



## Gloucester County - Explanation of Voluntary Proffers and Rezoning Considerations

### Overview:

- ❖ Zoning is a legislative authority and the current zoning of a property is presumed to be legal
- ❖ A landowner/applicant can request a rezoning to change the laws affecting the use of the property
- ❖ The change in zoning gets evaluated through the rezoning process which is also a legislative act requiring due process and includes public hearings by both the Planning Commission (advisory) and the Board of Supervisors (legislative)
- ❖ No rezoning is guaranteed
- ❖ To offset the impacts of a rezoning, an applicant may offer voluntary conditions, called proffers as part of the rezoning request
- ❖ For residential zonings, State law prohibits the County from accepting a proffer *unless it is reasonable and addresses an impact that is specifically attributable to the proposed new residential development or new residential use.*
- ❖ County officials, staff and agents are prohibited from suggesting, requesting, or requiring proffers related to residential rezonings
- ❖ To confirm compliance with State Code, the Gloucester County Board of Supervisors (“the Board”) adopted a Proffer Policy for Residential Rezoning making it the applicant’s responsibility to verify that any proffered condition is reasonable and addresses an impact that is resulting from the proposed residential development or use
- ❖ The proffer policy must be signed and submitted with all residential rezoning applications that include proffers (see Policy on page 4)
- ❖ Proffered conditions shall be submitted using the County’s proffer template which also requires the property owner to certify compliance with State Code regarding proffers
- ❖ Proffered conditions accepted by the Board become part of the zoning of the property and are legally binding until changed by a subsequent legislative act of the Board

### Details:

#### **Zoning/ Rezoning Considerations:**

- ❖ State governments’ authority includes the authority to legislate for the “health, safety, morals and general welfare” of their citizens, and states enact land use laws based on this authority.
- ❖ The authority of local governments to regulate land use is derived from the state’s specific delegation of its authority to the locality through *enabling legislation*.
- ❖ In Virginia, which operates under the “Dillon Rule,”<sup>1</sup> local governments cannot exercise authority that is not clearly granted to them by the State. In a court of law, legislative actions, such as zoning, are presumed to be reasonable and constitutionally valid. Therefore, when an applicant is

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<sup>1</sup> Named after Judge Dillon who wrote a treatise on municipal law

requesting a change in the zoning of their property from one district to another, it is their responsibility to “prove” why the proposed zoning better supports the “health, safety, morals and general welfare” *of the citizens of the community* as compared to the existing zoning of the property.

- ❖ The County’s Comprehensive Plan provides *guidance* for legislative land use decisions but the current zoning is the current legislation that *regulates* the use and development of property.
- ❖ When considering rezoning, the County uses the Comprehensive Plan as a guide, and considers the impact of the proposed rezoning to the existing community as well as the County’s ability and capacity to provide services and adequate infrastructure to support the proposed use(s).
- ❖ **No rezoning is guaranteed** – it is the Board of Supervisors’ decision, following a public hearing, as to whether the zoning of a property should be changed from the current zoning classification to another district. This decision is based on the information provided by the applicant, community input, and Planning Commission recommendation as well as input from staff and other agencies.

### Voluntary Proffers (Conditional Zoning):

- ❖ To offset potential impacts from a proposed rezoning, a property owner (applicant) has the opportunity, through voluntary proffers, to address impacts and needs created by the proposed rezoning.
- ❖ A proffer is a voluntary offer by a landowner (applicant) to place conditions on their property to help validate the change in zoning. *The conditions (if accepted by the County) become part of the zoning of the property and can only be changed by a subsequent legislative act to amend or change the proffers.*
- ❖ Conditions can include limitations on future use of the site (such as density limitations or identifying specific land uses which will or will not be permitted), on and off-site improvements, and/or cash proffers toward improvements done by others.
- ❖ Proffers must be written to be clearly enforceable much like other zoning regulations that affect the use of the land. Use of vague terms like “should” or “intends to” are not enforceable. Proffer language must be written using terms like “will” and “shall” with detailed timelines for when specific proffers will be completed and with *enforceable* and *measurable* requirements.
- ❖ A proffer *would not* include development improvements, such as parking and landscaping requirements, utility requirements, and other site improvements that are *already required by State and County codes and regulations*. A proffer is a voluntary condition that is *in addition* to requirements on the property under the proposed zoning and for residential rezonings, it shall relate specifically to the impacts of the residential development or use.
- ❖ A property owner/applicant can voluntarily do something not required by the ordinance, such as additional landscaping or architectural standards; however, owing to recent State legislation, *to be accepted and enforced by the County as a proffer, it must be reasonable and relate to the impacts anticipated by the change in zoning*<sup>2</sup>.
- ❖ The burden of *evaluating and clearly outlining* potential impacts anticipated by the proposed change in zoning, as well as contemplation of potential proffers that address such impacts (including the “reasonableness” of such proffers) *lies entirely with the entity proposing the change.*

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<sup>2</sup> Section 15.2-2303.4 of the Code of Virginia

## Relationship of Proffers to Capital Improvements:

- ❖ The County, through its annual budgeting process provides for the needs of the community based on anticipated revenues generated by the community. The revenues collected allow the County to provide services to the community as well as maintain and develop the infrastructure and facilities needed to effectively and efficiently deliver services to the public.
- ❖ The Capital Improvement Plan (CIP) is a five year plan updated annually to coordinate and prioritize development and maintenance of County facilities with anticipated needs, funding sources, growth and the County's ability to pay.
- ❖ Rezoning *that increase the residential density* may also increase the need for new, improved, or expanded public facilities. These projects are evaluated, not only on their consistency with the Comprehensive Plan, but also on whether the County has capacity in its current or planned public facilities to absorb the impacts generated from the new development without adversely impacting overall County services and planned capacity.

