

In Virginia, conditions or approval and proffers are tools used in the land use approval process, but they differ in their nature, applicability, and legal basis. Here's a breakdown:

PROFFERS	CONDITIONS OF APPROVAL
<b>SUMMARY</b>	
<p>Proffers are <b>voluntary</b>, binding commitments made by the developers to address their proposed development's rezoning impacts on transportation, schools, utilities, public safety, etc. Proffers can include cash contributions, infrastructure improvements or property dedications.</p>	<p>Conditions of approval are <b>regulatory requirements</b> imposed by local governments to ensure compliance with zoning ordinances or mitigate development impacts. Conditions of approval often address sightlines, noise and light.</p>
<b>LEGAL FRAMEWORK</b>	
<ul style="list-style-type: none"> <li>• Governed by <b>§ 15.2-2296 to § 15.2-2303.4</b> of the Code of Virginia</li> <li>• The 2016 Proffer Reform Act limits the types of proffers localities can accept, particularly for residential developments. Legislation restricts local governments from accepting unreasonable or unrelated proffers.</li> <li>• Proffers must directly <b>address an identified impact from the proposed development and be “reasonable.”</b></li> </ul>	<ul style="list-style-type: none"> <li>• Derived from local zoning ordinances and tied to the approval of a specific use or development.</li> <li>• Imposed by the governing body or planning commission as part of the land use approval process.</li> <li>• Not as strictly limited as proffers but must be directly related to the local ordinance and the use being approved.</li> <li>• Conditions of approval must be <b>reasonable, nondiscriminatory, and legally defensible.</b></li> </ul>
<b>VOLUNTARINESS</b>	
<ul style="list-style-type: none"> <li>• The developer <b>voluntarily</b> proposes to gain approval for a rezoning request. Localities cannot demand or impose proffers without the developer's agreement.</li> </ul>	<ul style="list-style-type: none"> <li>• Not voluntary, though the developer typically has input during the negotiation phase.</li> </ul>
<b>APPLICABILITY</b>	
<ul style="list-style-type: none"> <li>• Apply one to <b>rezoning cases</b>.</li> <li>• Legally binding if accepted by the local governing body as part of the rezoning approval.</li> <li>• Bind the land, meaning they run with the property and remain in effect even if ownership changes.</li> </ul>	<ul style="list-style-type: none"> <li>• Typically associated with <b>special exceptions (SEs)</b>, <b>special use permits (SUPs)</b>, <b>conditional use permits (CUPs)</b>, and sometimes conditional rezonings.</li> <li>• Depending on the language of the approval, it may be project-specific and not always transferable to future property owners.</li> </ul>
<b>ENFORCEMENT</b>	
<ul style="list-style-type: none"> <li>• Enforced through zoning enforcement mechanisms.</li> <li>• Violations can lead to revocation of the rezoning approval or other penalties.</li> </ul>	<ul style="list-style-type: none"> <li>• Enforced through the local permitting or code compliance process.</li> <li>• Violations can lead to suspension or revocation of the permit or approval tied to the condition.</li> </ul>
<b>EXAMPLES</b>	
<ul style="list-style-type: none"> <li>• A developer offers to widen a road, build a new school, or contribute funds to public safety in exchange for approval to rezone land use for residential use.</li> <li>• Example: Cash proffer contributions for every new housing unit built.</li> </ul>	<ul style="list-style-type: none"> <li>• A local government requires a developer to limit hours, install noise barriers, or provide additional landscaping as part of a special use permit for a commercial project.</li> <li>• Example: Requiring a fence or buffer zone for a CUP for a childcare facility.</li> </ul>