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SENATE BILL NO. 936

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact § 9.09, as amended, of Chapter 536 of the Acts of Assembly of 1950, which provided a charter for the City of Alexandria, relating to historic districts.

 Patron—Ticer

 Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That § 9.09, as amended, of Chapter 536 of the Acts of Assembly of 1950 is amended and reenacted as follows:

§ 9.09. Zoning Powers.

In addition to the powers granted elsewhere in this charter, the council shall have the power to adopt by ordinance a comprehensive zoning plan designed to lessen congestion in streets, secure safety from fire, panic and other danger, promote health, sanitation and general welfare, provide adequate light and air, prevent the overcrowding of land, avoid undue concentration of population, facilitate public and private transportation and the supplying of public utility services and sewage disposal, preserve existing and facilitate the provision of new housing that is affordable to all segments of the community, and facilitate provision for schools, parks, playgrounds and other public improvements and requirements. The comprehensive zoning plan shall include the division of the city into zones with such boundaries as the council deems necessary to carry out the purposes of this charter and shall provide for the regulation and restriction of the use of land, buildings and structures in the respective zones and may include but shall not be limited to the following:

(a) It may permit specified uses of land, buildings and structures in the zones and prohibit all other uses.

(b) It may restrict the height, area and bulk of buildings and structures in the zones.

(c) It may establish setback building lines and prescribe the area of land that may be used as front, rear and side yards and courts and open spaces.

(d) It may restrict the portion of the area of lots that may be occupied by buildings and structures.

(e) It may prescribe the area of lots and the space in buildings that may be occupied by families.

(f) It may require that spaces and facilities deemed adequate by the council shall be provided on lots for parking vehicles in conjunction with permitted uses of land and that spaces and facilities deemed adequate by the council shall be provided on lots for off-street loading or unloading of vehicles.

(g) It may provide that land, buildings and structures and the uses thereof which do not conform to the regulations and restrictions prescribed for the zone in which they are situated may be continued so long as the then existing or more restricted use continues and so long as the buildings or structures are maintained in their then structural condition; and may require that such buildings or structures and the use thereof shall conform to the regulations and restrictions prescribed for the zone or zones in which they are situated whenever they are enlarged, extended, reconstructed or structurally altered; and may require that such buildings or structures and the use thereof shall conform to the regulations and restrictions prescribed for the zone or zones in which they are situated, in any event within a reasonable period of time to be specified in the ordinance.

(h) It may require that permits be granted for special uses of property within a zone.

(i) It may, in order to promote the general welfare through the preservation and protection of historic places and any other buildings or structures within the city having an important historic, architectural or cultural interest and other areas of historic interest in the city and through the preservation of the memorial character of the George Washington Memorial Highway, provide for old and historic districts or designated preservation districts in which no building or structure shall be erected, reconstructed, altered, restored, moved, removed, capsulated or razed until approved by a board of architectural review and in which, notwithstanding any contrary provision of general law, no building or structure shall be allowed to deteriorate so that the building or structure or any exterior architectural feature thereof shall be lost or threatened with loss.

(j) It may create boards of architectural review which shall have the power to pass upon the appropriateness of exterior architectural features, including signs, of buildings and structures to be erected, reconstructed, altered or restored in any old and historic districts or in designated preservation districts established in the city and prohibit the moving, removing, capsulation, demolition or razing of any building in such a district without a permit if any such building is of such historic, architectural or

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59 cultural interest that its removal would be to the detriment of the public interest.

60 In addition to the provisions of § 2.06 of this charter, the council may adopt an ordinance which
61 establishes a civil penalty for the moving, removing, capsulation, demolition or razing of a building or
62 structure which is located in an old and historic or a designated preservation district without the prior
63 approval from either the board of architectural review or the council. The civil penalty established for a
64 violation of any such ordinance shall not exceed the market value of the property as determined by the
65 assessed value of the property at the time of the violation, and that market value shall include the value
66 of any improvements together with the value of the land upon which any such improvements are
67 located. Such ordinances may be enforced by the city attorney by bringing an action in the name of the
68 city in the circuit court. Such actions shall be brought against the party or parties deemed responsible
69 for the violation. It shall be the burden of the city in any such action to show the liability of the violator
70 by a preponderance of the evidence.

