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HOUSE BILL NO. 2325

Offered January 10, 2007

Prefiled January 9, 2007

A *BILL to amend and reenact § 15.2-2286.1 of the Code of Virginia, relating to clustering of single-family dwellings.*

Patron—Gilbert

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-2286.1 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-2286.1. (Effective July 1, 2007) Provisions for clustering of single-family dwellings so as to preserve open space.

A. *As used in this section, unless the context requires a different meaning:*

"Clustering" means the confinement of residential lots and the single-family dwellings thereon to a portion of a parent parcel, so as to preserve the remaining open space on the parent parcel undisturbed by a residential subdivision.

"Open space" means (i) the preservation of land areas for outdoor recreation by, or the education of, the general public, (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, (iii) the preservation of open space, including farmland and forest land, where such preservation is for the scenic enjoyment of the general public or pursuant to a clearly delineated federal, state, or local government conservation policy, and will yield a significant public benefit, or (iv) the preservation of an historically important land area or a certified historic structure.

"Parent parcel" means a parcel of record from which residential lots are subdivided.

"Preservation" means the protection in perpetuity of open space (i) that may be accomplished through the creation of a common or noncommon open space easement over the portion of the parent parcel left undisturbed by a residential subdivision, or (ii) by sufficient deed restrictions and notations on the final subdivision plat specifying that additional residential cannot be created after all dwelling unit rights allocated to a parent parcel according to local zoning and subdivision ordinances have been exercised.

AB. The provisions of this section shall apply to any county or city that had a population growth rate of 10% or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census. However, the requirements of this section shall not apply to any such county or city that has a population density of more than 2,000 people per square mile, according to the most recent report of the United States Bureau of the Census.

BC. Any such locality shall provide in its zoning or subdivision ordinances, applicable to a minimum of 40% of the unimproved land contained in residential and agricultural zoning district classifications, standards, conditions, and criteria for the clustering of single-family dwellings and the preservation of open space developments. In establishing such standards, conditions, and criteria, the governing body may, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space, and compliance with its comprehensive plan and land use ordinances. The density calculation of the cluster development shall be based upon the same criteria for the property as would otherwise be permitted by applicable land use ordinances. As a locality provides for the clustering of single-family dwellings and the preservation of open space developments, it may vary provisions for such developments for each different residential zoning classification within the locality. For purposes of this section, "unimproved land" shall not include land owned or controlled by the locality, the Commonwealth or the federal government, or any instrumentality thereof or land subject to a conservation easement.

If proposals for the clustering of single-family dwellings and the preservation of open space developments comply with the locality's adopted standards, conditions, and criteria, the development and open space preservation shall be permitted by right under the local subdivision ordinance. The implementation and approval of the cluster development and open space preservation shall be done administratively by the locality's staff and without a public hearing. No local ordinance shall require that a special exception, special use, or conditional use permit be obtained for such developments. However, any such ordinance may exempt (i) developments of two acres or less and (ii) property located in an Air Installation Compatible Use Zone from the provisions of this subdivision.

CD. Additionally, a locality may, at its option, provide for the clustering of single-family dwellings and the preservation of open space at a density calculation greater than the density permitted in the

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59 applicable land use ordinance. To implement and approve such increased density development, the
60 locality may, at its option, (i) establish and provide, in its zoning or subdivision ordinances, standards,
61 conditions, and criteria for such development, and if the proposed development complies with those
62 standards, conditions, and criteria, it shall be permitted by right and approved administratively by the
63 locality's staff in the same manner provided in subsection A, or (ii) approve the increased density
64 development upon approval of a special exception, special use permit, conditional use permit, or
65 rezoning.

66 ~~DE.~~ Notwithstanding any of the requirements of this section to the contrary, any local government
67 land use ordinance in effect as of June 1, 2004, that provides for the clustering of single-family
68 dwellings and preservation of open space ~~development~~ by right in at least one residential zoning
69 classification without requiring either a special exception, special use permit, conditional use permit, or
70 other discretionary approval may remain in effect at the option of the locality and will be deemed to be
71 in compliance with this section. Any other locality may adopt provisions for the clustering of
72 single-family dwellings, following the procedures set out in this section, in its discretion.