

065411448

HOUSE BILL NO. 337

Offered January 11, 2006

Prefiled January 5, 2006

A BILL to amend and reenact §§ 15.2-2201, 15.2-2259 and 15.2-2260 of the Code of Virginia, relating to plats.

Patron—Orrock

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2201, 15.2-2259 and 15.2-2260 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2201. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any property which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features or amenities desired by the locality within the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

~~"Plat of subdivision"~~ means the schematic representation of land divided or to be divided *and information in accordance with the provisions of Article 6 (§ 15.2-2240 et seq.) of this chapter.*

"Preliminary plat" means the proposed plan of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242 will be achieved.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use, that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

INTRODUCED

HB337

59 "Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

60 "Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the
61 division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose
62 of transfer of ownership or building development, or, if a new street is involved in such division, any
63 division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall
64 relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation
65 of any single division of land into two lots or parcels, a plat of such division shall be submitted for
66 approval in accordance with § 15.2-2258.

67 "Variance" means, in the application of a zoning ordinance, a reasonable deviation from those
68 provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a
69 building or structure when the strict application of the ordinance would result in unnecessary or
70 unreasonable hardship to the property owner, and such need for a variance would not be shared
71 generally by other properties, and provided such variance is not contrary to the intended spirit and
72 purpose of the ordinance, and would result in substantial justice being done. It shall not include a
73 change in use which change shall be accomplished by a rezoning or by a conditional zoning.

74 "Zoning" or "to zone" means the process of classifying land within a locality into areas and districts,
75 such areas and districts being generally referred to as "zones," by legislative action and the prescribing
76 and application in each area and district of regulations concerning building and structure designs,
77 building and structure placement and uses to which land, buildings and structures within such designated
78 areas and districts may be put.

79 § 15.2-2259. Local planning commission to act on proposed plat.

80 A. The local planning commission or other agent, *either or both as appropriate*, shall act on any
81 proposed plat within 60 days after it has been officially submitted for approval by either approving or
82 disapproving the plat in writing, and giving with the latter specific reasons therefor. The Commission or
83 agent shall thoroughly review the plat and shall make a good faith effort to identify all deficiencies, if
84 any, with the initial submission. Specific reasons for disapproval shall be contained either in a separate
85 document or on the plat itself. The reasons for disapproval shall identify deficiencies in the plat that
86 cause the disapproval by reference to specific duly adopted ordinances, regulations, or policies and shall
87 identify modifications or corrections as will permit approval of the plat. The local planning commission
88 or other agent shall act on any proposed plat that it has previously disapproved within 45 days after the
89 plat has been modified, corrected and resubmitted for approval.

90 B. If the commission or other agent fails to approve or disapprove the plat within 60 days after it
91 has been officially submitted for approval, or within 45 days after it has been officially resubmitted after
92 a previous disapproval, the subdivider, after 10-days' written notice to the commission, or agent, may
93 petition the circuit court for the locality in which the land involved, or the major part thereof, is located,
94 to decide whether the plat should or should not be approved. The court shall give the petition priority
95 on the civil docket, hear the matter expeditiously in accordance with the procedures prescribed in Article
96 2 (§ 8.01-644 et seq.) of Chapter 25 of Title 8.01 and make and enter an order with respect thereto as it
97 deems proper, which may include directing approval of the plat.

98 C. If a commission or other agent disapproves a plat and the subdivider contends that the disapproval
99 was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, he may
100 appeal to the circuit court having jurisdiction of such land and the court shall hear and determine the
101 case as soon as may be, provided that his appeal is filed with the circuit court within 60 days of the
102 written disapproval by the commission or other agent.

103 § 15.2-2260. Localities may provide for submission of preliminary subdivision plats; how long valid.

104 A. Nothing in this article shall be deemed to prohibit the local governing body from providing in its
105 ordinance for the submission of preliminary subdivision plats for tentative approval. The local planning
106 commission, or an agent designated by the commission or by the governing body to review preliminary
107 subdivision plats shall complete action on the preliminary plats within sixty days of submission.
108 However, if approval of a feature or features of the preliminary plat by a state agency is necessary, the
109 commission or agent shall forward the preliminary plat to the appropriate state agency or agencies for
110 review *within five working days*.

111 B. Any state agency making a review of a plat forwarded to it under this section, including, without
112 limitation, the Virginia Department of Transportation, shall complete its review within forty-five days of
113 receipt of the preliminary plat. The Virginia Department of Transportation shall allow use of its public
114 rights-of-way for placement of utilities by permit when practical and shall not unreasonably deny plat
115 approval. If a state agency does not approve the plat, it shall comply with the requirements, and be
116 subject to the restrictions, set forth in § 15.2-2259 A with the exception of the time period therein
117 specified. Upon receipt of the approvals from all state agencies, the local agent shall act upon a
118 preliminary plat within thirty-five days.

119 C. If a commission has the responsibility of review of preliminary plats and conducts a public
120 hearing, it shall act on the plat within forty-five days after receiving approval from all state agencies. If

the local agent or commission does not approve the preliminary plat, the local agent or commission shall set forth in writing the reasons for such denial and shall state what corrections or modifications will permit approval by such agent or commission. However, no commission or agent shall be required to approve a preliminary subdivision plat in less than sixty days from the date of its original submission to the commission or agent, and all actions on preliminary subdivision plats shall be completed by the agent or commission and, if necessary, state agencies, within a total of ninety days of submission to the local agent or commission.

D. If the commission or other agent fails to approve or disapprove the preliminary plat within ninety days after it has been officially submitted for approval, the subdivider after ten days' written notice to the commission, or agent, may petition the circuit court for the locality in which the land involved, or the major part thereof, is located to enter an order with respect thereto as it deems proper, which may include directing approval of the plat.

E. If a commission or other agent disapproves a preliminary plat and the subdivider contends that the disapproval was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, he may appeal to the circuit court having jurisdiction of such land and the court shall hear and determine the case as soon as may be, provided that his appeal is filed with the circuit court within sixty days of the written disapproval by the commission or other agent.

F. Once a preliminary subdivision plat is approved, it shall be valid for a period of five years, provided the subdivider (i) submits a final subdivision plat for all or a portion of the property within one year of such approval or such longer period as may be prescribed by local ordinance, and (ii) thereafter diligently pursues approval of the final subdivision plat. "Diligent pursuit of approval" means that the subdivider has incurred extensive obligations or substantial expenses relating to the submitted final subdivision plat or modifications thereto. However, no sooner than three years following such preliminary subdivision plat approval, and upon ninety days' written notice by certified mail to the subdivider, the commission or other agent may revoke such approval upon a specific finding of facts that the subdivider has not diligently pursued approval of the final subdivision plat.