Cash Proffer Amendment Procedures

DECEMBER 12, 2012

Cash Proffer Amendment Procedures

Hanover County Code, Article 9, § 6A

Establishment of Cash Proffers at the Time of Rezoning

- (j) "Applications for the amendment or deletion of proffered conditions previously accepted by the board of supervisors shall be considered through the same process as any other request for a zoning map amendment."
- Process includes:
  - Posting notice on property
  - Mail notice and advertisement; public hearing before Planning Commission
  - Mail notice and advertisement; public hearing before Board of Supervisors

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Virginia Code § 15.2-1427

F. "In counties, except as otherwise authorized by law, no ordinance shall be passed until after descriptive notice of an intention to propose the ordinance has been published for once a week for two successive weeks prior to its passage . . . ."

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Virginia Code § 15.2-2285

Adoption of zoning ordinance and map and amendments thereto

B. "No zoning ordinance shall be amended or re-enacted unless the governing body has referred the proposed amendment or reenactment to the local planning commission for its recommendations . . . ."

C. "Before approving or adopting any zoning ordinance or amendment thereof, the governing body shall hold at least one public hearing thereon, pursuant to public notice as required by §15.2-2204 . . . ."

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Virginia Code § 15.2-2297

Conditions as part of a rezoning or amendment to zoning map

A. Once proffered and accepted as part of an amendment to the zoning ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions . . .

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Virginia Code § 15.2-2302

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 . . . may apply* to the governing body *for amendments* . . . to such proffered conditions *provided only that written notice of such application be provided* in the manner prescribed by subsection H of § 15. 2-2204 *to any landowner subject to such existing proffered conditions . . . .*"

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Virginia Code § 15.2-2302

Amendments and variations of conditions (Continued)

B. There shall be no such amendment or variation of any conditions proffered . . . 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.

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Virginia Code § 15.2-2302
Amendments and variations of conditions (Continued)

- Authority for local governing body to waive public hearing requirement under specified conditions does not expressly change requirements for public notice and referral to planning commission.
- If Board decides to waive public hearing requirement for some categories of cases or for all cases, it must determine what public notice is appropriate and whether to refer these cases to Planning Commission.
- If public hearings are waived, County Attorney recommends no less public notice than is specified in § 15.2-1427 (publication) and §15.22302A (letter to other owners).

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Process for Board Waiver of Public Hearings

- Case by case determination or creation of one or more categories of cases for which public hearings are waived?
- Possible categories for waiver of public hearings
  - Cases where the total number of remaining undeveloped lots is less than a specified number (e.g. less than 50 lots remaining).
  - Cases where no specific public improvements proximate to and necessitated by development were identified during original rezoning, unless constructed by developer
  - All cases in which elimination or reduction of cash proffers is requested

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Options for consideration of requests for elimination or reduction of cash proffers:

<u>Public Hearing Options</u>

1. Standard process with separate public hearings before Planning Commission and Board of Supervisors
2. Combined public hearings before Planning Commission and Board of Supervisors
3. Waiver of public hearings for some categories of cases or for all cases

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Options for consideration of requests for elimination or reduction of cash proffers: (Continued)

Process Options

1. Expedite cases based on number of remaining undeveloped lots (e.g., 25 lots, 50 lots)
2. Expedite cases if no specific and proximate public facility improvements were identified during rezoning or if improvements have been constructed by developer
3. Bundle expedited cases for advertisement and for Planning Commission (if applicable) and Board agendas

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Questions Presented

1. Waive public hearing for some or all cash proffer amendment requests?
2. If public hearing waiver for some, but not all, for what categories of cases should it be waived?
3. If public hearings are waived for some or all cases, does waiver also include:
   - Posting?
   - Mail to adjoining owners?
   - Planning Commission?
   - Advertisement in newspaper?

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Questions Presented (Continued)

4. If public hearings are not waived, will Board hold joint public hearings with Planning Commission?
5. Does Board want certain cases, such as those involving 50 or fewer remaining lots and no specifically identified public facility impacts to be given first priority?
6. Does Board anticipate that cash proffer amendments will be retroactive to a certain date (e.g. December 12, 2012)?
7. If cash proffer amendments may be retroactive, should staff begin accepting bonds or other surety in lieu of payment of cash proffers?