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HOUSE BILL NO. 1963

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 15.2-2201 and 15.2-2306 of the Code of Virginia, relating to local resident curator programs.

Patrons—Rust, Comstock, Hugo, Keam, LeMunyon, Oder and Watts

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 15.2-2201 and 15.2-2306 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, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of 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" or "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, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

"Preliminary subdivision plat" means the proposed schematic representation of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable statutes will be achieved.

"Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage, preserve, maintain, operate, or reside in a historic property in accordance with the provisions of § 15.2-2306 and other applicable statutes.

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

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

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

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

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

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

86 § 15.2-2306. Preservation of historical sites and architectural areas.

87 A. 1. Any locality may adopt an ordinance setting forth the historic landmarks within the locality as
88 established by the Virginia Board of Historic Resources, and any other buildings or structures within the
89 locality having an important historic, architectural, archaeological or cultural interest, any historic areas
90 within the locality as defined by § 15.2-2201, and areas of unique architectural value located within
91 designated conservation, rehabilitation or redevelopment districts, amending the existing zoning
92 ordinance and delineating one or more historic districts, adjacent to such landmarks, buildings and
93 structures, or encompassing such areas, or encompassing parcels of land contiguous to arterial streets or
94 highways (as designated pursuant to Title 33.1, including § 33.1-41.1 of that title) found by the
95 governing body to be significant routes of tourist access to the locality or to designated historic
96 landmarks, buildings, structures or districts therein or in a contiguous locality. A governing body may
97 provide in the ordinance that the applicant must submit documentation that any development in an area
98 of the locality of known historical or archaeological significance will preserve or accommodate the
99 historical or archaeological resources. An amendment of the zoning ordinance and the establishment of a
100 district or districts shall be in accordance with the provisions of Article 7 (§ 15.2-2280 et seq.) of this
101 chapter. The governing body may provide for a review board to administer the ordinance and may
102 provide compensation to the board. The ordinance may include a provision that no building or structure,
103 including signs, shall be erected, reconstructed, altered or restored within any such district unless
104 approved by the review board or, on appeal, by the governing body of the locality as being
105 architecturally compatible with the historic landmarks, buildings or structures therein.

106 2. Subject to the provisions of subdivision 3 of this subsection the governing body may provide in
107 the ordinance that no historic landmark, building or structure within any district shall be razed,
108 demolished or moved until the razing, demolition or moving thereof is approved by the review board,
109 or, on appeal, by the governing body after consultation with the review board.

110 3. The governing body shall provide by ordinance for appeals to the circuit court for such locality
111 from any final decision of the governing body pursuant to subdivisions 1 and 2 of this subsection and
112 shall specify therein the parties entitled to appeal the decisions, which parties shall have the right to
113 appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the
114 action of the governing body, provided the petition is filed within thirty days after the final decision is
115 rendered by the governing body. The filing of the petition shall stay the decision of the governing body
116 pending the outcome of the appeal to the court, except that the filing of the petition shall not stay the
117 decision of the governing body if the decision denies the right to raze or demolish a historic landmark,
118 building or structure. The court may reverse or modify the decision of the governing body, in whole or
119 in part, if it finds upon review that the decision of the governing body is contrary to law or that its
120 decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the

governing body.

In addition to the right of appeal hereinabove set forth, the owner of a historic landmark, building or structure, the razing or demolition of which is subject to the provisions of subdivision 2 of this subsection, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure provided that: (i) he has applied to the governing body for such right, (ii) the owner has for the period of time set forth in the same schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell the landmark, building or structure, and the land pertaining thereto, to the locality or 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 landmark, building or structure and the land pertaining thereto, and (iii) no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark, 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. Any appeal which may be taken to the court from the decision of the governing body, 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 above. No offer to sell shall be made more than one year after a final decision by the governing body, but thereafter the owner may renew his request to the governing body to approve the razing or demolition of the historic landmark, building or structure. 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.

4. The governing body is authorized to acquire in any legal manner any historic area, landmark, building or structure, land pertaining thereto, or any estate or interest therein which, in the opinion of the governing body 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 historic interest by a department of the locality or by a board, commission or agency specially established by ordinance for the purpose; charge or authorize the charging of compensation for the use thereof or admission thereto; lease, subject to such regulations as may be established by ordinance, any such area, property, lands or estate or interest therein so acquired upon the condition that the historic character of the area, landmark, building, structure or land shall be preserved and maintained; or to enter into contracts with any person, firm or corporation for the management, preservation, maintenance or operation of any such area, landmark, building, structure, land pertaining thereto or interest therein so acquired as a place of historic interest; however, the locality shall not use the right of condemnation under this subsection unless the historic value of such area, landmark, building, structure, land pertaining thereto, or estate or interest therein is about to be destroyed.

The authority to enter into contracts with any person, firm or corporation as stated above may include the creation, by ordinance, of a resident curator program such that private entities through lease or other contract may be engaged to manage, preserve, maintain, or operate, including the option to reside in, any such historic area, property, lands, or estate owned or leased by the locality. Any leases or contracts entered into under this provision shall require that all maintenance and improvement be conducted in accordance with established treatment standards for historic landmarks, areas, buildings, and structures. For purposes of this section, leases or contracts that preserve historic landmarks, buildings, structures, or areas are deemed to be consistent with the purposes of use, observation, education, pleasure, and welfare of the people as stated above so long as the lease or contract provides for reasonable public access consistent with the property's nature and use. The Department of Historic Resources shall provide technical assistance to local governments, at their request, to assist in developing resident curator programs.

B. Notwithstanding any contrary provision of law, general or special, in the City of Portsmouth no approval of any governmental agency or review board shall be required for the construction of a ramp to serve the handicapped at any structure designated pursuant to the provisions of this section.

2. That it is the will of the General Assembly to encourage Virginia's localities to exercise the options for working with private entities to accomplish preservation, restoration, and management goals through resident curator programs and other creative partnerships in accordance with the authorities provided herein and elsewhere in the Code of Virginia for the benefit of the Commonwealth, its citizens, and communities.