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HOUSE BILL NO. 280

Offered January 13, 2016

Prefiled January 1, 2016

A BILL to amend and reenact § 15.2-2259 of the Code of Virginia, relating to submitted site plans; disclosure under FOIA.

Patron—Marshall, R.G.

Referred to Committee on General Laws**Be it enacted by the General Assembly of Virginia:****1. That § 15.2-2259 of the Code of Virginia is amended and reenacted as follows:****§ 15.2-2259. Local planning commission to act on proposed plat.**

A. 1. Except as otherwise provided in subdivisions 2 and 3, the local planning commission or other agent shall act on any proposed plat within 60 days after it has been officially submitted for approval by either approving or disapproving the plat in writing, and giving with the latter specific reasons therefor. The Commission or agent shall thoroughly review the plat and shall make a good faith effort to identify all deficiencies, if any, with the initial submission. However, if approval of a feature or features of the plat by a state agency or public authority authorized by state law is necessary, the commission or agent shall forward the plat to the appropriate state agency or agencies for review within 10 business days of receipt of such plat. The state agency shall respond in accord with the requirements set forth in § 15.2-2222.1, which shall extend the time for action by the local planning commission or other agent, as set forth in subsection B. Specific reasons for disapproval shall be contained either in a separate document or on the plat itself. The reasons for disapproval shall identify deficiencies in the plat that cause the disapproval by reference to specific duly adopted ordinances, regulations, or policies and shall identify modifications or corrections as will permit approval of the plat. The local planning commission or other agent shall act on any proposed plat that it has previously disapproved within 45 days after the plat has been modified, corrected and resubmitted for approval.

2. The approval of plats, site plans, and plans of development solely involving parcels of commercial real estate by a local planning commission or other agent shall be governed by subdivision 3 and subsections B, C, and D. For the purposes of this section, the term "commercial" means all real property used for commercial or industrial uses.

3. The local planning commission or other agent shall act on any proposed plat, site plan or plan of development within 60 days after it has been officially submitted for approval by either approving or disapproving the plat in writing, and giving with the latter specific reasons therefor. The Commission or agent shall thoroughly review the plat or plan and shall in good faith identify, to the greatest extent practicable, all deficiencies, if any, with the initial submission. However, if approval of a feature or features of the plat or plan by a state agency or public authority authorized by state law is necessary, the commission or agent shall forward the plat or plan to the appropriate state agency or agencies for review within 10 business days of receipt of such plat or plan. The state agency shall respond in accord with the requirements set forth in § 15.2-2222.1, which shall extend the time for action by the local planning commission or other agent, as set forth in subsection B. Specific reasons for disapproval shall be contained either in a separate document or on the plat or plan itself. The reasons for disapproval shall identify deficiencies in the plat or plan that caused the disapproval by reference to specific duly adopted ordinances, regulations, or policies and shall identify, to the greatest extent practicable, modifications or corrections that will permit approval of the plat or plan.

In the review of a resubmitted proposed plat, site plan or plan of development that has been previously disapproved, the local planning commission or other agent shall consider only deficiencies it had identified in its review of the initial submission of the plat or plan that have not been corrected in such resubmission and any deficiencies that arise as a result of the corrections made to address deficiencies identified in the initial submission. In the review of the resubmission of a plat or plan, the local planning commission or other agent shall identify all deficiencies with the proposed plat or plan that caused the disapproval by reference to specific duly adopted ordinances, regulations or policies and shall identify modifications or corrections that will permit approval of the plat or plan. Upon the second resubmission of such disapproved plat or plan, the local planning commission or other agent's review shall be limited solely to the previously identified deficiencies that caused its disapproval.

The local planning commission or other agent shall act on any proposed plat, site plan or plan of development that it has previously disapproved within 45 days after the plat or plan has been modified, corrected and resubmitted for approval. The failure of a local planning commission or other agent to

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HB280

59 approve or disapprove a resubmitted plat or plan within the time periods required by this section shall
60 cause the plat or plan to be deemed approved.

61 Notwithstanding the approval or deemed approval of any proposed plat, site plan or plan of
62 development, any deficiency in any proposed plat or plan, that if left uncorrected, would violate local,
63 state or federal law, regulations, mandatory Department of Transportation engineering and safety
64 requirements, and other mandatory engineering and safety requirements, shall not be considered, treated
65 or deemed as having been approved by the local planning commission or other agent. Should any
66 resubmission include a material revision of infrastructure or physical improvements from the earlier
67 submission or if a material revision in the resubmission creates a new required review by the Virginia
68 Department of Transportation or by a state agency or public authority authorized by state law, then the
69 local planning commission or other agent's review shall not be limited to only the previously identified
70 deficiencies identified in the prior submittals and may consider deficiencies initially appearing in the
71 resubmission because of such material revision.

72 The provisions of this subsection shall not apply to deficiencies caused by changes, errors or
73 omissions occurring in the applicant's plat, site plan or plan of development filings after the initial
74 submission of such plat, site plan or plan of development. The provision of this subsection shall not
75 apply to the review and approval of construction plans.

76 *Any proposed plat, site plan, or plan of development that is officially submitted to the local planning*
77 *commission or other agent for approval, or officially resubmitted to such commission or agent after a*
78 *previous disapproval, shall be considered a public record subject to disclosure under the Virginia*
79 *Freedom of Information Act (§ 2.2-3700 et seq.).*

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

92 C. If the commission or other agent fails to approve or disapprove the plat within 60 days after it
93 has been officially submitted for approval, or within 45 days after it has been officially resubmitted after
94 a previous disapproval or within 35 days of receipt of any agency response pursuant to subsection B, the
95 subdivider, after 10-days' written notice to the commission, or agent, may petition the circuit court for
96 the locality in which the land involved, or the major part thereof, is located, to decide whether the plat
97 should or should not be approved. The court shall give the petition priority on the civil docket, hear the
98 matter expeditiously in accordance with the procedures prescribed in Article 2 (§ 8.01-644 et seq.) of
99 Chapter 25 of Title 8.01 and make and enter an order with respect thereto as it deems proper, which
100 may include directing approval of the plat.

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