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HOUSE BILL NO. 2485

Offered January 23, 1995

A *BILL to amend and reenact §§ 15.1-430, 15.1-491, 15.1-491.2 and 15.1-491.2:1 of the Code of Virginia, relating to definitions used in chapter pertaining to local government regulation of land use and conditional zoning.*

Patron—McClure

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-430, 15.1-491, 15.1-491.2 and 15.1-491.2:1 of the Code of Virginia are amended and reenacted as follows:

§ 15.1-430. Definitions.

As used in this chapter the words listed below shall have the meaning given:

(a) "Governing body" means the board of supervisors of a county or the council of a city or town.

(b) "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.

(c) "Local planning commission" or "local commission" means a municipal planning commission or a county planning commission.

(d) "Municipality" means a city or town incorporated under the laws of Virginia.

(e) "Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by the governing body of a county or municipality in accordance with the provisions of Article 5 (§ 15.1-458 et seq.) hereof.

(f) "Person" means individual, firm, corporation or association.

(g) [Repealed.]

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

(i) "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. *Any conditions imposed in connection with residential special use permits shall be reasonably related to the use proposed, and conditions on residential projects specifying materials and methods of construction or specific design features shall consider the impact of the conditions upon the affordability of housing.*

(j) "Planning district commission" means a regional planning agency chartered under the provisions of Chapter 34 (§ 15.1-1400 et seq.) of this title.

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

(l) "Subdivision," unless otherwise defined in a local ordinance adopted pursuant to § 15.1-465, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.1-475.

(m) "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.

(n) "Plat of subdivision" means the schematic representation of land divided or to be divided.

(o) "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.

(p) "Variance" means, in the application of a zoning ordinance, a reasonable deviation from those

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60 provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a
61 building or structure when the strict application of the ordinance would result in unnecessary or
62 unreasonable hardship to the property owner, and such need for a variance would not be shared
63 generally by other properties, and provided such variance is not contrary to the intended spirit and
64 purpose of the ordinance, and would result in substantial justice being done. It shall not include a
65 change in use which change shall be accomplished by a rezoning or by a conditional zoning.

66 (q) "Conditional zoning" means, as part of classifying land within a governmental entity into areas
67 and districts by legislative action, the allowing of reasonable conditions governing the use of such
68 property, such conditions being in addition to, or modification of the regulations provided for a
69 particular zoning district or zone by the overall zoning ordinance.

70 (r) "Mixed use development" means property that incorporates two or more different uses, and may
71 include a variety of housing types, within a single development.

72 (s) "Planned unit development" means a form of development characterized by unified site design for
73 a variety of housing types and densities, clustering of buildings, common open space, and a mix of
74 building types and land uses in which project planning and density calculation are performed for the
75 entire development rather than on an individual lot basis.

76 (t) "Incentive zoning" means the use of bonuses in the form of increased project density or other
77 benefits to a developer in return for the developer providing certain features or amenities desired by the
78 locality within the development.

79 (u) *"Affordable housing" means, as a guideline, housing that is affordable to households with*
80 *incomes at or below 120 percent of the area median income, provided that the occupant pays no more*
81 *than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of*
82 *administering affordable dwelling unit ordinances authorized by this chapter, local governments may*
83 *establish individual definitions of affordable housing and affordable dwelling units.*

84 § 15.1-491. (Effective April 1, 1995) Permitted provisions in ordinances; amendments.

