

**DRAFT**

At a meeting of the Spotsylvania County Board of Supervisors held on September 11, 2018 on a motion by \_\_\_\_\_, seconded by \_\_\_\_\_ and passed \_\_\_\_\_, the Board adopts the following ordinance:

AN ORDINANCE No. 23-176

CA18-0002: Development Review Procedures

To amend County Code ("Code Amendment") Chapter 23, Zoning, Article 4, Development Review Procedures, as part of an ongoing effort to review and update the Spotsylvania County Zoning ordinance. The proposed amendment includes: Section 23-4.6. Zoning Map Amendments (Rezoning).

PUBLIC HEARING:

WHEREAS, staff has reviewed the Code Amendment and recommends approval as stated in the Executive Summary dated September 11, 2018; and

WHEREAS, the Spotsylvania County Planning Commission held a public hearing on this item on July 18, 2018, which was duly advertised in a local newspaper for a period of two weeks, and interested citizens were given an opportunity to be heard; and

WHEREAS, the Spotsylvania County Planning Commission recommended approval of the Code Amendment with a vote of 4-0; and

WHEREAS, the Spotsylvania County Board of Supervisors held a public hearing on September 11, 2018, which was duly advertised in a local newspaper for a period of two weeks, and interested citizens were given an opportunity to be heard; and

WHEREAS, good zoning practice and general welfare are served by approval of the Code Amendment.

NOW, THEREFORE, THE BOARD OF SUPERVISORS FOR THE COUNTY OF SPOTSYLVANIA HEREBY ORDAINS:

§ 1. That Chapter 23, Article 4, Division 6, be and is hereby **amended** and reordained as follows:

DIVISION 6. - ZONING MAP AMENDMENTS (REZONINGS)<sup>[5]</sup>

Footnotes:

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**Editor's note**— Ord. No. 23-162, adopted June 14, 2016, amended ~~division~~Division 6 in its entirety to read as herein set out. Formerly, ~~division~~Division 6, §§ 23-4.61—23-4.6.12, pertained to similar subject matter, and derived from Ord. No. 23-66, adopted October 24, 1995; Ord. No. 23-73, adopted August 12, 1997; Ord. No. 23-87, adopted September 26, 2000; Ord. No. 23-134, adopted October 13, 2009, and Ord. No. 23-143, adopted September 13, 2011.

**State Law reference**— Zoning amendments generally, Code of Virginia, § 15.2-2284.

#### Sec. 23-4.6.1. - Purpose and applicability.

In accordance with Code of Virginia, § 15.2-2284, as amended, the zoning map shall be drawn and applied and may be amended with reasonable consideration for the existing use and character of property, the ~~comprehensive~~Comprehensive pPlan, the suitability of property for various uses, ~~the availability of or plans for construction of necessary public utilities,~~ the trends of growth ~~or change~~and development in the area, the current and future requirements of the community as to land use for various purposes as determined by population and economic studies and other studies, the transportation requirements of the community, the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public ~~facilities and~~ services, the conservation of natural resources, the preservation of flood plains, the preservation of agricultural and forestal land, the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the locality. The purpose of this ~~division~~Division is to provide standards and procedures applicable to zoning map amendments.

(Ord. No. 23-162, 6-14-16; [Ord. No. 23-176, 9-11-18](#))

