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§ 15.2-2302. Same; amendments and variations of conditions.

A. Subject to any applicable public notice or hearing requirement of subsection B but notwithstanding any other provision of law, any landowner subject to conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 may apply to the governing body for amendments to or variations of such proffered conditions provided only that written notice of such application be provided in the manner prescribed by subsection B of § 15.2-2204. Further, the approval of such an amendment or variation by the governing body shall not in itself cause the use of any other property to be determined a nonconforming use.

B. There shall be 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 until after a public hearing before the governing body advertised pursuant to the provisions of § 15.2-2204. However, where an amendment to such proffered conditions is requested pursuant to subsection A, and where such amendment does not affect conditions of use or density, a local governing body may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of such proffered conditions.

Article 5:
CONDITIONAL ZONING AND PROFFERS

Article 5:**Conditional Zoning and Proffers****A. Purpose**

It is the purpose of this article to provide a procedure by which conditional zoning may be used in the Town of Smithfield in accordance with the enabling legislation provided in the Code of Virginia.

It is the policy of the Town to encourage the voluntary proffering of conditions by the applicant in cases where the use of traditional zoning methods is inadequate to achieve certain desired goals and where the proffered conditions will offset identified problems to the extent that the proposed rezoning is thus acceptable. The use of conditional zoning is not to be encouraged (a) where the proffered conditions do not sufficiently offset identified problems, (b) where the proffered conditions are unrelated to identified problems or (c) where traditional zoning methods are adequate to achieve certain desired goals.

It is further the purpose of this section to allow for complete and timely review and evaluation of the proffered conditions by the Town Staff, the Planning Commission and the Town Council.

B. Conditional Zoning Defined

As part of classifying land via police powers within the Town into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, with such conditions being in addition to, or modification of, the regulations provided for a particular zoning district or zone by the Town's adopted zoning ordinance. Refer to Article 4 for specific requirements for zoning amendments.

C. General Criteria for Proffers

Any applicant for a zoning map amendment (rezoning) may, as a part of a rezoning application, proffer reasonable conditions concerning the use and development of one's property, including off-site improvements that may serve or benefit the specific property and the public welfare. Proffers shall only be accepted as conditions attached to the rezoning if such proffered conditions meet the following criteria:

1. The rezoning itself must give rise to the need for the condition.
2. All such conditions shall have a reasonable relation to the rezoning.
3. All such conditions shall be in conformity with the Town's adopted Comprehensive Plan.
4. Such conditions shall be capable of being readily and effectively enforced by the Town of Smithfield at the time of development of the property.
5. Such conditions shall be deemed necessary and sufficient to offset identified problems caused by the rezoning in a manner not available with traditional zoning methods.
6. Such conditions shall be consistent with the Town's adopted Capital Improvements Plan, Official Map and other facilities and infrastructure planning documents.

D. Proffers for Dedication of Real Property or Payment of Cash

1. In the event proffered conditions include the dedication of real property or payment of cash to the Town, such property shall not transfer and such payment of cash shall not be made until the facilities for which such property is dedicated or cash is tendered are included in the Town's adopted Capital Improvements Plan, provided that nothing herein shall prevent the Town from accepting proffered conditions which are not normally included in such capital improvement program.
2. If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of such property or cash payment in the event the property or cash payment is not used for the purpose for which proffered.
3. Nothing in this section shall be construed to affect or impair the authority of the Town Council to accept proffered conditions which include provisions for timing or phasing of dedications, payments or improvements or to impose or accept conditions of conditional use permits.
4. In the event proffered conditions include (1) the dedication of real property or (2) the payment of cash which is not to be made until the facilities for which such property is dedicated or cash is tendered are included in the capital improvement program, the Town Attorney shall advise the Planning Commission and the Town Council of the adequacy of provisions securing to the Town the timely performance of such conditions. Such provisions may include bonding, letters of credit or other forms of surety.

E. Administrative Procedures for Conditional Zoning Applications

1. Any rezoning applicant may, at his or her option, submit a written proffer of conditions to accompany his rezoning petition. Refer to Article 4 for specific requirements for zoning amendments.
2. Such written proffers, together with the title certificate, shall be submitted to the Planning and Zoning Administrator as part of the application. In complying with the notice requirements, the Planning Commission and Town Council shall state whether conditions have been proffered, and such proffers shall be made available for public review by the Planning and Zoning Administrator as part of the public documents in the case.
3. Within thirty (30) days after receipt of a complete zoning application, the Planning and Zoning Administrator shall submit to the petitioner a written proffer analysis addressing the following items:
 - (a). A list of identified problems or reasons, if any, where the proposed rezoning may be deemed to fall short of compliance or policy;
 - (b). The degree to which the proffered conditions respond to the identified problems;
 - (c). A list of those proffered conditions, if any, that do not respond to identified problems, are insufficient to offset them, or that are not in keeping with the criteria set forth in this section;
 - (d). An indication of whether the identified problems will be adequately offset by the voluntarily proffered cash contribution, dedication of real or personal property, or payment for or construction of off-site improvements and
 - (e). The date of the Planning Commission hearing.
4. Submission of proffer statements:
 - (a). A copy of the (a) applicant's written proffers and (b) the proffer analysis from the Planning and Zoning Administrator shall be forwarded to the Planning Commission.
 - (b). Upon receipt of the proffer analysis, the petitioner may make subsequent voluntary changes deemed appropriate to the written proffers, provided that it is submitted no later than ten (10) calendar days prior to the Planning Commission public hearing.

