



Legislation Details (With Text)

**File #:** 19-1378      **Version:** 1      **Name:**  
**Type:** Action Item      **Status:** Passed  
**File created:** 7/30/2019      **In control:** Town Council Meeting  
**On agenda:** 8/19/2019      **Final action:** 8/19/2019  
**Title:** Request to consider amended proffers for 380 Maple MAC project

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. 380 Maple Avenue West Proffers Post Hearing for 8-19-19 TC Meeting, 2. 380 Maple Ave W - Revised Concept Plan and Landscape Plan, 3. Revision Narrative 08-08-19

Date	Ver.	Action By	Action	Result
8/19/2019	1	Town Council Meeting	approved	Pass

**Subject:**

Request to consider amended proffers for 380 Maple MAC project

**EXPLANATION AND SUMMARY :**

Town Council voted to approve the mixed-use 380 Maple rezoning application on June 17, 2019. The application included a number of proffers accepted by Town Council. The applicant wishes to amend the proffers, as permitted by Virginia Code Section 15.2-2302. The amended proffers do not affect conditions of use or density and therefore the governing body has the right to waive the requirement for a public hearing for amended proffers.

The amended proffers result in the widening of Wade Hampton Drive SW from 32 to 36 feet. This widening results in the loss of a landscaping strip between the curb and sidewalk area as well as the loss of two channelizing islands; it also allows for the addition of at least two on-street parking spaces. The widening also requires a minor reduction in square footage of retail area, from 7,500 square feet of ground floor retail space to 7,263 square feet of retail space.

Staff notes that the zoning ordinance, specifically section 18-95.12.C, states that street trees shall be required between the curb and sidewalk on all adjacent public streets of a project. However, per section 18-95.12.D, Town Council may approve an alternative landscaping plan if it meets the purpose and intent of landscaping standards in section 18-95.12. If Town Council accepts the amended proffers, it also will be accepting an alternative landscaping plan.

**§ 15.2-2302. Same; amendments and variations of conditions.**

A. Subject to any applicable public notice or hearing requirement of subsection B but notwithstanding any other provision of law, any landowner subject to conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 may apply to the governing body for amendments to or

variations of such proffered conditions provided only that written notice of such application be provided in the manner prescribed by subsection B of § 15.2-2204. Further, the approval of such an amendment or variation by the governing body shall not in itself cause the use of any other property to be determined a nonconforming use.

B. There shall be no such amendment or variation of any conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 until after a public hearing before the governing body advertised pursuant to the provisions of § 15.2-2204. However, where an amendment to such proffered conditions is requested pursuant to subsection A, and where such amendment does not affect conditions of use or density, a local governing body may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of such proffered conditions.

C. Once amended pursuant to this section, the proffered conditions shall continue to be an amendment to the zoning ordinance and may be enforced by the zoning administrator pursuant to the applicable provisions of this chapter.

D. Notwithstanding any other provision of law, no claim of any right derived from any condition proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 shall impair the right of any landowner subject to such a proffered condition to secure amendments to or variations of such proffered conditions.

E. Notwithstanding any other provision of law, the governing body may waive the written notice requirement of subsection A in order to reduce, suspend, or eliminate outstanding cash proffer payments for residential construction calculated on a per-dwelling-unit or per-home basis that have been agreed to, but unpaid, by any landowner.

**Departmental Recommendation** : Town Council may use its discretion to accept the amended proffers.

**Finance Recommendation** : N/A

**Purchasing Recommendation** : N/A

**Town Attorney Recommendation** : Pursuant to Virginia Code §15.2-2302, Town Council may consider proposed amendments to a rezoning proffer. Depending on the nature of the proposed amendment, a public hearing may be required.

Va. Code §15.2-2302

B. There shall be no such amendment or variation of any conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 until after a public hearing before the governing body advertised pursuant to the provisions of § 15.2-2204. However, where an amendment to such proffered conditions is requested pursuant to subsection A, and where such amendment does not affect conditions of use or density, a local governing body may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of such proffered conditions.

**Town Manager's Recommendation** : The Town Council may consider the proposed amendments to the rezoning proffer at its discretion.

Cost and Financing: N/A

Account Number: N/A

Decision Needed by This date: N/A

**PROPOSED/SUGGESTED MOTION**

"I move to accept the amended proffers as submitted for the 380 Maple rezoning application."

Or

Other action deemed necessary by Council.