#### Sec. 23-4.6.2. - Initiation of amendments; application requirements for amendments; determination of completeness.

- (a) Amendments to the zoning map can be initiated by resolution or motion by the ~~planning commission~~Planning Commission or ~~board of supervisors~~Board of Supervisors. Any resolution or motion by the ~~planning commission~~Planning Commission or ~~board of supervisors~~Board of Supervisors shall state the public purpose for the amendment of the zoning map prescribed by this ~~division~~Division. Upon adoption of any such resolution or motion for an amendment to the zoning map, such amendment shall be prepared and a public hearing scheduled to consider the amendment in accordance with the requirements of ~~division~~Division 2 of this ~~article~~Article.
- (b) Amendments to the zoning map can be initiated by the property owner. An application for an amendment to the zoning map may be filed by the owner of the lot or parcel which is the subject of the rezoning, by the contract purchaser with the owner's written consent, or by any person acting under a valid power of attorney from the owner.
- (c) Before filing the application, the applicant shall schedule a pre-application meeting with the ~~planning department~~Planning Department to discuss the proposed amendment and to become more familiar with the applicable requirements and approval procedures of the ~~county~~County.
- (d) An application for approval of a zoning map amendment shall be filed with the ~~county~~County on a form to be provided by the ~~planning department~~Planning Department and shall contain or be accompanied by such information and plans as required on the form or as determined necessary by the ~~director~~Director of Planning of planning at the pre-application meeting. The ~~director~~Director of Planning may waive or modify any of the submission requirements due to the scope and nature of the proposed development. The application shall be accompanied by a generalized development plan ~~(GDP) drawn to the size and scale~~ and a ~~generalized development plan~~GDP narrative

describing the proposal as specified on the application form. ~~Preparation of the plan by a licensed architect, engineer or surveyor is required.~~ The ~~generalized development plan~~GDP shall include the following information unless the minimum submission requirements have been waived or modified by the ~~director~~Director of Planning due to the scope and nature of the proposed development:

(1) ~~Generalized development plan~~GDP ~~†~~Title ~~s~~Sheet(s) to include:

- a. A title block denoting the type of application, name of project, tax map reference, voting district, and street address;
- b. An approval block located along the right side of the title sheet and each subsequent sheet of the generalized development plan;
- c. The name, address, and phone number of the owner and applicant;
- d. The name, address, phone number, signature, and registration number of the ~~plan~~GDP preparer, and the preparation date of the ~~plan~~GDP;
- e. Vicinity map, 1" = 2,000', a north arrow scale, and scale graphic;
- f. ~~Generalized development plan~~GDP index;
- g. A site data summary table (with computations) providing at minimum:
  1. Tax map reference;
  2. Project area size including total, and disturbed acreage;
  3. Existing and proposed zoning designation(s);
  4. A table with computations showing existing by-right unit potential, proposed unit yield by residential unit type, and densities and/or gross and net floor areas of nonresidential structures, where applicable;
  5. Identification of any overlay districts within project limits;
  6. Existing use and types of proposed uses;
  7. Building height, number of floors, and setbacks of all existing and proposed buildings, structures and other improvements;
  8. A table with computations showing trip generation with land use code reference;
  9. Acknowledgement of any known historic building, archaeological features, or historic districts;
  10. Acknowledgement of any known places of burial;
  11. Acknowledgement of any floodplains, resource protection areas, wetlands, steep slopes, dam break inundation zones, onsite;
  12. Parking, including tabulation of required parking and spaces proposed.
- h. A table with computations estimating the lot coverage ratio and impervious surface ratio.

(2) The identification of and distance to all major intersections within one-half mile of the proposed development;

(3) The boundary of the entire parcel with courses and distances;

(4) Any existing or proposed parcel lines, easements or right-of-way within the subject parcel(s);

(5) The present zoning and principal use of the subject parcel and all contiguous properties;

(6) Graphic depiction of the boundaries of any overlay zoning districts described in ~~article~~Article 6 of this chapter;

(7) Graphic depiction of the general locations, approximate dimensions, height, number of floors and setbacks of all existing and proposed buildings, structures, accessory structures (including

outdoor lighting, fences, bike racks, walls or hedges, trash receptacles), signs, landscaping and buffers, stormwater management facilities, and other improvements;

