

**STAFF CONTACT:** William D. Fritz, AICP  
**PLANNING COMMISSION:** May 28, 2019  
**BOARD OF SUPERVISORS:** June 19, 2019

**ZTA: 2019-04 Proffers**

**ORIGIN:** The State Code has been amended to allow additional opportunities for proffers to be accepted. The Planning Commission adopted a Resolution of Intent to amend the Zoning Ordinance on April 23, 2019. (Attachment A)

**PROPOSAL:** Update the Zoning Ordinance to allow the County to reflect changes in the State Code that will allow acceptance of off-site proffers after July 1, 2019

**PUBLIC PURPOSE TO BE SERVED:** Provides flexibility in the review of rezonings and allows proffers to be submitted by applicants and accepted by the County to address off-site impacts generated by residential rezonings.

**BACKGROUND:** The State Code was amended in 2016 to limit the ability of localities to accept proffers addressing off-site impacts. The 2019 session of the General Assembly passed, and the Governor signed HB2342. (Attachment B) This legislation goes into effect on July 1, 2019 and will allow localities to accept proffers if the owner and applicant deem the proffer reasonable and appropriate.

The current proffer legislation severely restricts the ability of the County to accept proffers. Currently the County may only accept offsite proffers to address impacts to public transportation facilities, public safety facilities, public school facilities or public parks. Acceptance of proffers addressing impacts to these types of facilities is limited to proffers that:

- address impacts that are specifically attributable to a proposed new residential development
- address an impact where the new residential development creates a need or an identifiable portion of a need for improvements
- provide each new unit a direct and material benefit from the proffer

The proposed amendment will allow an owner and applicant to submit proffers using the criteria outlined above or to submit any onsite or offsite proffer that the owner and applicant deem to be reasonable and appropriate, as conclusively evidenced by the signed proffers.

It is important to note that if an applicant chooses to submit proffers it is the applicant that decides under which of the two options listed above to submit the proffers. Failure to submit proffers deemed by the owner and applicant to be reasonable and appropriate shall not be a basis for the denial of any rezoning or proffer condition amendment application.

**STAFF COMMENT:**

**Analysis of the proposed zoning text amendment:**

Zoning Ordinance section 33.6(B) establishes factors to be reasonably considered by the Planning Commission and Board of Supervisors in the review of ZTAs. Each factor is reviewed below:

- (i) the existing use and character of property

This amendment is not linked to any zoning district or individual property. The amendment allows applicants and the County to work more collaboratively to address the impacts caused by rezonings.

- (ii) the Comprehensive Plan

The Comprehensive Plan acknowledges that proffers serve a role in addressing the needs of the community. (Attachment C) In part, the Comprehensive Plan states:

In addition to residents and property owners, area developers play a large part in the implementation of Albemarle County's Comprehensive Plan. By adhering to established policies, participation in current review practices, and voluntary submission of proffers, developers can help ensure future development – both residential and commercial – reflects the goals stated in the Comprehensive Plan.”

This ZTA is consistent with the Comprehensive Plan.

(iii) the suitability of property for various uses

The existing zoning on a property may be inconsistent with the Comprehensive Plan. By allowing the County to accept proffers addressing the impacts caused by rezonings, uses more suitable and consistent with the Comprehensive Plan may be approved more readily.

(iv) the trends of growth or change

Rezonings are reviewed in part to determine if they are consistent with the trends of growth or change in the County. This ZTA provides an additional tool to address impacts generated by growth and change.

(v) the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies

Studies may be made during the review of a rezoning to determine the future impacts. This ZTA provides an opportunity to offset identified impacts.

(vi) the community's transportation requirements

Studies may be made during the review of a rezoning to determine transportation requirements. This ZTA provides an opportunity to offset identified requirements.

(vii) the requirements for airports, housing, schools, parks, playgrounds, recreation areas, and other public services

Studies may be made during the review of a rezoning to determine impacts on these resources. This ZTA provides an opportunity to offset identified impacts.

(viii) the conservation of natural resources

This ZTA has limited relationship to conservation of natural resources. This ZTA impacts only the potential to address off site impacts. Impacted resources are typically onsite.

(ix) preserving flood plains

This ZTA has limited relationship to preserving flood plains. This ZTA impacts only the potential to address off site impacts. Impacted flood plains are typically onsite.