85 A zoning ordinance may include, among other things, reasonable regulations and provisions as to any
86 or all of the following matters:

87 (a) For variances as defined in § 15.1-430 (p) or special exceptions as defined in § 15.1-430 (i) to the
88 general regulations in any district in cases of unusual situations or to ease the transition from one district
89 to another, or for buildings, structures or uses having special requirements, and for conditional zoning as
90 defined in § 15.1-430 (q) and for the adoption, in counties, or towns, therein which have planning
91 commissions, wherein the urban county executive form of government is in effect, or in a city adjacent
92 to or completely surrounded by such a county, or in a county contiguous to any such county, or in a
93 city adjacent to or completely surrounded by such a contiguous county, or in any town within such
94 contiguous county, and in the counties east of the Chesapeake Bay as a part of an amendment to the
95 zoning map of reasonable conditions, in addition to the regulations provided for the zoning district by
96 the ordinance, when such conditions shall have been proffered in writing, in advance of the public
97 hearing before the governing body required by § 15.1-493 by the owner of the property which is the
98 subject of the proposed zoning map amendment. Once proffered and accepted as part of an amendment
99 to the zoning ordinance, such conditions shall continue in effect until a subsequent amendment changes
100 the zoning on the property covered by such conditions. However, such conditions shall continue if the
101 subsequent amendment is part of a comprehensive implementation of a new or substantially revised
102 zoning ordinance. *Proffered conditions affecting the affordability of housing shall be reasonably related*
103 *to the scope and purpose of the comprehensive plan and the purpose of zoning ordinances as stated in*
104 *§ 15.1-446.1 and § 15.1-489 respectively.*

105 (a1) In the event proffered conditions include a requirement for the dedication of real property of
106 substantial value, or substantial cash payments for or construction of substantial public improvements,
107 the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map
108 for the property subject to such conditions, nor the conditions themselves, nor any amendments to the
109 text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the
110 governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio,
111 or the density of use permitted in the zoning district applicable to such property, shall be effective with
112 respect to such property unless there has been mistake, fraud, or a change in circumstances substantially
113 affecting the public health, safety, or welfare.

114 (a2) Any landowner who has prior to July 1, 1990, proffered the dedication of real property of
115 substantial value, or substantial cash payments for or construction of substantial public improvements,
116 the need for which is not generated solely by the rezoning itself, but who has not substantially
117 implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail
118 prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice
119 shall identify the property to be developed, the zoning district, and the proffers applicable thereto.
120 Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement
121 such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good

faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subdivision shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subdivision (a1), unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subdivision shall acquire no rights pursuant to this section.

(a3) The provisions of subdivisions (a1) and (a2) of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

Nothing in this section shall be construed to affect or impair the authority of a governing body to:

1. Accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or

2. Accept or impose valid conditions pursuant to subsection (c) of this section, subsection H of § 15.1-466, or other provision of law.

(b) For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.

(c) For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any city, county or town may reserve unto itself the right to issue such special exceptions.

(d) For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the county or municipality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance, including the authority to make conclusions of law and findings of fact, with concurrence of the attorney for the governing body, in connection with the administration, application and enforcement of the ordinance in specific cases, including determinations of rights accruing under § 15.1-492, and further including the ordering in writing of the remedying of any condition found in violation of the ordinance, and the bringing of legal action to insure compliance with the ordinance, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.1-496.1.

(e) For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000.

(f) For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices and other expenses incident to the administration of a zoning ordinance or to the filing or processing of any appeal or amendment thereto.

(g) For the amendment of the regulations or district maps from time to time, or for their repeal. Whenever the public necessity, convenience, general welfare, or good zoning practice require, the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated (i) by resolution of the governing body, (ii) by motion of the local commission, or (iii) by petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed zoning map amendment, addressed to the governing body or the local commission, who shall forward such petition to the governing body; however, the ordinance may provide for the consideration of proposed amendments only at specified intervals of time, and may further provide that substantially the same petition will not be reconsidered within a specific period, not exceeding one year. Any such resolution or motion by such governing body or commission proposing the rezoning shall state the above public purposes therefor.

In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed twelve months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

(h) For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

(i) For areas and districts designated for mixed use developments as defined in § 15.1-430 (r) and planned unit developments as defined in § 15.1-430 (s).

(j) For the administration of incentive zoning as defined in § 15.1-430 (t).

