



Memorandum

Planning Division • Community Development

900 Church Street
Lynchburg, Virginia 24504
P 434-455-3900

To: Planning Commission

From: Tom Martin, AICP, City Planner

CC: Bonnie Svrcek, City Manager, Reid Wodicka Deputy City Manager, Walter Erwin, City Attorney, Kent White, Director Community Development, Kevin Henry, Zoning Administrator

Date: July 24, 2019

Re: Zoning Ordinance Amendment – Section 35.2-11.3, Applications

Amendments to the Code of Virginia § 15.2-2303.4 related to conditional rezonings for new residential developments became effective on July 1, 2019. While no significant changes to the City's Zoning Ordinance are necessary, the City Attorney, Walter Erwin has advised the attached amendments are necessary to maintain consistency with the Code of Virginia.

The primary change is a statement that: "The submission of any onsite or offsite proffer at the time of filing and application or during the development review process that has been signed by the applicant or owner shall be conclusive evidence that the proffered condition is reasonable and appropriate."

If you have questions, please contact me at (434) 455-3909 or tom.martin@lynchburgva.gov.

ORDINANCE:

AN ORDINANCE TO AMEND AND REENACT THE CODE OF LYNCHBURG, 1981 BY AMENDING ZONING ORDINANCE SECTION 35.2-11.3 RELATED TO CONDITIONAL REZONINGS FOR NEW RESIDENTIAL DEVELOPMENTS AND RESIDENTIAL USES:

WHEREAS, the General Assembly amended and reenacted Va. Code Ann. § 15.2-2303.4, effective July 1, 2019, which amends the provisions addressing conditional rezonings for new residential developments and new residential uses.

WHEREAS, the City wishes to amend its Zoning Ordinance to conform to the provisions of Va. Code § 15.2-2303.4, as amended (the "Zoning Ordinance Amendments").

WHEREAS, the Planning Commission held a public hearing to consider and address the proposed Zoning Ordinance Amendments and to receive public comment on July 24, 2019.

WHEREAS, the City Council held a public hearing to consider and address the proposed Zoning Ordinance Amendments and to receive public comment on September 10, 2019.

WHEREAS, the City Council finds that this Ordinance should be adopted to promote the public necessity, convenience, welfare, and good zoning practice.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Sections 35.2-11.3 of the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted as follows:

35.2-11.3 Applications

- (a) **Initiation.** The Planning Commission, the City Council or the owner, contract purchaser with the owner's written consent, or the owner's agent may initiate a request.
- (b) **Pre-Application Conference Recommended.** Before any application is made, the applicant may schedule a pre-application conference with the City Planner to discuss applicable procedures and requirements.
- (c) **Submittal Requirements.** Applicants shall provide the information listed in Exhibit II-5.
- (d) **Conditional Zoning Proffers.**
 - 1. **Purpose.** The purpose of conditional zoning is to provide a method for permitting the reasonable and orderly development and use of land in those situations in which peculiar specific circumstances indicate that the existing zone ordinance district regulations are not adequate. In such instances reasonable conditions voluntarily proffered by the owner of the subject property to which such conditions are applicable for the protection of the community (which conditions are not generally applicable to other land similarly zoned) when considered with existing zoning ordinance district regulations should cause the requested rezoning to be compatible with existing zoning and uses in the area.
 - 2. **Application.** An applicant seeking conditional rezoning shall voluntarily proffer in writing such conditions as the applicant deems appropriate. The applicant shall generally file such a proffered condition in writing at the time of filing an application to rezone a property. An applicant may file such voluntary proffers in writing prior to the public hearing before the Council. The Council may refer such later filed proffered conditions back to the Planning Commission for review. City Council may consider additional proffers, deletions, and/or amendments to all such conditions provided same have been voluntarily proffered in writing by the owner of the property which is the subject of the rezoning request.
 - 3. **Applications for conditional rezoning for new residential development and new residential uses.**
 - a. **Defined Terms.** The terms used in this subsection, shall have the meanings stated for the same terms as defined in Va. Code Ann. § 15.2-2303.4.
 - b. **The Applicant's Proffer Statement.** An applicant seeking a conditional rezoning or a proffer condition amendment for a new residential development or a new residential use shall provide a written proffer statement at the time the applicant proffers any conditions. The applicant's proffer statement shall include the information designated below.

- c. Required Contents of Proffer Statement. An applicant shall include the following information in a proffer statement submitted pursuant to this subsection.
- i) Proffers and Proffer Condition Amendments. A description and explanation of how each proffer or proffer condition amendment, whether onsite or offsite, addresses an impact that is specifically attributable to the proposed new residential development or other new residential use applied for.
 - ii) Offsite Proffers. A description and explanation of how an offsite proffer addresses an impact to an offsite public facility such that:
 - a) The new residential development or new residential use creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the rezoning or proffered condition amendment; and
 - b) Each new residential development or new residential use applied for will receive a direct and material benefit from the proffer made with respect to any such public facility improvements; and
 - c) The projected impacts on public facility capacity specifically attributable to the proposed new residential development or new residential use.
 - iii) Certifications. The applicant's proffer statement shall include the following certifications:
 - a) A certification by the applicant that all proffers and proffer condition amendments are voluntary.
 - b) A certification by the applicant that the information in the proffer statement is true, accurate, and complete to the best of the applicant's knowledge.
 - c) The submission of any onsite or offsite proffer at the time of filing an application or during the development review process that has been signed by the applicant or owner shall be conclusive evidence that the proffered condition is reasonable and appropriate.
 - iv) Identification of Proffers ~~Suggested~~ Required or Requested in Writing by the City. The proffer statement shall specifically identify any proffer or proffer condition amendment that was ~~suggested, requested, or~~ required by the City or requested in writing by the City.
 - v) Waiver of Required Contents. The Zoning Administrator or the City Planner may waive any element of the required contents of a proffer statement pursuant to section 35.2-10.12(b) of this Zoning Ordinance.

- vi) Application Fee. The City Council may require a specific application fee for a conditional rezoning application for a proposed new residential development or new residential use pursuant to section 35.2-101 of this Zoning Ordinance.
- (e) **Concurrent Review Allowed.** Applications for Comprehensive Plan amendments and other development approvals may be submitted and reviewed concurrently.
- (f) **Completeness Review.** The City Planner shall review the application and shall determine if the application is complete pursuant to the provisions of section 35.2-10.12 (Completeness).
- (g) **Staff Review and Recommendation.** Upon finding that the application is complete the City Planner shall consult with the Technical Review Committee (TRC), prepare a report making findings and recommendations on the application, and authorize notice to be provided in accordance with section 35.2-10.14 (Notice) and Exhibit II-6.

2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified:

Clerk of Council