

## Minor Modifications to Approved Zonings

May 25, 2017

Typically, land use actions are approved with a set of conditions (proffers for rezonings and development conditions for Special Exceptions and Special Permits) to address site specific and/or operational aspects of the proposal. These may include conformance with a specific layout or design; delineation of an environmental area to be preserved; specific uses allowed; or, limits on such things as hours of operation. These proffers and conditions become part of the zoning of the property and any development must be in "substantial conformance" with them. However, it is frequently the case that modifications to an approval are requested, either based on detailed design and engineering done at the time of construction, or because needs have changed over time. The Zoning Ordinance allows what are termed "minor modifications" to be approved administratively by the Zoning Administrator to address these issues. However, for a minor modification to be approved, it cannot:

- Change the amount of land area or permit a more intensive use;
- Result in an increased parking requirement;
- Permit uses other than those approved;
- Reduce the effectiveness of approved screening, buffering, landscaping or open space;
- Permit changes to bulk, mass, orientation or location which adversely impact the relationship of the development to adjacent property; or
- Result in an increase in the amount of clearing and/or grading for a stormwater management facility

This proposed amendment to the Zoning Ordinance is designed to address the need for additional flexibility to respond to changing circumstances, while retaining the protections expected by the community. The proposed Zoning Ordinance Amendment would:

- Maintain that proffers and development conditions are part of the zoning regulations of the property, unless they are changed by a subsequent zoning action;
- Streamline and reformat the existing text to be more user friendly by eliminating duplicate text and unnecessary verbiage, and by using language that is more easily understandable; and,
- Maintain the basic provisions of the Zoning Ordinance that allow the Zoning Administrator to permit certain administrative changes to proffers and development conditions if they are in substantial conformance with the approval and remain true to the intent of the approved proffers or development conditions, except to add more flexibility to the existing provisions in the four areas described below.

1. Exempt solar collectors and other innovative energy technology structures less than 10 feet in height from building height and roof top coverage limitations.

*This change addresses instances where, for example, solar collectors on the roof of a multi-story office building would have exceeded the allowable building height and rooftop coverage limits. This exemption is consistent with County policy to promote energy conservation and green building practices.*

2. Exclude from the definition of gross floor area and the calculation of FAR any incidental increase in interior space created by the replacement of a façade material on an existing building.

*This change addresses an issue that arose in the repositioning of an existing office building, where the replacement of the precast façade with a glass façade increased interior space which resulted in a floor area which exceeded the maximum allowed. This change facilitates County policy to advance the repositioning and repurposing of existing buildings.*

3. Permit a change in the color of signs and typeface.

*This change addresses instances where an amendment was required to change the color of signs for a bank when the corporate colors changed.*

4. Increase the allowable size for minor building additions and simplify the provisions. Currently, minor building additions have different rules for different categories of uses and development size, as indicated in the table below.

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

*This change would simplify the provisions by treating all uses the same. A simplified approach will make it easier for property owners to determine how much of an addition is allowable under this minor building addition provision. This amendment would also clarify that the same amount of cellar space could be allowed as a minor building addition.*

The proposed Amendment creates a new avenue for the Board to approve certain requests as an Action Item, with public notice, as set forth below:

1. The addition or modification of a use which is not specifically precluded by proffers or conditions, if the new use does not have a greater land use impact than the approved use(s).

*This change is based upon a request by the Board to add the flexibility to allow new uses in places such as shopping centers.*

2. An increase in building height based upon final engineering or design issues, provided the resultant height does not exceed 15% of the approved height, exceed one story, exceed the maximum height of the zoning district, or materially impact adjacent properties.

*This change is designed to address circumstances that arise during final engineering such as the discovery of subsurface rock that would be costly to remove and therefore would necessitate a change in elevation and an increase in building height.*

3. A modification to proffered minimum yard dimensions and distances from lot lines for decks, patios, and other permitted extensions related to single-family dwellings and for setbacks in other uses, if the modified dimensions would not adversely impact adjacent properties and not impact other proffered elements such as streetscape.

*This change is designed to address a request to modify minimum yard dimensions and setbacks beyond those which can be approved as minor modifications. The need has arisen where homeowners have located or proposed to locate structures within proffered minimum yards or setbacks and can be resolved only by the removal of the structures or the submission of PCA and/or FDPA applications.*

4. Modification or deletion of active recreation uses shown on a development plan.

*This change is proposed to address requests from HOAs or Management Companies to change a proffered active recreation facility to a completely passive recreation facility to reflect community preferences.*

5. Modification of proffer commitments to technologies and transportation demand measures, including commitments to alternative transportation modes such as shuttle service, that are underutilized or have become ineffective or obsolete as circumstances have changed.

*This would address circumstances that have occurred where a shuttle was proffered, but a public bus system has abrogated the need for the shuttle, or when there has been a proffer to the distribution of metro smart cards at a hotel, which is too specific and not well utilized.*

For these requests, public notice is required as follows:

- For an application affecting no more than 25 parcels, written notice goes
  - To the owners of those parcels.
  - To the owners of any parcels abutting and or across the road from the affected parcels.
  - If any portion of the affected property is within a P District, to an HOA that has members owning property located within 2,000 feet of the affected property.
- For an application affecting more than 25 parcels, notice goes to the owners of all parcels.
- Timing of notice: at least 5 days before the BOS action by law, but County can establish longer time period.

The changes proposed in this Zoning Ordinance Amendment represent potential additional flexibility for the Zoning Administrator and the Board to respond to request related to proffers and development conditions. Approval of these requests is not a matter of right; each request will be evaluated on its merits based on the provisions of the Zoning Ordinance by county staff and coordinated with the respective Board member and Planning Commissioner.