

**Department of Community Development  
Staff Report**

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**MEETING DATE:** August 18, 2016

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**REQUEST:** A Resolution to Recommend Approval of Amendments to Articles 4, 5 and 13 of the Fauquier County Zoning Ordinance Related to the Processing of Applications for and Related to Residential Rezoning

**OUTSTANDING ISSUES:** There are no outstanding issues.

**RECOMMENDATION:** Staff recommends approval of the proposed resolution.

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**Topic Description:**

During its last term, the Virginia General Assembly adopted Section 15-2-2303.4 of the *Code of Virginia*. This section permits applicants for a residential rezoning to assert a claim that the County suggested, requested or demanded an unreasonable proffer during the process of rezoning regardless of whether the rezoning is approved or denied.

The Board of Supervisors took action on June 9, 2016 to formally eliminate the County's existing proffer policy and to initiate an amendment to the Zoning Ordinance to require an applicant for a residential rezoning to submit an affidavit attesting that no suggestion, request or demand for an unreasonable proffer was made prior to the submission of the proffer, or if the applicant asserts that such a request, suggestion or demand was made, the nature of the requested proffer.

Staff has identified some additional amendments that need to be made to the Zoning Ordinance to address the *Code of Virginia* changes related to proffers.

**Analysis:**

*Pre-Application Conferences*

Changes are proposed to Sections 4-113, 4-715 and 4-920 to eliminate the requirement for a pre-application meeting for residential rezonings. The pre-application process brings all County and outside agencies together before a project is filed to discuss technical requirements and recommendations. Staff believes this process could result in claims that staff requested something later deemed to be "unreasonable." A more controlled process, as set forth in the recently adopted Board policy, would be utilized to meet with prospective residential rezoning applicants.

*Timing of Applications*

The amendment proposes to require sequential processing for Comprehensive Plan Amendment Applications, Rezoning Applications, and Special Exception Applications related to a residential

rezoning. Currently, these applications may be, and often are, processed concurrently. Requiring sequential processing will clarify the relationship between conditions, approval/denials, and the relevant case. For example, if a Comprehensive Plan Amendment related to a residential rezoning is denied, the related Rezoning case would likely never be filed, or, if it was, a denial of the Rezoning could clearly be attributable to the Comprehensive Plan issue rather than the type and extent of proffers.

Rezoning applications are also proposed to be separated from Special Exception applications in the case of residential projects. The County has authority to impose conditions on Special Exception uses that go well beyond our authority to require proffers. If the two applications are approved together, as has been the practice in recent history, approving the Special Exception as part of a Rezoning application muddies the record as to whether a request or requirement is related to the Rezoning application or the Special Exception application.

Also, related to timing, the proposed amendment limits the filing of Rezoning applications to two times a year, December 1<sup>st</sup> and June 1<sup>st</sup>.

#### *Requirement for Analysis to Accompany Proffers*

The amendment adds a requirement that detailed analysis addressing how proposed proffers are directly attributable to mitigating the impacts of the proposed project be provided for projects with a residential component. The County is working toward a fiscal impact model that will assist the County in evaluating any proposed proffers; however, even with this model a detailed assessment from the applicant will be critical to a full analysis.

#### *Zoning Ordinance*

Staff is proposing multiple amendments to Articles 4, 5 and 13 of the Zoning Ordinance related to proffers.

- Elimination of references to proffers that conflict with the new Virginia Code provision.
- Addition of a requirement that any Comprehensive Plan Amendment, Special Exception or Special Permit application related to a residential rezoning be processed separately from the Rezoning application rather than concurrently. The intent is to reduce the County's potential liability under the new proffer policy by clearly separating discussion and decisions related to the Comprehensive Plan and conditions imposed as part of a Special Permit or Special Exception from any discussions or decisions related to the Rezoning application.
- Addition of a limitation allowing Rezoning applications only twice a year, as is the procedure with Comprehensive Plan Amendments and Zoning Ordinance text amendments.
- Addition of a requirement that a detailed analysis addressing how proposed proffers are directly attributable to mitigating the impacts of the proposed project be submitted in conjunction with residential Rezoning applications.

#### **Process:**

The Board of Supervisors initiated the amendment on July 14, 2016.