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HOUSE BILL NO. 195

Offered January 9, 2008

Prefiled December 26, 2007

A *BILL to amend and reenact §§ 15.2-2201 and 15.2-2260 of the Code of Virginia, relating to subdivision 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 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 §§ 15.2-2241 and 15.2-2242.

"Preliminary subdivision 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.

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

INTRODUCED

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

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

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

78 § 15.2-2260. Localities may provide for submission of preliminary subdivision plats; how long valid.

79 A. Nothing in this article shall be deemed to prohibit the local governing body from providing in its
80 ordinance for the submission of preliminary subdivision plats for tentative approval. The local planning
81 commission, or an agent designated by the commission or by the governing body to review preliminary
82 subdivision plats shall complete action on the preliminary plats within 60 days of submission. However,
83 if approval of a feature or features of the preliminary plat by a state agency or public authority
84 authorized by state law is necessary, the commission or agent shall forward the preliminary plat to the
85 appropriate state agency or agencies for review within 10 business days of receipt of such preliminary
86 plat.

87 B. Any state agency or public authority authorized by state law making a review of a preliminary
88 plat forwarded to it under this section, including, without limitation, the Virginia Department of
89 Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.), shall complete its review
90 within 45 days of receipt of the preliminary plat upon first submission and within 45 days for any
91 proposed plat that has previously been disapproved, provided, however, that the time period set forth in
92 § 15.2-2222.1 shall apply to plats triggering the applicability of said section. The Virginia Department of
93 Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.) shall allow use of public
94 rights-of-way for public street purposes for placement of utilities by permit when practical and shall not
95 unreasonably deny plat approval. If a state agency or public authority authorized by state law does not
96 approve the plat, it shall comply with the requirements, and be subject to the restrictions, set forth in
97 § 15.2-2259 A with the exception of the time period therein specified. Upon receipt of the approvals
98 from all state agencies, the local agent shall act upon a preliminary plat within 35 days.

99 C. If a commission has the responsibility of review of preliminary *subdivision* plats and conducts a
100 public hearing, it shall act on the plat within forty-five days after receiving approval from all state
101 agencies. If the local agent or commission does not approve the preliminary *subdivision* plat, the local
102 agent or commission shall set forth in writing the reasons for such denial and shall state what
103 corrections or modifications will permit approval by such agent or commission. However, no
104 commission or agent shall be required to approve a preliminary subdivision plat in less than sixty days
105 from the date of its original submission to the commission or agent, and all actions on preliminary
106 subdivision plats shall be completed by the agent or commission and, if necessary, state agencies, within
107 a total of ninety days of submission to the local agent or commission.

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

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

118 F. Once a preliminary subdivision plat is approved, it shall be valid for a period of five years,
119 provided the subdivider (i) submits a final subdivision plat for all or a portion of the property within
120 one year of such approval or such longer period as may be prescribed by local ordinance, and (ii)

121 thereafter diligently pursues approval of the final subdivision plat. "Diligent pursuit of approval" means
122 that the subdivider has incurred extensive obligations or substantial expenses relating to the submitted
123 final subdivision plat or modifications thereto. However, no sooner than three years following such
124 preliminary subdivision plat approval, and upon ninety days' written notice by certified mail to the
125 subdivider, the commission or other agent may revoke such approval upon a specific finding of facts
126 that the subdivider has not diligently pursued approval of the final subdivision plat.