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SENATE BILL NO. 1203

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact §§ 15.2-2201 and 15.2-2283 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2306.1, relating to working waterfront development areas.

 Patron—Lewis

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2201 and 15.2-2283 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2306.1 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 tract of land 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.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"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,

59 and 15.2-2264, and other applicable statutes.

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

63 "Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage,
64 preserve, maintain, operate, or reside in a historic property in accordance with the provisions of
65 § 15.2-2306 and other applicable statutes.

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

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

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

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

81 "Variance" means, in the application of a zoning ordinance, a reasonable deviation from those
82 provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or
83 location of a building or structure when the strict application of the ordinance would unreasonably
84 restrict the utilization of the property, and such need for a variance would not be shared generally by
85 other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not
86 include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

87 "*Working waterfront*" means an area or structure on, over, or adjacent to navigable waters that
88 provides access to the water and is used for water-dependent commercial, industrial, or governmental
89 activities, including commercial and recreational fishing; tourism; aquaculture; boat and ship building,
90 repair, and services; seafood processing and sales; transportation; shipping; marine construction; and
91 military activities.

92 "*Working waterfront development area*" means an area containing one or more working waterfronts
93 having economic, cultural, or historic public value of such significance as to warrant development and
94 reparation.

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

100 **§ 15.2-2283. Purpose of zoning ordinances.**

101 Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare
102 of the public and of further accomplishing the objectives of § 15.2-2200. To these ends, such ordinances
103 shall be designed to give reasonable consideration to each of the following purposes, where applicable:
104 (i) to provide for adequate light, air, convenience of access, and safety from fire, flood, impounding
105 structure failure, crime and other dangers; (ii) to reduce or prevent congestion in the public streets; (iii)
106 to facilitate the creation of a convenient, attractive and harmonious community; (iv) to facilitate the
107 provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water,
108 sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other
109 public requirements; (v) to protect against destruction of or encroachment upon historic areas and
110 *working waterfront development areas*; (vi) to protect against one or more of the following:
111 overcrowding of land, undue density of population in relation to the community facilities existing or
112 available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life,
113 health, or property from fire, flood, impounding structure failure, panic or other dangers; (vii) to
114 encourage economic development activities that provide desirable employment and enlarge the tax base;
115 (viii) to provide for the preservation of agricultural and forestal lands and other lands of significance for
116 the protection of the natural environment; (ix) to protect approach slopes and other safety areas of
117 licensed airports, including United States government and military air facilities; (x) to promote the
118 creation and preservation of affordable housing suitable for meeting the current and future needs of the
119 locality as well as a reasonable proportion of the current and future needs of the planning district within
120 which the locality is situated; and (xi) to provide reasonable protection against encroachment upon

121 military bases, military installations, and military airports and their adjacent safety areas, excluding
122 armories operated by the Virginia National Guard. Such ordinance may also include reasonable
123 provisions, not inconsistent with applicable state water quality standards, to protect surface water and
124 ground water as defined in § 62.1-255.

125 **§ 15.2-2306.1. Creation of working waterfront development areas.**

126 A. Any locality may establish by ordinance one or more working waterfront development areas for
127 the purpose of providing incentives to private entities to purchase real property and interests in real
128 property to assemble parcels suitable for working waterfront development. Each locality establishing a
129 working waterfront development area may grant such incentives and provide regulatory flexibility. Such
130 zones shall be reasonably compact, shall not encompass the entire locality, and shall constitute one or
131 more tax parcels not commonly owned. Properties that are acquired through the use of eminent domain
132 shall not be eligible for the incentives and regulatory flexibility provided by the ordinance.

133 B. Incentives granted by a locality pursuant to subsection A may include, but not be limited to, (i)
134 reduction of permit fees, (ii) reduction of user fees, (iii) reduction of any type of gross receipts tax, and
135 (iv) waiver of tax liens to facilitate the sale of property.

136 C. Incentives granted pursuant to this section may extend for a period of up to 10 years from the
137 date of initial establishment of the working waterfront development area; however, the extent and
138 duration of any incentive shall conform to the requirements of applicable federal and state law.

139 D. The regulatory flexibility provided in a working waterfront development area may include (i)
140 special zoning for the district, (ii) the use of a special permit process, (iii) exemption from certain
141 specified ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the
142 requirements of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), the Erosion and
143 Sediment Control Law (§ 62.1-44.15:51 et seq.), and the Virginia Stormwater Management Act
144 (§ 62.1-44.15:24 et seq.), and (iv) any other incentives adopted by ordinance, which shall be binding
145 upon the locality for a period of up to 10 years.

146 E. This section shall not authorize any local government powers that are not expressly granted
147 herein.

148 F. Prior to adopting or amending any ordinance pursuant to this section, a locality shall provide for
149 notice and public hearing in accordance with subsection A of § 15.2-2204.