

Guide to Proffered Conditions



WHAT IS A PROFFERED CONDITION?

A proffered condition (“proffer”) is a limitation on a site’s physical development or use that is voluntarily offered by an applicant in order to mitigate or avoid anticipated negative impacts of development that would be enabled by the rezoning. Proffers can only be offered by the owner, contract purchaser with the owner’s written consent, or the owner’s agent. Once proffers are accepted as part of a rezoning, they run with the property and any subsequent owner is subject to the same conditions. Conditions are legally binding; non-compliance with proffers constitutes a zoning violation.

ADOPTING PROFFERED CONDITIONS

Proffers can address a number of issues related to the use or physical development of a property. Proffers commonly provide for enhanced landscaping, limitations on signage, limiting lighting spillover, parking, access, building location, and so forth. Proffers not related to the use or physical development of the property (e.g., hours of operation) should be avoided. Proffers must be clearly understood, enforceable, and comply with the following standards:

- a. The rezoning itself must give rise for the need for the conditions;
- b. The conditions shall have a reasonable relation to the rezoning;
- c. The conditions shall not include a cash contribution to the City;
- d. The conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments, or other public facilities not otherwise provided for in Sec. 15.2-2241, Code of Virginia (1950), as amended;
- e. The conditions shall not include a requirement that the applicant create a property owners’ association under Chapter 26 (Sec. 55-508 et seq.) of Title 55, Code of Virginia (1950), as amended;
- f. The conditions shall not include payment for or construction of off-site improvements except those provided for in Sec. 15.2-2241, Code of Virginia (1950), as amended;
- g. No conditions shall be proffered that are not related to the physical development or physical operation of the property; and
- h. All such conditions shall be in conformity with the City’s comprehensive plan.

Rezonings to any planned unit development district or sign overlay district should not have written proffers. Any conditions should be included on the required development plan. The language below should be used for listing proffered conditions to be adopted:

Proffered Conditions to be Adopted

The applicant hereby requests that the following proffered condition(s) be adopted as it/they pertain(s) to Official Tax No(s). _____ *(tax no(s))* .

1. *(list proffers)*

PROFFERING A DEVELOPMENT PLAN

A development plan is the most common type of proffer. A proffered development plan provides clear expectations for how the site is going to be developed. The development plan must show all requirements listed in the Zoning Amendments

Procedures Guide; however, specifics regarding landscaping material, lighting, signage, pedestrian access, and so forth that go above and beyond the requirements of the Zoning Ordinance may also be depicted. Typical language used when proffering a development plan is as follows:

1. The property will be developed in substantial conformity with the development plan prepared by (name of firm), dated (date), a copy of which is attached to this application as Exhibit (no.), subject to any changes that may be required by the City during comprehensive development plan review.

REPEALING PROFFERED CONDITIONS

When the owner of a property wishes to remove all previously-established proffers, an amendment of proffered conditions is required. An amendment follows the same process as adopting proffers. The language below should be used for listing proffered conditions to be repealed:

Proffered Conditions to be Repealed

The applicant hereby requests that the following proffered condition(s) enacted by Ordinance No. (no.) be repealed as it/they pertain(s) to Official Tax No(s). (tax no(s)):

1. (insert list of all existing proffers)

AMENDING PROFFERED CONDITIONS

When the owner of a property wishes to revise or remove previously-established proffers, an amendment of proffered conditions is required. An amendment follows the same process as adopting proffers. Striking-through the text to be repealed and italicizing the text to be added makes it very clear to the reviewing bodies what is being changed. Please ensure that proffers remaining the same are included. The language below should be used for listing proffered conditions to be amended:

Proffered Conditions to be Amended

The applicant hereby requests that the following proffered condition(s) enacted by Ordinance No. (no.) be amended as it/they pertain(s) to Official Tax No(s). (tax no(s)):

1. The property will be developed in substantial conformity with the Development Plan prepared by (name of firm), dated (date) (name of firm), dated (date), a copy of which is attached to this application, subject to any changes that may be required by the City during comprehensive development plan review.
2. (insert any additional existing proffers)