71 The council shall establish standards, rules, regulations and procedures for the operation of any such
72 boards of architectural review, and, to carry out the purposes and provisions of subsection (i) above and
73 of this subsection (j), it shall provide for appeals to the city council from any final decision of a board,
74 which appeal shall stay a board's decision pending the outcome of the appeal before the council. The
75 council, on appeal, shall apply the same standards as those established for such boards and may affirm,
76 reverse or modify the decision of such boards, in whole or in part. The city council shall determine, by
77 ordinance, the parties entitled to appeal decisions of the city council; such parties shall have the right to
78 appeal to the circuit court of the city for review by filing a petition, at law, setting forth the alleged
79 illegality of the city council's action, provided such petition is filed within thirty days after the final
80 decision is rendered by the city council. The filing of the said petition shall stay the council's decision
81 pending the outcome of the appeal to the court. Findings of fact by the council shall be conclusive on
82 the court in any such appeal. The court may reverse or modify the decision of the council, in whole or
83 in part, if it finds upon review that the decision of the council is contrary to law or that its decision is
84 arbitrary and constitutes an abuse of discretion, or it may affirm the decision of council.

85 In addition to the right of appeal hereinabove set forth, the owner of a building or structure, the
86 moving, removal, capsulation, the razing or demolition of which is subject to the provisions of
87 subsection (i) above and of this subsection (j), shall, as a matter of right, be entitled to move, remove,
88 capulate, raze or demolish such building or structure provided that: (1) he has applied to the board for
89 such right and has also been a party to an appeal from the board's decision to the council, (2) that the
90 owner has for the period of time set forth in the time schedule hereinafter contained and at a price
91 reasonably related to ~~its~~ *the fair market value of the property with the historic building or structure,*
92 made a bona fide offer to sell such building or structure, and the land pertaining thereto, to any person,
93 firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives
94 reasonable assurance that it is willing to preserve and restore the building or structure and the land
95 pertaining thereto, and (3) that no bona fide contract, ~~binding upon all parties thereto,~~ shall have been
96 ~~executed~~ *tendered* for the *purchase and* sale of any such building or structure, and the land pertaining
97 thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter
98 contained. *As used in this paragraph, "bona fide" means honesty in fact and the observance of*
99 *reasonable commercial standards of fair dealing between buyers and sellers of similar property in an*
100 *arms length transaction, and "reasonable assurance" to preserve and restore means to preserve and*
101 *restore in conformity with a certificate of appropriateness pursuant to the old and historic district or*
102 *designated preservation district ordinance.* Any appeal which may be taken to the court from the
103 decision of the council, whether instituted by the owner or by any other proper party, notwithstanding
104 the provisions heretofore stated relating to a stay of decision appealed from shall not affect the right of
105 the owner to make the bona fide offer to sell referred to in this paragraph. No offer to sell shall begin
106 more than one year after a final decision by the city council. The time schedule for offers to sell shall
107 be as follows: three months when the offering price is less than \$25,000; four months when the offering
108 price is \$25,000 or more but less than \$40,000; five months when the offering price is \$40,000 or more
109 but less than \$55,000; six months when the offering price is \$55,000 or more but less than \$75,000;
110 seven months when the offering price is \$75,000 or more but less than \$90,000; and twelve months
111 when the offering price is \$90,000 or more. *The provisions of this paragraph shall be administered and*
112 *enforced by the director of planning and zoning, subject to appeal as provided in this chapter.*

113 (j-01) It may, in order to promote the general welfare through the preservation and protection of
114 properties in the city which are located outside of any old and historic or designated preservation district
115 but which are over 100 years old and are of historic, architectural or cultural interest, provide by
116 ordinance for the listing of such buildings and structures for preservation which shall not be moved,
117 removed, demolished, razed, capsulated, reconstructed, altered or restored until approved by the board of
118 architectural review except as hereinafter indicated and which, notwithstanding any contrary provision of
119 general law, shall not be allowed to deteriorate so that the building or structure or any exterior
120 architectural feature thereof shall be lost or threatened with loss.

Boards of architectural review shall have the power to prohibit moving, removal, capsulation, razing, reconstruction, alteration or restoration of any building or structure so listed that is over 100 years old and is of such historical, architectural or cultural interest that its removal would be to the detriment of the public interest.

