
PART SEVENTEEN — BUILDING, LAND USE AND SUBDIVISION CODE

ARTICLE 1709 Voluntary Proffers

- 1709.01 Conditions and requirements.**
- 1709.02 Reasonability of conditions.**
- 1709.03 Unacceptable Voluntary Proffers.**
- 1709.04 Acceptable Voluntary Proffers.**

CROSS REFERENCES

Conditions as part of final plat approval—see WV Code 8A-6-2 *et seq.*

1709.01 Conditions and requirements.

The owner or the contract owner of real property requesting subdivision or site plan approval for real property, not already subject to proffer conditions, may volunteer to satisfy certain reasonable conditions as a requirement of the final plat approval for a development project, including, but not limited to, constructing certain capital improvements, either on-site or off-site, and / or volunteer to provide cash in lieu of constructing the improvements (“Voluntary Proffer”), under the following specific conditions and requirements, in accordance with Final Plat approval in Section 1726.03 of Part Seventeen of the Codified Ordinances:

- (a) The Voluntary Proffer must be in writing in a form acceptable to the Corporation of Harpers Ferry (the “Town”);
- (b) The Voluntary Proffer must be offered to the Planning Commission for their recommendation to the Town Council prior to the public hearing before the Town Council;
- (c) It must be demonstrated that the subdivision or site development gives rise to the need for such Voluntary Proffer;
- (d) The Voluntary Proffer addresses projects contained in the Town’s capital improvements program and is reasonably related to the development project;
- (e) The Voluntary Proffer may contain items not normally within the capital improvements program; however, if accepted by the Town, the proffer will be added to the Town’s capital improvement program;
- (f) The Voluntary Proffer, once accepted by the Town Council, is binding upon both parties and cannot be amended unless agreed upon by both parties;
- (g) The owner or contract owner has the right to rely on the good faith of the Town once the Voluntary Proffer is implemented. The Town agrees that there will be no attempt to materially restrict, reduce, or modify the uses or density of the approved development unless there has been a mistake or change in circumstances that substantially affect the public health, safety, or welfare, or a change in state or federal law;
- (h) No proposed site plan, Preliminary Plat, or Final Plat of the owner or contract owner containing a Voluntary Proffer will be considered that requires an amendment to the Town’s Zoning Ordinance or the Town’s Comprehensive Plan unless all of the requirements for amendments to that Zoning Ordinance and / or Comprehensive Plan are first obtained in accordance with other provisions of the Codified Ordinances;
- (i) The Planning Commission or Town Council may not reject a proposed Preliminary Plat, Final Plat, or site plan solely upon the grounds that an owner or contract owner has failed or refused to include a Voluntary Proffer in that owner’s or contract owner’s

HISTORY:

Ord. 2017-08 (passed 12-11-2017) created Article 1709.

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- proposed development plan; and
- (j) A Voluntary Proffer May not be accepted by the Planning Commission or Town Council that is in lieu of an impact fee that would otherwise go to schools unless approved by the Jefferson County Board of Education.

1709.02 Reasonability of conditions.

For purposes of this section, a condition contained in a Voluntary Proffer is considered reasonable if:

- (a) The development project results in the need for the conditions;
- (b) The conditions have a reasonable relation to the development project; and
- (c) All conditions are in conformity with the Town's Zoning Ordinance and Comprehensive Plan.

1709.03 Unacceptable Voluntary Proffers.

Unacceptable Voluntary Proffers include, but are not limited to:

- (a) On-site structure(s) without which the property could not be developed (e.g., water lines, sewer lines, stormwater management control structures, pump stations, booster stations, etc.).
- (b) Requirements detailed in the Zoning Ordinance, subdivision regulations, stormwater management regulations, or standard details.
- (c) Improvements in excess of what the Town requires and desires (e.g., 30-foot paved street when Town requirement is for 28 feet for the type of street anticipated).
- (d) Conformance to the master street plan rights-of-way, easements, and pavement sections.

1709.04 Acceptable Voluntary Proffers.

Acceptable Voluntary Proffers include, but are not limited to:

- (a) A financial investment in the Town's Water Works plant and distribution systems in order to provide capacity for clean water in a dependable manner to new development.
- (b) A financial investment in the Harpers Ferry-Bolivar Public Service District sewer plan and infrastructure to provide additional capacity to accommodate the new development.
- (c) A financial investment in the Friendship Fire Company, or its successor, for equipment to support fire protection required by new development.
- (d) A financial investment in the Town's Police Department to support operational needs generated by new development.
- (e) Park or open-space acreage beyond the minimum requirements.
- (f) Improvements to Town parks (e.g., play equipment, backstops, fencing, landscaping, street furniture, restrooms, etc.).