- (8) Graphic depiction of the boundaries of any water bodies, USGS perennial streams, floodplain, resource protection areas, watershed, wetlands ~~(if any)~~, dam break inundation areas, and steep slopes;
  - (9) A generalized landscape plan showing existing vegetation, proposed clearing limits and indicating the location, and types of vegetation to be installed under the landscaping and bufferyard requirements of ~~article~~Article 5, ~~division~~Division 5, of this chapter, and the general location and material descriptions of any other proposed screens, bufferyards, or landscaping;
  - (10) The location and dimensions of existing and proposed parking and loading areas and any other impervious surfaces, such as driveways, streets (and names), ~~cement~~-sidewalks, bicycle or multi-use trails, and playing surfaces;
  - (11) The location and description of all points of access including all proposed interparcel connections;
  - (12) The estimated daily vehicular trips generated by the proposed development on each road segment shown on the plan;
  - ~~(13) The location and dimensions of on-site pedestrian walkways or bicycle paths and any connection to adjacent property;~~
  - ~~(14)~~13 The location and dimensions of existing water and sewer mains serving the site of the proposed development, points of connection to public water and sewer and/or location of wells and septic systems and reserve drainfields;
  - ~~(15)~~14 Topographic contour lines at two foot intervals for the existing site;
  - ~~(16)~~15 The location and dimensions of on-site and off-site facilities for the retention or detention of stormwater;
  - ~~(17)~~16 The size, location, and boundaries of any common open spaces, recreation areas, and recreation facilities, including a tabulation of usable open space in accordance with the open space definition in ~~section~~Section 23-2.1.4., Definitions;
  - ~~(18)~~17 For large-scale, phased developments, identification of the location and timing of each phase of the development;
  - ~~(19)~~18 Graphic depiction of any known historic building, archaeological features, or historic districts;
  - ~~(20)~~19 Graphic depiction of any known places of burial and easements for cemetery access in accordance with the Code of Virginia, § 57-27.1, as amended;
  - ~~(21)~~20 A description of the methods proposed to control erosion, sedimentation, and stormwater runoff; and
  - ~~(22)~~21 A description of the persons to be responsible for future maintenance of all roads, easements, parks, playgrounds, stormwater and drainage facilities, and other common areas.
  - ~~(23)~~22 Signature and seal of the licensed architect, engineer, landscape architect, or surveyor~~professional person~~ certifying the plan.
- (e) Determination of completeness. Within ten (10) working days after receiving an application for a map amendment, the ~~county~~County shall determine whether the application is complete. If the ~~county~~County determines that the application is not complete, it shall notify the applicant of any deficiencies and shall take no further steps to process the application until the applicant remedies the deficiencies.

(Ord. No. 23-162, 6-14-16; Ord. No. 23-176, 9-11-18)

Sec. 23-4.6.3. - Proffers of conditions.