In addition to the provisions of § 2.06 of this charter, the council may adopt an ordinance which establishes a civil penalty for the moving, removing, capsulation, demolition or razing of a building or structure which has been designated by the council as an historic building or structure or landmark without the prior approval from either the board of architectural review or the council. The civil penalty imposed for a violation of any such ordinance shall not exceed the market value of the property as determined by the assessed value of the property at the time of the violation, and that market value shall include the value of any improvements together with the value of the land upon which any such improvements are located. Such ordinances may be enforced by the city attorney by bringing an action in the name of the city in the circuit court. Such actions shall be brought against the party or parties deemed responsible for the violation. It shall be the burden of the city in any such action to show the liability of the violator by a preponderance of the evidence.

The council shall establish standards, rules, regulations and procedures for the operation of such board to carry out the purposes and provisions of this subsection (j-01); it shall provide for appeals to the city council from any final decision of any board, which appeal shall stay the board's decision pending the outcome of the appeal before the council. The council, on appeal, shall apply the same standards as those established for the board and may affirm, reverse or modify the decision of a board, in whole or in part. The city council shall determine, by ordinance, the parties entitled to appeal decisions of the city council; such parties shall have the right to appeal to the circuit court of the city for review by filing a petition, at law, setting forth the alleged illegality of the city council's action, provided such petition is filed within thirty days after the final decision is rendered by the city council. The filing of the said petition shall stay the council's decision pending the outcome of the appeal to the court. Findings of fact by the council shall be conclusive on the court in any such appeal. The court may reverse or modify the decision of the council, in whole or in part, if it finds upon review that the decision of the council is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of council.

In addition to the right of appeal hereinabove set forth, the owner of a building or structure, the moving, removal, capsulation, razing or demolition of which is subject to the provisions of this subsection (j-01), shall, as a matter of right, be entitled to move, remove, capsulate, raze or demolish such building or structure provided that: (1) he has applied to a board for such right and has also been a party to an appeal from a board's decision to the council, (2) that the owner has for the period of time set forth in the time schedule hereinafter contained and at a price reasonably related to ~~its~~ *the* fair market value *of the historic building or structure*, made a bona fide offer to sell such building or structure, and the land pertaining thereto, to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the building or structure, and the land pertaining thereto, *and (3) that no bona fide contact shall have been tendered for the purchase and sale of any such building or structure and the land pertaining thereto*, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. *As used in this paragraph, "bona fide" means honesty in fact and the observance of reasonable commercial standards of fair dealing between buyers and sellers of similar property in an arms length transaction, and "reasonable assurance" to preserve and restore means to preserve and restore in conformity with a certificate of appropriateness pursuant to the 100 year old building or structure preservation ordinance.* Any appeal which may be taken to the court from the decision of the council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from shall not affect the right of the owner to make the bona fide offer to sell referred to in this paragraph. No offer to sell shall begin more than one year after a final decision by the city council. The time schedule for offers to sell shall be as follows: three months when the offering price is less than \$25,000; four months when the offering price is \$25,000 or more but less than \$40,000; five months when the offering price is \$40,000 or more but less than \$55,000; six months when the offering price is \$55,000 or more but less than \$75,000; seven months when the offering price is \$75,000 or more but less than \$90,000; and twelve months when the offering price is \$90,000 or more. *The provisions of this paragraph shall be administered and enforced by the director of planning and zoning, subject to appeal as provided in this chapter.*

(j-1) To acquire, in the manner provided in Chapter 13 of this charter, areas, properties, lands or any estate or interest therein, of old and historic interest which, in the opinion of the council, should be acquired, preserved and maintained for the use, observation, education, pleasure and welfare of the people; provide for their renovation, preservation, maintenance, management and control as places of old

182 and historic interest by a department of the city government or by a board, commission or agency
183 specially established by ordinance for the purpose; charge or authorize the charging of compensation for
184 the use thereof or admission thereto; lease, subject to such regulations as may be established by
185 ordinance, any such area, property, lands or estate or interest therein so acquired upon the condition that
186 the old and historic character of the area, property or lands shall be preserved and maintained; or to
187 enter into contracts with any person, firm or corporation for the management, preservation, maintenance
188 or operation of any such area, property, lands or estate or interest therein so acquired as a place of old
189 and historic interest, provided, the city shall not use the right of condemnation under this paragraph
190 unless the historic value of such area, property, lands or estate or interest therein is about to be
191 destroyed.
192 (k) To restrict, and regulate the erection of buildings and structures in areas subject to floods.