The ordinance may also provide that petitions brought by property owners, contract purchasers or the

agents thereof, shall be sworn to under oath before a notary public or other official before whom oaths may be taken, stating whether or not any member of the local planning commission or governing body has any interest in such property, either individually, by ownership of stock in a corporation owning such land, partnership, as the beneficiary of a trust, or the settlor of a revocable trust or whether a member of the immediate household of any member of the planning commission or governing body has any such interest.

The ordinance shall not require that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. For the purposes of this section, production agriculture and silviculture is the bona fide production or harvesting of agricultural or silviculture products but shall not include the processing of agricultural or silviculture products or the above ground application or storage of sewage sludge. However, localities may adopt setback requirements, minimum area requirements and other requirements that apply to land used for agriculture or silviculture activity within the locality that is zoned as an agricultural district or classification.

§ 15.1-491.2. Same; conditions as part of a rezoning or amendment to zoning map.

A. A zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map; provided that (i) the rezoning itself must give rise for the need for the conditions; (ii) such conditions shall have a reasonable relation to the rezoning; (iii) such conditions shall not include a cash contribution to the county or municipality; (iv) such conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in subdivision A (f) of § 15.1-466; (v) such conditions shall not include payment for or construction of off-site improvements except those provided for in subdivision A (j) of § 15.1-466; (vi) no condition shall be proffered that is not related to the physical development or physical operation of the property; and (vii) all such conditions shall be in conformity with the comprehensive plan as defined in § 15.1-446.1. *Proffered conditions affecting the affordability of housing shall be reasonably related to the scope and purpose of the comprehensive plan and the purpose of zoning ordinances as stated in § 15.1-446.1 and § 15.1-489 respectively.* Once proffered and accepted as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by such conditions; however, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property.

Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no rights pursuant to this section.

D. The provisions of subsections B and C of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

Nothing in this section shall be construed to affect or impair the authority of a governing body to:

1. Accept proffered conditions which include provisions for timing or phasing of dedications,

payments, or improvements; or

2. Accept or impose valid conditions pursuant to subsection (c) of § 15.1-491 or other provision of law.

§ 15.1-491.2:1. Same; conditions as a part of rezoning or zoning map amendment in certain localities.

A. Except for those localities to which § 15.1-491(a) is applicable, this section shall apply to (i) any county, city, or town which has had population growth of ten percent or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census, provided that until the 1990 census is reported, any county, city, or town instead may qualify only if it has had an estimated population growth of ten percent or more from 1980 to the most recent year for which population estimates are available from the Center for Public Service of the University of Virginia; (ii) any city adjoining such city or county; (iii) any towns located within such county; and (iv) any county contiguous with at least three such counties, and any town located in that county.

In any such county, city, or town, notwithstanding any contrary provisions of § 15.1-491.2, a zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map, provided that (i) the rezoning itself gives rise to the need for the conditions; (ii) such conditions have a reasonable relation to the rezoning; and (iii) all such conditions are in conformity with the comprehensive plan as defined in § 15.1-446.1. *Proffered conditions affecting the affordability of housing shall be reasonably related to the scope and purpose of the comprehensive plan and the purpose of zoning ordinances as stated in § 15.1-446.1 and § 15.1-489 respectively.* Once proffered and accepted as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by such conditions; however, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

No proffer shall be accepted by a county, city, or town unless it has adopted a capital improvement program pursuant to § 15.1-464 or local charter. In the event proffered conditions include the dedication of real property or payment of cash, such property shall not transfer and such payment of cash shall not be made until the facilities for which such property is dedicated or cash is tendered are included in the capital improvement program, provided that nothing herein shall prevent a county, city, or town from accepting proffered conditions which are not normally included in such capital improvement program. If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of such property or cash payment in the event the property or cash payment is not used for the purpose for which proffered.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B above, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no rights pursuant to this section.

D. The provisions of subsections B and C of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

306 Nothing in this section shall be construed to affect or impair the authority of a governing body to:

307 1. Accept proffered conditions which include provisions for timing or phasing of dedications,
308 payments, or improvements; or

309 2. Accept or impose valid conditions pursuant to subsection (c) of § 15.1-491 or other provision of
310 law.