- (a) The owner of property which is the subject of a rezoning request may proffer that, in the event the property is rezoned to a requested zoning district, the use and development of the property will be subject to specified reasonable conditions, in addition to the regulations provided by this chapter for the zoning district; provided, however, all such conditions are in conformity with the [Spotsylvania CountyCounty](#) Comprehensive Plan and requirements of the Code of Virginia.
- (b) The submission and acceptance of proffered conditions shall be in accordance with the following procedures:
  - (1) If an applicant for a change of zoning desires to proffer conditions, then either the proffers or a statement of intent to submit proffers shall accompany the rezoning application. All proposed proffers shall be submitted in writing in a format acceptable to the planning ~~director~~[Director of Planning](#). Proffers shall be clear and succinct and shall be separated into independently enumerated paragraphs, each of which addresses no more than one (1) aspect of the development and use of the property. Any proffered generalized development plans, architectural elevations, and other graphic representations or sample materials shall accompany the proffer statement and shall be clearly identified and incorporated by reference in the text of the proffers.
  - (2) Any modified or revised proposed proffers shall be accompanied by comparative drafts highlighting the changes made in such modification or revision.
  - (3) Any proffers shall be approved as to form by the [countyCounty](#) attorney. Proffered conditions presented to the ~~planning commission~~[Planning Commission](#) or ~~board of supervisors~~[Board of Supervisors](#) must be signed by the record owner of the subject property, or an agent with power of attorney authorized to sign the proffered conditions, and notarized. The ~~planning commission~~[Planning Commission](#) hearing on a rezoning application shall not be scheduled without these signatures on the proffer statement.
  - (4) Additional amendments to the proffered conditions shall be submitted not less than fourteen (14) days prior to the scheduled ~~planning commission~~[Planning Commission](#) public hearing unless the public hearing is postponed.
  - (5) If the applicant wishes to amend proffered conditions once the public hearing has begun the ~~planning commission~~[Planning Commission](#) shall continue consideration of the rezoning to a future meeting and the amended proffers, shall be submitted not less than fourteen (14) days prior to that meeting date.
  - (6) After the ~~planning commission~~[Planning Commission](#) public hearing, the applicant may submit additional proffers or modifications to address issues identified in the staff report considered or discussed by the ~~planning commission~~[Planning Commission](#) at the public hearing.
  - (7) The ~~board of supervisors~~[Board of Supervisors](#) public hearing shall be scheduled once the proffered conditions are approved to form. Additional amendments to the proffered conditions shall be submitted not less than fourteen (14) days prior to the scheduled ~~board of supervisors~~[Board of Supervisors](#) public hearing unless the public hearing is postponed.
  - (8) If the applicant wishes to amend proffered conditions once the public hearing has begun the ~~board of supervisors~~[Board of Supervisors](#) shall continue consideration of the rezoning to a future meeting and the amended proffers shall be submitted not less than fourteen (14) days prior to that meeting date.
  - (9) In the event that the ~~board of supervisors~~[Board of Supervisors](#) determines that the property should be rezoned to a requested zoning district, it may make such rezoning subject to some or all of the conditions proffered by the applicant.
  - (10) Proffered conditions shall become a part of the zoning regulations applicable to the property in question and shall be noted on the zoning map. No development activity on the subject property shall be approved by any [countyCounty](#) official in the absence of conformance with the

proffered conditions including proffers defining the specific uses and the physical layout depicted by the plans, profiles, elevations and other demonstrative materials presented by the applicant. For the purpose of this ~~section~~Section, "conformance" shall be interpreted to provide a reasonable margin for adjustments in the physical layout of the development due to final engineering data, provided that the adjustment does not increase the density of the proposed development or reduce any provision intended to mitigate the impact of the development on adjacent properties or the community.

- (11) Once proffered and accepted as a part of an amendment to the zoning ordinance, conditions shall continue in effect until subsequent amendment changes the zoning on the property covered by such conditions; such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.
- (12) Applications for the amendment or deletion of proffered conditions previously accepted by the ~~board of supervisors~~Board of Supervisors shall be considered through the same process as any other request for a zoning map amendment.
- (13) Within thirty (30) days after ~~board of supervisors~~Board of Supervisors approval of proffered conditions as part of an amendment to the zoning map, the applicant shall cause a notice of conditional zoning to be recorded among the land records of the circuit court of the ~~county~~County, in a form approved by the ~~county~~County attorney, indicating that such proffered conditions shall run with the rezoned property and shall remain in effect until the ~~board of supervisors~~Board of Supervisors amends the zoning on the property or otherwise modifies the conditions.
- (14) The provisions of this ~~section~~Section shall be administered and interpreted in accordance with Virginia Code, § 15.2-2303.