- (c). Where an amendment to the written proffers provides for a voluntary cash contribution, dedication of real or personal property, or payment for or construction of off site improvements, the Planning and Zoning Administrator may require that the amended proffers be submitted at least twenty (20) calendar days prior to the public hearing when additional time is deemed necessary to allow for adequate staff review of the sufficiency of such amended proffers.
- (d). Upon receipt of the amended proffers, the Planning and Zoning Administrator shall make them part of the public record. The Planning Commission shall not consider any proffer not made available for public review for at least ten (10) calendar days prior to the public hearing.

F. Commission and Council Action on Proffered Conditions:

- 1. After holding a public hearing on the conditional zoning application, the Planning Commission, in taking its action on the application, may recommend from the following options: (1) recommend to the Town Council approval of the zoning application as submitted, (2) recommend to the Town Council denial of the application as submitted or (3) recommend approval of the application with the deletion of one or more of the proffers in the application.
- 2. If the Planning Commission takes final action on a conditional rezoning application, it shall require the applicant to (a) reduce all proffers made to the Planning Commission to a final written proffer statement in the proper legal form required by the Town and (b) return the final proffer statement to the Planning and Zoning Administrator not more than ten (10) calendar days after the Planning Commission hearing for subsequent transmittal to the Town Council.
- 3. The Planning Commission, upon the concurrence of the applicant, may defer action to a later meeting for the purpose of considering the revised proffers, provided that such revisions are submitted in proper legal form and are reviewed on the same time schedule as the original zoning application.
- 4. Upon completion of Planning Commission action on the conditional zoning application, the matter shall be forwarded to the Town Council in the manner of all rezonings. The Town Council, in taking action on the zoning amendment proposal and proffers, may (1) approve the zoning application, (2) deny the zoning application or (3) consider modification of the proffered conditions for subsequent approval.

5. The applicant may add to, expand, clarify or otherwise modify the proffer statement in writing at the time of the Town Council public hearing. Upon receipt of the modification of the proffer statement, the Town Council may take any one of the following actions:
 - (a) The Council may decline to consider the modification to the proffer statement as not timely filed and act only upon the application which was acted upon by the Planning Commission if it finds that the additional modifications do not alter the overall application sufficiently to warrant continued review or referral to the Planning Commission.
 - (b). The Council may continue the hearing on the application to another hearing date, in which case the applicant shall be required to submit to the Planning and Zoning Administrator a final written proffer statement not less than ten (10) days before the scheduled hearing in order for the Council to act upon the application with the modified proffers. Nothing herein shall limit the Council's discretion to continue application to subsequent dates for further modification.
 - (c) The Council may refer the modified application back to the Planning Commission for review and recommendation in accordance with the preceding sections.
6. If an applicant at any time modifies an application by deleting any provision from any proffer that has been reviewed and acted upon by the Planning Commission, the Council shall refer the application with such modified proffer back to the Planning Commission for review and recommendation in accordance with the preceding section.
7. The Town Council may also modify any proffered condition, but only with the concurrence of all parties to the proffers and only after a new public hearing is held to consider the modified proffer, with the modified proffer being submitted in writing to the Planning and Zoning Administrator at least ten (10) days prior to said public hearing.
8. The Town Council shall accept only those proffers which have been reviewed and deemed acceptable in legal form, sufficiency and enforceability by the Town Attorney.
9. No proffer may be modified or amended except in accordance with these provisions. After the effective date of this section, the Town Council shall attach no conditions to nor accept any proffer with a rezoning except in accordance with this section.