(x) protecting life and property from impounding structure failures

This ZTA has limited relationship to impounding structures. This ZTA impacts only the potential to address off site impacts. Impounding structures are typically onsite.

- (xi) preserving agricultural and forestal land

This ZTA has no relationship to preserving agricultural and forestal land.

- (xii) conserving properties and their values

This ZTA does not address any specific use. The rezoning process is a technique for the conservation of properties and their values.

- (xiii) encouraging the most appropriate use of land throughout the County

By providing a tool to allow for impacts to be addressed this ZTA may encourage and facilitate the rezoning of land to be consistent with the Comprehensive Plan.

#### Strategic Plan:

This ZTA allows proffers to be made to address any offsite impacts. Therefore, it has the ability to address many items identified in the Board's strategic plan:

- Climate Action Planning
- Continue to expand & promote the County's outdoor recreation parks & amenities
- School space needs
- Infrastructure planning

This ordinance will be reviewed by the three (3) criteria previously established by the Board for amendments:

#### Administration/Review Process:

The amendment to the State Code improves the ability of the County to review rezoning applications by allowing for a free discussion of impacts and possible ways of addressing the impacts. No negative impacts on administration of the ordinance or review process are expected.

#### Housing Affordability:

Approval of this ZTA may facilitate and promote residential development which serves to increase overall housing supply and may impact housing affordability positively. This ZTA allows applicants to proffer affordable housing.

#### Implications to Staffing/Staffing Costs:

No impacts are expected.

#### RECOMMENDED ACTION:

Staff recommends approval of ZTA 2019-04 Proffers.

#### ATTACHMENTS

Attachment A – [Resolution of Intent](#)

Attachment B – [Proposed Ordinance Language](#)

Attachment C – [Comprehensive Plan provisions addressing proffers](#)

**RESOLUTION OF INTENT  
ZONING TEXT AMENDMENT  
RESIDENTIAL PROFFERS**

**WHEREAS**, pursuant to Albemarle County Code § 18-33.22 and Virginia Code §§ 15.2-2303 and 15.2-2303.4, the Board of Supervisors may accept proffers in conjunction with zoning map amendments; and

**WHEREAS**, the 2019 session of the General Assembly amended Virginia Code § 15.2-2303.4 to permit greater flexibility in residential proffers; and

**WHEREAS**, it is desired to review and amend Albemarle County Code § 18-33.21, § 18-33.22, and related regulations as appropriate, to reflect the recently-amended state law regarding residential proffers.

**NOW, THEREFORE, BE IT RESOLVED THAT** for purposes of public necessity, convenience, general welfare, and good zoning and development practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to consider amending Albemarle County Code § 18-33.21, § 18-33.22, and any other sections of the Zoning Ordinance deemed to be appropriate to achieve the purposes described herein.

**ORDINANCE NO. 19-180**

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE IV, PROCEDURES, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article IV, Procedures, is hereby amended and reordained as follows:

**By Amending:**

- Sec. 33.21 Studies identifying potential impacts of zoning map amendment
- Sec. 33.22 Proffers

**Chapter 18. Zoning**

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**Article IV. Procedures**

**Section 33. Zoning Text Amendments, Zoning Map Amendments,  
Special Use Permits And Special Exceptions**

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**Sec. 33.21 Studies identifying potential impacts of zoning map amendment.**

When the filed application is complete, the Director of Planning may require an applicant to submit studies identifying the nature and extent of potential impacts resulting from a proposed zoning map amendment. In addition:

- A. *Studies pertaining to particular impacts.* The following requirements apply to particular impacts:
  - 1. *Impacts on traffic, generally.* The Director may require a traffic study for any application for a zoning map amendment. The scope of the appropriate traffic study shall be determined by the County's transportation engineer in consultation with the Virginia Department of Transportation.
  - 2. *Impacts on public transportation facilities, public safety facilities, public school facilities, and public parks; zoning map amendments for new residential development or new residential uses.* For zoning map amendments that propose new residential development or new residential uses as defined in and subject to Virginia Code § 15.2-2303.4, the Director may require studies that identify the impacts of the project on public transportation facilities, public safety facilities, public school facilities, and public parks. If required, such~~The~~ studies shall identify impacts that are specifically attributable to the project and, for impacts to public facilities that are located outside of the project, shall also identify: (i) the extent to which the project 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 zoning map amendment; and (ii) the extent to which the applicant or its successors would receive direct and material benefits from any proffer related to any public facility improvements.
- B. *Form and content of studies; authority of the Director of Planning.* The Director may establish the form and determine the required content of any study.
- C. *Time to submit studies.* The Director may establish deadlines by which any studies must be submitted by the applicant in order to provide County staff adequate time to review the study before scheduling the Commission's public hearing on the application.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286, 15.2-2303, 15.2-2303.4.