(c) Proffered dedications of land for public facilities must be pursuant to a project identified within the Capital Improvement Plan (CIP) or substantially in accord with the Comprehensive Plan in accordance with Virginia Code, §15.2-2232. Proffered conditions that include land dedication, but not including right of way along existing roadways, shall be accompanied by the following:

(1) Topographical and boundary survey of the property to be proffered, including identification of resource protection areas (RPAs) and jurisdictional wetlands, known hazards, and preliminary geotechnical information;

(2) Phase I environmental site assessment;

(3) Phase I archaeological survey and report;

(4) Endangered species survey and report; and

(5) An appraisal report prepared by a Certified General Appraiser licensed by the Virginia Real Estate Appraiser Board accompanied by an affidavit from the appraiser certifying its compliance with the Uniform Standards of Professional Appraisal Practice, as amended, and meeting the following standards:

a. The appraised market value of the property shall be valued coincident with the date of the appraisal report;

b. The appraisal of the property shall be done as-is and free of hypothetical conditions; and

c. The appraisal shall not exceed the value for the highest and best use that is consistent with the existing zoning requirements and shall be for a use for which the property is adaptable and needed or likely to be needed in the reasonably near future, that considers factors

including but not limited to, known hazards, slopes, resource protection areas, jurisdictional wetlands, floodplains, and soil conditions of the property and for which existing roads serving the property are sufficient to support the highest and best use proposed for the property.

(Ord. No. 23-162, 6-14-16; Ord. No. 23-176, 9-11-18)

Sec. 23-4.6.4. - Staff review and report.

- (a) Once an application for a map amendment is determined to be complete, ~~county~~County staff shall review the application for compliance with the requirements of this chapter.
- (b) The ~~director~~Director of Planning of planning shall transmit the application and other information to any state, ~~county~~County or other government agencies for review and comment as appropriate.
- (c) After the application is determined to be complete and all agency comments have been received, ~~county~~County staff shall provide the comments in writing to the applicant so that they may make revisions.
- (d) ~~County~~County staff shall schedule the application for a public hearing before the ~~planning commission~~Planning Commission and submit a written staff report to the ~~planning commission~~Planning Commission on the proposed map amendment.

If an application for a map amendment is filed in conjunction with an application for approval of a ~~special-use~~Special Use Permit, the ~~county~~County shall coordinate the review of the proposed map amendment with the review of the application for the ~~special-use~~Special Use Permit.

(Ord. No. 23-162, 6-14-16; Ord. No. 23-176, 9-11-18)

Sec. 23-4.6.5. - Public hearing and recommendation by ~~planning commission~~Planning Commission.

The ~~planning commission~~Planning Commission shall conduct a public hearing, after giving notice in accordance with ~~section~~Section 23-4.2.1 of this ~~chapter~~Chapter, and shall submit a written report and recommendation on the proposed map amendment to the ~~board of supervisors~~Board of Supervisors no later than sixty (60) days from the date of conclusion of the public hearing.

(Ord. No. 23-162, 6-14-16; Ord. No. 23-176, 9-11-18)

Sec. 23-4.6.6. - Public hearing and decision by the ~~board of supervisors~~Board of Supervisors.

- (a) Upon receipt of the report and recommendation of the ~~planning commission~~Planning Commission and staff, the ~~board of supervisors~~Board of Supervisors shall conduct a public hearing, after giving notice as provided in ~~division~~Division 2 of this ~~article~~Article.
- (b) After conducting a public hearing, the ~~board of supervisors~~Board of Supervisors shall make a decision upon the proposed amendment within a reasonable time not to exceed twelve (12) months from the date that the application is determined to be complete, unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his application. The ~~board of supervisors~~Board of Supervisors may:
  - (1) Approve the zoning map amendment, with or without proffers; ~~or~~
  - (2) Deny the zoning map amendment; ~~or~~



- (3) Refer the application back to the ~~planning commission~~[Planning Commission](#) for further study and review; ~~or~~
- (4) Continue the public hearing and/or vote to a future meeting; or
- (5) Rezone the property to a district that permits uses that are more intense than permitted in the preexisting district but less intense than the applicant's proposed district.

(Ord. No. 23-162, 6-14-16; [Ord. No. 23-176, 9-11-18](#))

Sec. 23-4.6.7. - Withdrawal of application.

