

WARRENTON ZONING ORDINANCE
Article 11-3.9.17 Conditional Zoning Text Amendment

Adopted by Town Council: February 12, 2013

11-3.9.17 Conditional Zoning

1. Purpose and Authority

As part of a petition to rezone property and amend the official zoning map, the property owner may voluntarily proffer in writing certain conditions and restrictions on the use and development of his property, such conditions being in addition to, or modification of, the regulations provided for a particular zone or zoning district by this Ordinance. The Zoning Administrator shall be vested with all necessary authority to administer, interpret and enforce such conditions and restrictions, all in accordance with the terms of §15.2-2296 et seq. of the Code of Virginia, as amended..

While the conditions may vary from property to property by reason of the nature of the use and different circumstances at a particular location, it is not the intention of this section to authorize conditions limited to a particular individual or group, owner, or operator, and the provisions of this section shall not be used for the purpose of discrimination in housing.

2. Proffered Conditions.

As a part of an application for rezoning or amendment to the zoning district map, the owner or owners of the property involved may, prior to a public hearing before the Town Council, voluntarily proffer in writing such reasonable conditions, in addition to the regulations provided for the zoning district or districts as herein set forth, as he deems appropriate for the particular case to address impacts of the proposed use.

For the purpose of this Ordinance, proffered conditions may include written statements, development plans, profiles, elevations, and/or other demonstrative materials. Materials of whatever nature and intended as proffers shall be annotated with the following statement signed by the owner or owners of the subject property: "I (we) hereby voluntarily proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission unless an amendment thereto is mutually agreed upon by the Town Council, and the undersigned."

3. When Proffers Are Made.

Proffered conditions should be submitted for Staff review as part of the initial application for rezoning..

Proffered conditions made at the Planning Commission meeting shall be forwarded to the Town Council prior to the Council's public hearing.

To be considered by the Planning Commission, proffers must be submitted with the application prior to advertising for public hearing.

4. Contents of Proffer.

Proffered conditions shall be signed by all persons having an ownership interest in the property and shall be notarized. Proffered conditions shall contain a statement that the owners voluntarily enter into the proffers contained therein.

5. Review and Revision of Proffered Conditions.

Additional conditions may be proffered by the applicant during or subsequent to the public hearing before the Planning Commission, provided however that after proffered conditions are signed and made available for public review and the public hearing before the Town Council has been advertised (whether or not jointly held with the Planning Commission) no change or modification to any proffered condition shall be approved without a second advertised public hearing thereon.

6. Modifications to Proffers.

After the Town Council's public hearing has been advertised, should additional or modified conditions be proffered by the applicant, which conditions were specifically discussed at the public hearing before the Planning Commission, then a second public hearing need be held only before the Town Council before the application and the modified conditions can be reviewed and acted on by the Council.

7. Additional Conditions.

Should additional conditions be proffered by the applicant at the time of the public hearing before the Town Council, which conditions were not addressed at the public hearing before the Planning Commission, or if the proffered conditions are modified beyond the scope of any conditions considered at the public hearing before the Planning Commission, the application shall be the subject of a second public hearing before both the Planning Commission and the Town Council, which hearing may be held either separately or jointly.

8. Annotation of Zoning District Map.

The zoning district map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The Zoning Administrator shall keep in his office and make available for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district. Such conditions shall become a part of the zoning regulations applicable to the property in question, regardless of changes in ownership or operation, unless subsequently changed by an amendment to the zoning district map, and such

conditions shall be in addition to the specific regulations set forth in this Ordinance for the zoning district in question.

9. Enforcement of Conditions.

The Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to administer, interpret and enforce conditions attached to a rezoning or amendment to the zoning district map, including: (a) the ordering in writing of the remedy of any noncompliance with such conditions; (b) the bringing of legal action to insure compliance with such conditions, including injunction, abatement, or other appropriate action or proceeding; and (c) requiring a guarantee, satisfactory to the Town Council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town Council, or agent thereof, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part. Provided, further, that failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.

Upon approval by the Town Council, proffered conditions shall become a part of the zoning regulations applicable to the property, and are enforceable under the same provisions for enforcement as all other provisions in the Ordinance.

10. Substantial Conformance Required.

Upon approval, any site plan, subdivision plat or development plan thereafter submitted for the development of the property in question shall be in substantial conformity with the approved zoning and all proffered statements, plans, profiles, elevations, or other demonstrative materials, and no development shall be approved by any Town official in the absence of said substantial conformity.

11. Substantial Conformance Defined.

For the purpose of this Section, substantial conformity mean that conformity which leaves a reasonable margin for adjustment due to final engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials presented or proffered by the applicant. Determinations of substantial conformance shall be made by the Zoning Administrator.

12. Guarantee for Construction of Improvements.

A guarantee, satisfactory to the Town Council, may be required in an amount sufficient for and conditioned upon the construction of any public improvements required by a rezoning

request and the proffered conditions. This guarantee may be reduced or released by the Council or agent thereof, upon the submission of satisfactory evidence that the construction of such improvements has been completed in whole or in part. The guarantee shall be required no later than final site plan or subdivision approval, whichever may occur earlier in time.

13. No Permits Shall Be Issued That Do Not Comply With Proffers.

Failure to meet or comply with any proffered conditions shall be sufficient cause to deny the issuance of any site plan or subdivision approvals, grading permits, zoning permits, building permits, or certificates of occupancy as may be determined appropriate by the Zoning Administrator. In addition to the other penalties appropriate for violations of this Ordinance, failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any development approvals or permits relating to the land area which was the subject of the conditional zoning. To this end, each application for a development approval or permit shall include an affidavit by the applicant that all applicable proffers have or will be complied with as agreed upon at the time of rezoning. The burden shall be on the applicant to verify that proposed development complies with all proffered conditions.

14. Appeal of Proffer Decision.

Any person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal such decision to the Town Council. Such appeal shall be filed within thirty (30) calendar days from the date of the decision being appealed by filing a notice of appeal with the Zoning Administrator. Such notice shall be a written statement specifying the grounds on which aggrieved and the complete basis for the appeal. Upon receipt of the appeal notice, the Council shall take such testimony as it deems appropriate and should render its decision within sixty (60) calendar days after receipt of the appeal notice. The Town Council may reverse or affirm wholly or partly or may modify the decision of the Zoning Administrator.

15. Change of Approved Conditions.

Once proffered conditions have been approved, and there is cause for an amendment which would not be in substantial conformity with them, then an application shall be filed for an amendment of the proffered conditions. Applications can be filed by any landowner subject to conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303 or 15.2-2303.1 and Section 1 of this Article. Written notice of such application shall be provided as prescribed in Section H of § 15.2-2204 to any landowner subject to such existing proffered conditions. The approval of such amendment or variation by the Town Council shall not in itself cause the use of any other property to be determined a non-conforming use per Section 11-4.3 of this Ordinance.

If the amendment concerns an approved site development plan, such application shall include the submission requirements for a site development plan set forth in Section 11-3.7 of this Ordinance, except that the Planning Director may waive any submission

requirement if such requirement is not necessary for an adequate review of the amendment application. Such amendment shall be the subject of public hearing in accordance with the requirements for a new application. No such amendment or variation of any conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303 or 15.2-2303.1 and Section 1 of this Article until after public hearings before the Planning Commission and Town Council are advertised pursuant to Article 11-3.2 of this Ordinance. Where a landowner subject to the conditions noted above requests an amendment to such proffered conditions and where such amendment does not affect conditions of use or density, the Town may waive requirements for public hearings.