**Sec. 33.22 Proffers.**

The Board of Supervisors may accept proffers pursuant to Virginia Code §§ 15.2-2303 and 15.2-2303.4 in conjunction with zoning map amendments as follows:

- A. *Purpose.* Proffers are reasonable conditions proposed by the applicant governing the use of parcels being rezoned. The conditions are in addition to the regulations in this chapter that apply to the district.
- B. *Form.* Proffers shall be in writing and be in a form that is approved by the County Attorney. The Director of Planning may provide applicants with a proffer statement form.
- C. ~~*Proffers addressing impacts on public transportation facilities, public safety facilities, public school facilities, and public parks; zoning map amendments for new residential development or new residential uses.*~~ *Proffers addressing impacts from new residential developments or uses.* For zoning map amendments that propose new residential development or new residential uses as defined in and subject to Virginia Code § 15.2-2303.4, any proposed proffers addressing the impacts resulting from the new residential development or new residential uses shall comply with the requirements of Virginia Code § 15.2-2303.4(C).
- D. *Time to submit.* The applicant shall submit proffers by the following deadlines:
  - 1. *Before the Commission's public hearing.* Proposed proffers, regardless of whether they are signed by the owners of all parcels subject to the zoning map amendment, shall be submitted to the Department of Community Development at least 14 days before the Commission's public hearing on the zoning map amendment.
  - 2. *Before the Board of Supervisors' public hearing.* Proposed proffers, signed by the owners of all parcels subject to the zoning map amendment, shall be submitted to the Department of Community Development before the Board's public hearing on the zoning map amendment. The Director of Planning may establish written guidelines that require signed proffers to be submitted a reasonable period of time prior to the public hearing to allow County officers and employees and members of the public a reasonable period of time to review the proffers.

State law reference-Va. Code §§ 15.2-2303, 15.2-2303.4.

[§ 33.22: (§ 33.7: Ord. 12-18(7), 12-5-12, effective 4-1-13 (§ 33.3, 12-10-80; 4-4-90; Ord. 07-18(1), 7-11-07)(§ 33.3.1, 12-10-80; 4-4-90; Ord. 16-18(4), 4-6-16); § 33.22 Ord. 18-18(3), 9-5-18]

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I, Claudette K. Borgersen, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of to, as recorded below, at a regular meeting held on \_\_\_\_\_.

\_\_\_\_\_  
Clerk, Board of County Supervisors

|              |       |       |
|--------------|-------|-------|
|              | Aye   | Nay   |
| Mr. Dill     | _____ | _____ |
| Mr. Gallaway | _____ | _____ |

Ms. Mallek \_\_\_\_\_  
Ms. McKeel \_\_\_\_\_  
Ms. Palmer \_\_\_\_\_  
Mr. Randolph \_\_\_\_\_

Chapter 8.1 DEVELOPMENT AREAS

**Strategy 9b: Make decisions to approve new development with an understanding of where public investments are being focused. Give priority to approving rezonings and special use permits that are consistent with priority areas established in the Development Area Master Plans.**

The County has experienced steady and consistent growth over the past 50 years. Public investment and infrastructure improvements have not kept pace with this growth. This is particularly true with road improvements, but also includes other types of community facilities and services, such as incomplete sidewalk systems, lack of crosswalks, limited playing fields, and emergency service personnel. Proffers approved through rezonings sometimes include commitments to improve infrastructure needed for the new development. Sometimes, commitments are for cash to make public improvements. However, the private sector cannot be expected to mitigate impacts for existing deficiencies; new development can only be held responsible for deficiencies it creates.

The County's Capital Improvement Program is used to guide decisions on County expenditures to improve infrastructure. Priority Areas are used to help provide guidance on where expenditures should be made as well as where new development should be approved. While decisions regarding private development proposals and investment should not be based solely on these priority areas, decisions on development proposals should be made with an understanding of where public investments are being focused. Land use decisions should be consistent with Priority Areas established in the Development Area Master Plans. The County may decide not to approve new rezoning or special use permit requests outside of the designated Priority Areas as planned facilities are not in place to support the proposed project and the existing neighborhoods. If approved, however, as part of the land development process, developers will need to provide more significant levels of improvements to ensure adequate infrastructure and services are available to the area.

