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**HOUSE BILL NO. 1630**

Offered January 10, 2001

Prefiled November 30, 2000

*A BILL to amend and reenact §§ 15.2-2201 and 15.2-2306 of the Code of Virginia, relating to historic preservation.*

\_\_\_\_\_  
Patron—Callahan

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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.

"Architectural area" means an area where the visual impact of buildings and development can be significant on the economic, cultural, or scenic attributes of the community. These areas may include natural or scenic areas; conservation, rehabilitation, and redevelopment areas; or new economic development and employment centers.

"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~~ that 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~~ that 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.

"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.

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

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

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

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

79 § 15.2-2306. Preservation of historical sites and architectural areas.

80 A. 1. a. *It is the policy of the Commonwealth to protect and enhance the quality of its historic,*  
81 *architectural, archaeological, cultural, and visual resources, whether natural or manmade, which*  
82 *distinguish Virginia as one of the most beautiful states in the country; which contribute to its*  
83 *communities' character and sense of place; which contribute tangible and intangible benefits such as*  
84 *improved quality of life for its citizens and a rich legacy for future generations; and which strengthen*  
85 *the economic base of the Commonwealth and its communities by encouraging tourism and attracting*  
86 *new businesses. It is the purpose of this section to provide a means for localities to protect and enhance*  
87 *the quality of its historic, architectural, archaeological, cultural, and visual resources as aesthetic and*  
88 *economic assets of major importance.*

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

B. *In addition to the powers stated in clause b of subdivision A1, any locality may adopt an ordinance setting forth architectural areas as defined by § 15.2-2201 and as established in the locality's comprehensive plan. An amendment of the zoning ordinance and the establishment of one or more architectural districts encompassing such architectural areas shall be in accordance with the provisions of Article 7 (§ 15.2-2280 et seq.) of this chapter. The ordinance may include a provision that no building or structure, including signs, shall be erected, reconstructed, altered or restored within any such district unless approved by the approving body, or on appeal by the governing body, as being architecturally compatible with the goals and purpose of the architectural area, as established in this section. Any locality that adopts an architectural district shall adopt standards consistent with the policy and purposes of the architectural area to guide decision making within the district. The governing body may provide for the review board, as established in subdivision A1, or other body or agency of the locality, as the reviewing body. However, the governing body may also reserve unto itself the right of review and approval within such district, particularly if approval is part of a review of change in zoning or application for a special exception.*

C. 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.