

# ORDINANCE AMENDING AND RE-ENACTING SECTION 10-3-123 – CONDITIONAL ZONING, OF THE CODE OF ORDINANCES CITY OF HARRISONBURG, VIRGINIA

Be it ordained by the Council of the City of Harrisonburg, Virginia:

Section 10-3-123 be amended and re-enacted as follows:

## Sec. 10-3-123. Conditional zoning.

- (a) *Purpose.* Where competing and incompatible uses conflict, traditional zoning methods and procedures are sometimes inadequate. In such cases, more flexible and adaptable zoning methods are needed to permit differing land uses and at the same time to recognize effects of change. [City Council may accept proffers pursuant to Virginia Code §§ 15.2-2303 and 15.2-2303.4](#) ~~It is the purpose of this section to provide a zoning method authorized under § 15.1-491, Code of Virginia 1950, as amended,~~ whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community even though said conditions may not be generally applicable to land similarly zoned. While the conditions may vary from property to property by reason of the nature of the use and different circumstances at a particular location, it is not the intention of this section to authorize conditions limited to a particular individual or group, owner or operator, and the provisions of this section shall not be used for purpose of discrimination in housing.
- (b) *Proffers addressing impacts from new residential development 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 must comply with Virginia Code §15.2-2303.4.
- (c) *Proffer in writing.* As part of a petition for rezoning or amendment of the zoning district map, the owner or owners of the property involved may, prior to a public hearing before the city council, voluntarily proffer in writing such reasonable conditions, in addition to the regulations provided for the zoning district or districts as herein set forth, as ~~they~~he deems appropriate for the particular case; provided, that:
- (1) The rezoning itself must give rise for the need for the conditions;
  - (2) Such conditions shall have a reasonable relation to the rezoning;
  - ~~(3) Such conditions shall not include a cash contribution to the city;~~
  - ~~(4) Such conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in the subdivision ordinance;~~
  - ~~(5) No condition shall be proffered that is not related to the physical development or physical operation of the property; and~~
- (3) All such conditions shall be in conformity with the comprehensive plan.

For the purpose of this chapter, "proffered conditions" shall be interpreted to include written statements, development plans, profiles, elevation and/or other demonstrative materials. Materials of whatever nature and intended as conditions shall be annotated with the following statement signed by the owner or owners of the subject property:

"I (we) hereby proffer that the development of the subject property on this application shall be in strict accordance with the conditions set forth in this submission."

Once proffered and accepted as part of an amendment to the zoning ordinance such conditions shall continue in full force and effect until a subsequent amendment changes the zoning in the property covered by such conditions; provided, however, that such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

- (de) *Review and revision of proffered conditions.* Additional conditions or modified conditions may be proffered by the applicant during or subsequent to the public hearing before the planning commission; provided, however, that after proffered conditions are signed and made available for public review and the public hearing before the city council has been advertised (whether or not jointly held with the planning commission) no change or modification to any condition shall be approved without a second advertised public hearing thereon.

After the city council public hearing has been advertised or commenced, should additional or modified conditions be proffered by the applicant, which conditions were discussed at the public hearing before the planning commission, then a second public hearing need be held only before the city council before the application and the modified conditions can be approved.

Should additional conditions be proffered by the applicant at the time of the public hearing before the city council, which conditions were not addressed at the public hearing before the planning commission, or if the proffered conditions are modified beyond the scope of any conditions considered at the public hearing before the planning commission, the application shall be the subject of a second public hearing before both the planning commission and the city council, which hearing may be either separately or jointly held.

- (ed) *Annotation of zoning map.* The zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The administrator shall keep in his office and make available for public inspection a conditional zoning index. The index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district. Such conditions shall become a part of the zoning regulations applicable to the property in question, regardless of changes in ownership or operation, unless subsequently changed by an amendment to the zoning district map, and such conditions shall be in addition to the specific regulations set forth in this chapter for the zoning district in question.
- (fd) *Enforcement of conditions.* The administrator shall be vested with all necessary authority on behalf of the city council to administer and enforce conditions attached to such rezoning or amendment to the zoning map, including:

- (1) The ordering in writing of the remedy of any noncompliance with such conditions;
- (2) The bringing of legal action to ensure compliance with such conditions, including injunction, abatement or other appropriate action or proceeding; and
- (3) Requiring a guarantee, satisfactory to the city council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the city council, or agent thereto, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part.

Provided, further, that failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy or building permits, as may be appropriate.

- (g-f) *Conformity of development plans.* Upon approval, any site plan, subdivision plat or development plan thereafter submitted for the development of the property in question shall be in substantial conformity with all proffered statements, plans, profiles, elevations or other demonstrative materials, and no development shall be approved by any city official in the absence of said substantial conformity. For the purpose of this section, "substantial conformity" shall mean that conformity which leaves a reasonable margin for adjustment to final engineering data but conforms with the general nature of the plans, profiles, elevations and other demonstrative materials presented by the applicant.
- (h-g) *Change of approved conditions.* Once conditions have been approved, and there is cause for an amendment which would be in substantial conformity with the proffered conditions, then an application shall be filed for an amendment. If the amendment concerns an approved site plan, such application shall include the submission requirements for a site plan set forth in article D. Such amendment shall be the subject of public hearings in accordance with the requirements for a new application.
- (i-h) *Review of the administrator's decision.* Any zoning applicant or any other person who is aggrieved by the decision of the administrator pursuant to the provisions of paragraph (f-e) above may petition the city council for the review of the decision of the administrator. All such petitions for review shall be filed with the zoning administrator and with the clerk of the city council within thirty (30) days from the date of the decision for which review is sought, and such petitions shall specify the grounds upon which the petitioner is aggrieved.

This ordinance shall be effective from the \_\_\_\_ day of \_\_\_\_\_, 2024. Adopted and approved this \_\_\_\_ day of \_\_\_\_\_, 2024.

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**MAYOR**

ATTESTE:

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CITY CLERK