Chapter 12.1 COMMUNITY FACILITIES

**Strategy 3c: Provide facilities in locations that are appropriate for the projected enrollment in order to ensure educational parity for all students. Ensure school location and facility design are based on the recommendations of the Long-Range Plan for Albemarle County Schools and Development Area Master Plans, to the greatest extent possible.**

Providing appropriate education facilities for all students—current and future—is a priority for the County. The School Division monitors enrollment figures on a frequent basis to ensure schools can meet enrollment needs. School district boundaries are drawn to balance the numbers of students, as well as to ensure consistency of school facilities and offerings. Appropriate new locations for schools in the Development Areas are places where growth is occurring or projected to occur quickly.

Identifying and acquiring the sites that will be needed for future schools and expanded schools can ensure that these sites are secured and available when the need arises. Such planning ahead helps ensure cost-effective use of County funds. Obtaining school sites through proffers helps to offset costs



for the County. Planning and land acquisition should be done early enough to avoid overcrowding in schools.

In order to ensure that all students have adequate facilities to meet their educational needs, and that facilities will continue to meet the needs of future students, County decision makers should continue to evaluate enrollment numbers. When existing educational facilities need to be expanded to continue to provide high quality education opportunities, the County should explore constructing new facilities in a location that best serves the projected enrollment and adheres to the Neighborhood Model principles.

The Long Range Plan for Albemarle County Schools should identify land needed for school expansion and new schools, and recommend acquisition of these sites as soon as feasible. Development Area Master Plans are created with a great amount of public input and feedback. Potential school sites are identified based on locations of undeveloped land near residential areas. Future school sites identified on such Master Plans and these recommendations are important to understand the needs of that particular community.

**Strategy 3e: Provide adequate recreational and athletic facilities on a school site to serve the students of the school and to provide park facilities as identified in the Parks and Recreation Chapter of this Plan.**

In past years, combining school and park locations was viewed as creating a good economy of scale. By increasing the size of playing fields, maintenance and sharing of existing parking lots was less expensive to the public. Public buy-in of sites helped pave the way for new construction. This sharing, however, had the downside of creating school sites that were so large as to make walking to school very inconvenient. Schools were intended to be accessed predominately by cars. The parcel size also increased the purchase cost of the land.

With the Neighborhood Model, requiring larger recreational land than needed for the school use became less important than creating walkable neighborhood centers. Through rezoning, the County can receive park and school sites on smaller parcels, separate from each other, which is more palatable to the property owners who are proffering the land. In collaboration with the Parks and Recreation Department, school, park, and recreational facilities will be available for public use after schools meet their responsibilities to students.

### **Chapter 13.1 IMPLEMENTATION**

“In addition to residents and property owners, area developers play a large part in the implementation of Albemarle County’s Comprehensive Plan. By adhering to established policies, participation in current review practices, and voluntary submission of proffers, developers can help ensure future development – both residential and commercial – reflects the goals stated in the Comprehensive Plan.”

“Cash Proffers In 2007, per Virginia Code § 15.2-2303 which enables the County to accept proffers as reasonable conditions to address the impacts resulting from a rezoning, Albemarle County adopted the existing Cash Proffer Policy. A copy of the current policy may be found in Appendix of this Plan. The authority granted by the State includes the authority to accept cash contributions to address impacts to public facilities generated by new residential development. It is the policy of the County to require that the owner of property that is rezoned for residential uses to provide cash proffers equivalent to the proportional value of the public facilities deemed necessary to serve the proposed development on the

property. It is intended that this policy help offset expenses incurred by the County as a result of new development. By volunteering proffers and therefore assisting in the construction of needed public facilities such as schools, transportation, parks, libraries, and public safety facilities, developers contribute greatly to helping the County achieve the Comprehensive Plan goals.”

**Housing - Indicators of Progress**

2. Increase in number of proffered affordable units over "cash-in-lieu" through rezonings and special use permits.

**Parks and Recreation, Greenways, Blueways, and Green Systems - Indicators of Progress**

2. Increase in amount of acreage in public land for parks for each category: proffered, dedicated, and accepted.

4. Increase in amount of acreage in greenways for each category of: proffered, dedicated, and accepted.