G. Recordation of Proffers and Amendment of Zoning Map:

1. If the Town Council approves the rezoning petition and accepts the written proffer, the Town Attorney shall, within ten (10) days of the Town Council's action, examine the appropriate records so as to determine whether any change in the interest in the property has occurred since the date of the title certificate. In the event that the Town Attorney determines that no such change in interest has occurred, the Town Attorney shall, within the said ten (10) day period, present the written proffer to the Clerk of the Circuit Court for recordation.
2. Upon recordation of the written proffer, the Planning and Zoning Administrator shall promptly delineate by appropriate symbol on the Town's Official Zoning Map the existence of the written proffers and other conditional zoning considerations for the subject property. The Planning and Zoning Administrator shall maintain and make available for public inspection the full and complete records of written proffers.
3. If upon Town Council approval of the rezoning petition and acceptance of the written proffers, the Town Attorney determines that a change in interest in the property has taken place, and that, in his opinion, such change may adversely affect the Town's interest in the proffer, the applicant shall be notified in writing that the proffer will not be recorded and that the Town Council's action in approving the rezoning will be rescinded and void unless an appeal is filed for a hearing before the Town Council within sixty (60) days of the date of the Town Attorney's letter.
4. In the event that the applicant files an appeal within sixty (60) days of the date of the Town Attorney's letter, the applicant shall be given the opportunity for a hearing before the Town Council. At the conclusion of such hearing, the Town Council may, at its legislative discretion, permit the applicant a certain amount of time in which to correct the legal or procedural objection raised by the Town Attorney or may rescind its earlier action in approving the rezoning.
5. If the applicant fails to file his appeal within the said sixty (60) day period or upon hearing an appeal the Town Council acts to rescind its earlier action, the approval of the rezoning application shall be void. In no event shall the zoning map be changed to reflect the Town Council's approval of the conditional zoning application until the Planning and Zoning Administrator receives written notification from the Town Attorney that the proffer has been properly recorded.

H. Legal Form of Proffer Statement and Title:

1. All proffers shall be in writing and shall be in a form suitable for recordation in the deed books maintained in the land records of Isle of Wight County.
2. No proffer shall be accepted by the Town Council which has not received the approval of the Town Attorney as to legal form, sufficiency and enforceability.
3. Each conditional zoning petition and proffer statement shall be accompanied by a certificate of title, prepared and signed by an attorney licensed to practice law in the Commonwealth of Virginia. The title certificate shall describe the property that is the subject of the petition and shall identify all parties having a recorded interest in the property, including legal and equitable owners and shall state the source of title or interest for each party.
4. The certificate of title shall state the latest date through which the applicant's attorney examined the title to the property, which date shall not be more than six (6) months prior to the date of the filing of the petition.
5. The Town Attorney shall reject any certificate of title which, in the Town Attorney's opinion, is incomplete or is otherwise insufficient from a legal standpoint.
6. The written proffer shall name as grantors all owners of the property and shall be signed by all such parties. In the event that the applicant for the rezoning is a contract purchaser, such purchaser shall also be made party to the proffer and shall sign same.
7. The foregoing provisions shall not be construed as limiting the authority of the Town Attorney to require that any additional person, firm, association or corporation be made a party and sign the proffer, when, in the Town Attorney's opinion, the inclusion of such person, firm, association or corporation is necessary to protect the Town's interest.

I. Effect, Enforcement and Amendment of Proffered Conditions:

1. Once proffered and accepted as part of an amendment to the Town's zoning ordinance, such proffered conditions shall continue in full force and effect until any subsequent amendment changes the zoning of the property covered by such conditions. However, such proffers conditions shall continue in full force and effect if the subsequent zoning amendment is part of a municipal action to comprehensively implement a new or substantially revised zoning ordinance.

2. The Planning and Zoning Administrator shall be responsible for recording and referencing on the Town's Official Zoning Map the existence of adopted proffered conditions for individual properties. Any site plan, subdivision plat, general development plan, special use permit plan or other land use application thereafter submitted for development of property with proffered conditions shall conform with all of such conditions, and, further, in the absence of full conformity, shall not be approved by any Town official or body. For the purpose of this section, "full conformity" shall mean conformity which leaves a reasonable margin for technical adjustment due to introduction of final engineering and mapping data, but conforms to the general nature and intent of the development plat or plan, the specific uses, as well as the general layout depicted by the plans, profiles, elevations, and other demonstrative materials presented by the applicant's professional consultants.
3. In the event of an inconsistency between a specific written proffer and a graphic depiction upon an approved general development plan, the proffered text shall control.
4. The Planning and Zoning Administrator is hereby vested with all necessary authority to enforce such proffered conditions. Failure to comply shall be sufficient cause to deny the approval of (1) site plans, (2) subdivision plats, (3) zoning permits and/or (4) occupancy permits. In exercise of this authority, the Planning and Zoning Administrator may initiate action through the Town Manager to (1) issue a violation notice and correction order, (2) bring legal action to ensure compliance, including lien, injunction and/or abatement and/or (3) proceed with institution of criminal process.
5. No amendment shall be made to any accepted proffer except in the manner of a new rezoning application as set forth herein. **However, where an amendment to such proffered conditions is requested, and where such amendment does not affect condition of use or density, a local governing body may waive the requirement for a public hearing and new rezoning application, by a majority vote at the next regularly scheduled Town Council meeting.**

(Ord. of 2023-03-??)