

ORDINANCE

A ZONING ORDINANCE TEXT AMENDMENT TO ARTICLES 4, 5 AND 13 RELATED TO THE PROFFER POLICY AND PROCESSING OF APPLICATIONS FOR AND RELATED TO RESIDENTIAL REZONINGS

WHEREAS, during its last term, the Virginia General Assembly adopted Section 15.2-2303.4 of the *Code of Virginia*; and

WHEREAS, Section 15.2-2303.4 permits applicants to assert a claim that the County suggested, requested or demanded an unreasonable proffer during the process of a Rezoning whether the Rezoning is approved or denied; and

WHEREAS, the County seeks to change the language of the Comprehensive Plan to address the change in Virginia's code provisions on proffers; and

WHEREAS, the County seeks to implement procedural requirements that eliminate any ambiguity as to whether proposed conditions and possible denials are related to a Rezoning application as opposed to a related Comprehensive Plan or Special Exception application; and

WHEREAS, the County seeks to require additional application materials for Rezoning applications that require an applicant to assess direct impacts; and

WHEREAS, the County has determined that the public necessity, convenience, general welfare and good zoning practice warrant these amendments; and

WHEREAS, on July 14, 2016, the Fauquier County Board of Supervisors initiated this proposed amendment; and

WHEREAS, the Fauquier County Planning Commission held a public hearing on the proposed amendments on August 18, 2016 and recommended approval; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 8<sup>th</sup> day of September 2016, That the following changes to Articles 4, 5 and 13 be, and are hereby, approved.

**4-113      Rezoning to the Planned Residential Development District**

Rezoning to PRD shall be established by amending the Zoning Map of Fauquier County. The procedures for such an amendment shall be generally as set forth in Section 13-200 of this Ordinance except as provided below. In the event of conflict between the provisions of Section 13-200, the provisions below shall prevail.

**A. Deleted. Pre-Application Conference**

~~Applicants for rezoning to the PRD shall meet with Department of Community Development staff and other appropriate review agencies to review the proposed Concept Development Plan and Code of Development prior to formal submittal. The purpose of such conferences shall be to assist in bringing the application and material submitted therewith as nearly as possible into conformity with these or other regulations applying in the case, and to define specific modifications to the applicant~~

~~of these regulations which may be modifiable pursuant to Section 4-112 above and which seem justified by alternative means to achieve the public purpose for such regulation to at least an equivalent degree. The timing and number of pre-application conferences shall be as mutually agreed to by the applicant and staff.~~

4-715

**Rezoning to the Planned Development Mixed Use District**

Rezoning to the PDMU district shall be established by amending the Zoning Map of Fauquier County. The procedures for such an amendment shall be generally as set forth in Section 13-200 of this Ordinance except as provided below. In the event of conflict between the provisions of Section 13-200, the provisions below shall prevail.

1. **Deleted. Pre-Application Conference**

~~Applicants for rezoning to the PDMU shall meet with Department of Community Development staff and other appropriate review agencies to review the proposed development plan prior to formal submittal. The purpose of such conference shall be to assist in bringing the application and material submitted therewith as nearly as possible into conformity with these or other regulations applying in the case. The conference shall also identify specific modifications to the regulations which may be requested pursuant to Section 4-714 above, and which seem justified by alternative means to achieve the public purpose for such regulations to at least an equivalent degree. The timing and number of pre-application conferences shall be as mutually agreed to by the applicant and staff.~~

4-904

**Uses**

The table below lists potential uses allowed within the MU district, by sub-district. The Code of Development approved in conjunction with a MU rezoning (see Section 4-923) shall further define and limit the particular uses for any proposed development. In no case shall a Code of Development for a project authorize any uses which are in conflict with the specific Comprehensive Plan provisions for a Service District.

Permitted uses (P) are allowed by-right within the MU district unless specifically excluded by the approved Code of Development for the project.

Special Permit (SP) and Special Exception (SE) uses must **be identified in the rezoning as potential future uses, but may only be approved separately by SP and SE once the MU zoning is approved** ~~be:~~

1. ~~approved as part of the initial MU District rezoning pursuant to the procedures in Section 4-923 and the Standards set forth in this Mixed Use District and Article 5;~~  
~~or~~
2. ~~approved as an amendment to the MU District rezoning by approval of the Board of Supervisors pursuant to the procedures in Section 4-923 and the Standards set forth in this Mixed Use District and Article 5;~~
3. ~~added to the proposed development after approval of the MU District with approval of a Special Permit or Special Exception pursuant to the Provisions set forth in Article 5.~~

4-920

**Deleted. Pre-Application Conference**

~~Applicants for rezoning to the MU shall meet with Department of Community Development staff and other appropriate review agencies to review the proposed development plan prior to formal submittal.~~



C. Submission Requirements

(1) All applications to the Zoning Map, initiated in the manner prescribed by 13-202-1-B(c) above, shall be filed with the Zoning Administrator and shall include the following information:

h. For any proposal with a residential component, detailed analysis addressing how proposed proffers are directly attributable to mitigating the impacts of the proposed project

D. Proffered Condition Regulations

~~(11) In the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the REZONING itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the Board, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been a mistake, fraud, or a change in circumstances substantially affecting the public health, safety or welfare. Nothing in the Section shall preclude the Board from accepting proffered conditions which make the zoning conditional upon the substantial implementation of the proffers, including provisions which safeguard the Board's ability to rezone the property if the proffers are not implemented.~~