board. These proffered conditions are in addition to the specific regulations set forth in the Ordinance for the Zoning District in question. 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 conflict with a proffer or:

- 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. Result in an increased parking requirement, except for any additional parking required for building additions or modifications permitted under Par. 4 D and 4 K below;

- D. 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;
- E. Permit uses other than those approved pursuant to the proffered conditions except that accessory uses may be permitted;
- F. Reduce the effectiveness of approved transitional screening, buffering, landscaping, and/or open space;
- G. 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 setback dimensions up to 10% from that shown on an approved development plan may be considered, provided that they do not adversely impact adjacent property; and
 - (2) Increases in height up to 10 feet and increases in percentages of rooftop coverage may be permitted for solar collectors and other innovative energy and environmental technologies.
- H. 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;
- I. Expand hours of operation;
- J. Expand the area or type of signage approved, although changes to color and typeface may be considered provided they do not change the character of the approved sign;
- K. 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) 500 square feet or five (5) percent of the approved gross floor area up to 2500 square feet, whichever is greater, when the total gross floor area shown on the proffered development plan does not exceed 250,000 square feet.

- (2) One (1) percent of the approved gross floor area when the total gross floor area shown on the proffered development plan exceeds 250,000 square feet.
- (3) 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.
- (4) The maximum density or FAR allowed in the zoning district or the proffered conditions; however, any increase in gross floor area resulting from replacing the materials of an existing building façade is not included in the calculation of FAR;

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, at 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 for minor variations to proffered conditions or final development plan conditions without a public hearing in accordance with the following:
 - A. Such requests cannot materially affect proffered conditions of use, density, or intensity, and are 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 that the resultant height increase does not:

- (a) exceed 15 feet or 15% of the approved building height, whichever is less;
 - (b) cause the building to exceed the maximum height of the zoning district;
 - (c) have a materially adverse impact on 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 have a materially adverse impact on adjacent properties or other proffered conditions.
 - (4) To modify or delete, at the request of the property owner or owners' association, local community/HOA active or passive recreation uses shown on an approved development plan provided that any deletion or modification would not reduce the recreational uses or open space below the minimum required for the zoning district or otherwise required by the Zoning Ordinance.
 - (5) To modify proffer commitments related to technologies (such as computer business centers) or services (such as transportation shuttles) that are underutilized or have become ineffective or obsolete as circumstances have changed.
 - (6) To modify architectural design, character, color, features, or materials for buildings and signs provided such modifications do not have a materially adverse impact on adjacent properties.
 - B. When the Board approves a minor variation that affects an approved development plan, the variation is deemed to apply to the development plan and not require a separate development plan amendment.
 - C. Anyone making such a request to the Board must send notice in accordance with Virginia Code Section 15.2-2204(B).
- 6. A request that cannot be accomplished as a minor modification or minor variation 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 add proffered conditions on a parcel not currently the subject of any proffered condition. In its review of a request that does not cover all of the property subject to proffered conditions, the Board should consider whether the request would

have an adverse impact on the remainder of the property in terms of (a) the approved use, (b) fulfillment of proffered conditions, (c) vehicular and pedestrian circulation, connectivity, landscaping and streetscape, and (d) 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 will be permitted and will 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 approval of a subdivision plan or site plan, and 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.