Amendments initiated by a property owner may be withdrawn upon the submittal of a signed written request by the property owner to the ~~director~~[Director of Planning](#) of planning. Such request must be received prior to the close of the public hearing by the ~~board of supervisors~~[Board of Supervisors](#). Upon such withdrawal, processing of the application shall cease.

(Ord. No. 23-162, 6-14-16; [Ord. No. 23-176, 9-11-18](#))

Sec. 23-4.6.8. - Indexing, administration, enforcement, and appeal of proffered conditions.

- (a) Proffers to be indicated on zoning map; proffered conditions index. The zoning map shall show, by an appropriate symbol on the map, the existence of proffered conditions which were attached to the zoning district when the map was amended. The ~~county~~[County](#) shall keep and make available for public inspection a proffered conditions index. The index shall provide ready access to the proffered conditions in a particular district.
- (b) Administration and enforcement of proffered conditions. The ~~zoning administrator~~[Zoning Administrator](#) shall be vested with all necessary authority, on behalf of the ~~board of supervisors~~[Board of Supervisors](#), to administer and enforce proffered conditions, including:
  - (1) Ordering in writing compliance with such proffered conditions;
  - (2) Bringing of legal action to insure compliance;
  - (3) Requiring a guarantee or contract, or both, as allowed by Virginia Code, § 15.2-2299, for construction of physical improvements required by proffered conditions, including but not limited to letters of credit securing funds necessary to complete proffered improvements; and/or
  - (4) Denial of the issuance of any required site plan approval, building, or occupancy permits.
- (c) Petition for review of enforcement decision. Any person who is aggrieved by a decision of the ~~zoning administrator~~[Zoning Administrator](#) in the enforcement of proffered conditions pursuant to this ~~section~~[Section](#) may petition the governing body for the review of the enforcement decision pursuant to § 15.2-2301 of the Code of Virginia. Such appeal shall be filed within thirty (30) days from the date of the decision appealed by filing a petition for review of decision with the ~~zoning administrator~~[Zoning Administrator](#) and the clerk of the ~~board of supervisors~~[Board of Supervisors](#). Such petition shall specify the grounds on which the applicant is aggrieved and the basis for the appeal.
- (d) Any party who is aggrieved by a decision of the governing body on appeal taken pursuant to this ~~section~~[Section](#) may petition the circuit court for review of the decision. The provisions of Sub~~section~~[Section](#) F of the Virginia Code, § 15.2.2285 shall apply to such petitions mutatis mutandis.

(Ord. No. 23-162, 6-14-16; [Ord. No. 23-176, 9-11-18](#))

Sec. 23-4.6.9. - Duration of conditions.



Once conditions have been proffered and accepted as part of an amendment to the zoning map, such conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by such conditions. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of substantial revisions to this ~~chapter~~[Chapter](#).

(Ord. No. 23-162, 6-14-16; [Ord. No. 23-176, 9-11-18](#))

Sec. 23-4.6.10. - Amendments and variations of proffered conditions.

Once the ~~board of supervisors~~[Board of Supervisors](#) has approved proffered conditions pursuant to this ~~division~~[Division](#), no material amendment or material variation of such conditions may be made until public hearings have been held before the ~~board of supervisors~~[Board of Supervisors](#) and the ~~planning commission~~[Planning Commission](#) pursuant to ~~division~~[Division](#) 2 of this chapter and notice of such hearings has been given pursuant to ~~division~~[Division](#) 2 of this chapter.

(Ord. No. 23-162, 6-14-16; [Ord. No. 23-176, 9-11-18](#))

Sec. 23-4.6.11. - Waiting period for subsequent applications.

Where an application for an amendment to the zoning map is disapproved by the ~~board of supervisors~~[Board of Supervisors](#), the board may not reconsider substantially the same application for a period of one (1) year following the date of the denial of the application by the ~~board of supervisors~~[Board of Supervisors](#).

(Ord. No. 23-162, 6-14-16; [Ord. No. 23-176, 9-11-18](#))