## Reasonable Proffers and Relationship to the Project<sup>3</sup>:

- ❖ Pursuant to State code, the County *cannot accept a proffer unless it is reasonable and addresses an impact that is specifically attributable to the proposed new residential development* or new residential use.
  - Such proffers may include buffers to address increased noise and activities on the site, screening of parking and activity areas such as dumpsters, and other factors that alleviate impacts *directly related to the change in site conditions from the rezoning* as compared to what would be permitted on the site under the current zoning of the property and not already required by local or State regulations affecting the property.
- ❖ Pursuant to State code, an **off-site proffer (including cash proffers) shall:**
  - Specifically address an impact created by the new residential development or use to an off-site public facility;
  - Specifically address 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 proffer condition amendment;
  - Be worded to make clear that the new residential development or use resulting from the rezoning must receive *a direct and material* benefit from a proffer made with respect to any public facility improvements.
- ❖ Assessment of public facility capacity will be based on the projected impacts specifically attributable to the new residential development or new residential use as determined by the application, the potential capacity of the new zoning district, and any additional information provided by the applicant – including any voluntary proffers.
  - Public facilities include transportation facilities, schools, parks and recreational facilities, public safety facilities, public water and sewer facility.
- ❖ An application must demonstrate the impacts on public facilities from the proposed residential development under the proposed zoning (including restrictions proposed in voluntary proffers) relative to those which would be permitted under the existing zoning.

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<sup>3</sup> See page 5 for examples of potential reasonable and unreasonable proffers

**Gloucester County**  
**Proffer Policy for Applications for Residential Rezoning**  
*Effective October 18, 2016 per Resolution adopted by the Gloucester County Board of Supervisors.*

Gloucester County has the authority, pursuant to Va. Code Section 15.2-2298, to accept voluntary proffers submitted by an applicant for conditional zoning. Proffers may include land, infrastructure, cash, or other conditions and constraints on the use of the property applied for conditional zoning. There must be a reasonable relationship or connection between the proffers and the rezoning.

In order to ensure compliance with applicable law, Section 15.2-2303.4 of the Code of Virginia; the County and its officials, employees, and agents shall not suggest, request, or require any proffer associated with a requested residential rezoning. Any such suggestion, request, or requirement of a proffer shall be deemed null and void and of no effect.

In order to ensure that there exists a reasonable relationship or connection between the proffers and the rezoning, it shall be the responsibility of the applicant to provide the County with detailed analyses of the impacts (capital, environmental, fiscal, etc.) of any residential development or use resultant from a requested residential rezoning; the applicant must then demonstrate how the project and/or any proffered conditions will mitigate those impacts.

The applicant shall certify, in writing, that any proffered conditions are voluntary, reasonable, and directly related to the rezoning applied for. The applicant shall acknowledge that failure to address and/or mitigate impacts directly attributable to the rezoning may result in the denial of the rezoning request.

I have read and understand the above proffer policy:

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Property Owner

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Applicant (if different)

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Date

## Proffer Examples

### ❖ Examples of a *reasonable residential proffer*:

- The maximum density of the site is limited to X number of units in order to minimize the impacts of the development on traffic generated at the site as well as other impacts based on the increased number of units that would be allowed under the proposed zoning as compared to those permitted under the existing zoning.
- The applicant will upgrade the signal at the corner of Route X and Route Y in accordance with the recommendations in the Traffic Impact Analysis prepared as part of the proposed rezoning to address the decrease in Level of Service resulting from the increased traffic generated by the proposed rezoning.
- The applicant will contribute X number of dollars per unit to contribute to the upgrade of pump station Y to offset the loss of capacity of that pump station because of the sewer connections anticipated by the proposed development.
- The applicant will contribute X number of dollars for improvements to \_\_\_\_\_ Park in order to develop additional recreation areas for use by the future residents of the proposed development. This proffer is based on comparison of the standards cited in the Virginia Outdoor Plan and the County's Comprehensive Plan, which indicate the County is lacking in per capita recreational facilities and the proposed development will further reduce the per capita facilities available for recreation in the County.

### ❖ Examples of *unreasonable proffers* include:

- The applicant proffers X number of dollars per unit to be used for any project on the County's CIP. (*This is unreasonable unless the applicant provides an impact created by the development that will be addressed by a project on the CIP.*)
- The buildings will be developed using high quality materials including granite countertops and quality shingles. (*This is unreasonable because it doesn't relate to the specific impacts of development.*)
- Landscaping will exceed the minimum requirements. (*This is unreasonable and unenforceable because it doesn't relate to the impacts of the development and is not specific enough to be enforceable. It could be made reasonable if it included a reason for exceeding the landscaping requirement caused by the residential development and the type of landscaping proposed to exceed existing requirements.*)
- The applicant proffers to contribute \$500 to the public library to buy additional books. (*The definition for public facilities in State Code, Section 15.2-2302.4 does not include libraries. "Public facilities" means public transportation facilities, public safety facilities, public school facilities, or public parks.*)