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HOUSE BILL NO. 721

Offered January 9, 2008

Prefiled January 8, 2008

A *BILL to amend and reenact §§ 15.2-2258 and 15.2-2260 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.2-2259.1 and 15.2-2259.2, relating to approval of plats, site plans, and plans of development.*

 Patron—Oder

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2258 and 15.2-2260 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-2259.1 and 15.2-2259.2 as follows:

§ 15.2-2258. Plat of proposed subdivision and site plans to be submitted for approval.

Whenever the owner or proprietor of any tract of land located within any territory to which a subdivision ordinance applies desires to subdivide the tract, he shall submit a plat of the proposed subdivision to the planning commission of the locality, or an agent designated by the governing body thereof for such purpose. When any part of the land proposed for subdivision lies in a drainage district such fact shall be set forth on the plat of the proposed subdivision. When any grave, object or structure marking a place of burial is located on the land proposed for subdivision, such grave, object or structure shall be identified on any plans or site plans required by this article. When the land involved lies wholly or partly within an area subject to the joint control of more than one locality, the plat shall be submitted to the planning commission or other designated agent of the locality in which the tract of land is located. ~~Site~~ Except as provided in § 15.2-2259.1, site plans or plans of development required by provision 8 of § 15.2-2286 shall also be subject to the provisions of §§ 15.2-2258 through 15.2-2261, mutatis mutandis.

§ 15.2-2259.1. *Approval of plats, site plans, and plans of development in certain localities.*

In localities with a population greater than 90,000 based on the 2000 United States Census, the approval of plats, site plans, and plans of development solely involving parcels of real estate zoned commercial shall be governed by § 15.2-2259.2. For the purposes of this section, the term "commercial" means all real property used for or zoned to permit commercial or industrial uses.

§ 15.2-2259.2. *Local planning commission in certain localities to act on proposed plats, site plans, and plans of development involving commercial property.*

A. 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 local planning commission or other agent shall act on any proposed site plan or plan of development within 45 days after it has been officially submitted for approval by either approving or disapproving the site plan or plan of development in writing, and giving with the latter specific reasons therefor. The Commission or agent shall thoroughly review the plat, site plan, or plan of development 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, site plan, or plan of development 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 five business days of receipt of such plat, site plan, or plan of development. The state agency shall respond in accord with the requirements set forth in subsection B, which shall extend the time for action by the local planning commission or other agent, as set forth in that section. Specific reasons for disapproval shall be contained either in a separate document or on the plat, site plan, or plan of development itself. The reasons for disapproval shall identify all deficiencies in the plat, site plan, or plan of development 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, site plan, or plan of development. 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 14 days after the plat has been modified, corrected, and resubmitted for approval. In such action, the local planning commission or other agent shall consider only deficiencies it had identified in its review of the initial submission of the plat, site plan, or plan of development that have not been corrected in such resubmission. The local planning commission or other agent shall not base its actions regarding the resubmitted plat, site plan, or plan of development on any alleged deficiencies it had not identified in

INTRODUCED

HB721

59 *the initial submission.*

60 *B. Any state agency or public authority authorized by state law making a review of a plat forwarded*
61 *to it under this article shall complete its review within 30 days of receipt of the plat upon first*
62 *submission and within 30 days for any proposed plat that has been previously disapproved. The Virginia*
63 *Department of Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.) shall*
64 *complete its review within 45 days of receipt of the plat upon first submission and within 45 days for*
65 *any proposed plat that has previously been disapproved, provided, however, that the time periods set*
66 *forth in § 15.2-2222.1 shall apply to plats triggering the applicability of said section. The Virginia*
67 *Department of Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.) shall allow*
68 *use of public rights-of-way dedicated for public street purposes for placement of utilities by permit when*
69 *practical and shall not unreasonably deny plat approval. If a state agency or public authority*
70 *authorized by state law does not approve the plat, it shall comply with the requirements, and be subject*
71 *to the restrictions set forth in subsection A, with the exception of the time period therein specified. Upon*
72 *receipt of the approvals from all state agencies and other agencies, the local agent shall act upon a plat*
73 *within 14 days.*

74 *C. If the commission or other agent fails to approve or disapprove the plat within 30 days after it*
75 *has been officially submitted for approval, or within 45 days after submission of a site plan or plan of*
76 *development, or within 14 days after a plat, site plan, or plan of development has been officially*
77 *resubmitted after a previous disapproval or within 14 days of receipt of any agency response pursuant*
78 *to subsection B, the subdivider or developer, after 10-days' written notice to the commission, or agent,*
79 *may petition the circuit court for the locality in which the land involved, or the major part thereof, is*
80 *located, to decide whether the plat, site plan, or plan of development should or should not be approved.*
81 *The court shall give the petition priority on the civil docket, hear the matter expeditiously in accordance*
82 *with the procedures prescribed in Article 2 (§ 8.01-644 et seq.) of Chapter 25 of Title 8.01, and make*
83 *and enter an order with respect thereto as it deems proper, which may include directing approval of the*
84 *plat. If the court grants approval of the plat, the court shall require the commission or other agent to*
85 *pay the subdivider or developer all reasonable attorney fees and expenses related to preparing, filing,*
86 *and proceeding with such court action and the court may require the commission or agent to pay to the*
87 *subdivider or developer any additional expenses or costs it incurred during the commission or agent*
88 *review of the plat, site plan or plan of development that the court finds were due to unreasonable*
89 *actions of the commission or agent.*

90 *D. If a commission or other agent disapproves a plat, site plan, or plan of development and the*
91 *subdivider or developer contends that the disapproval was not properly based on the ordinance*
92 *applicable thereto, or was arbitrary or capricious, he may appeal to the circuit court having jurisdiction*
93 *of such land and the court shall hear and determine the case as soon as may be, provided that his*
94 *appeal is filed with the circuit court within 60 days of the written disapproval by the commission or*
95 *other agent.*

96 *§ 15.2-2260. Localities may provide for submission of preliminary subdivision plats; how long valid.*

97 *A. Nothing in this article shall be deemed to prohibit the local governing body from providing in its*
98 *ordinance for the submission of preliminary subdivision plats for tentative approval. The local planning*
99 *commission, or an agent designated by the commission or by the governing body to review preliminary*
100 *subdivision plats shall complete action on the preliminary plats within 60 days of submission. However,*
101 *if approval of a feature or features of the preliminary plat by a state agency or public authority*
102 *authorized by state law is necessary, the commission or agent shall forward the preliminary plat to the*
103 *appropriate state agency or agencies for review within 10 business days of receipt of such preliminary*
104 *plat.*

105 *B. Any state agency or public authority authorized by state law making a review of a preliminary*
106 *plat forwarded to it under this section, including, without limitation, the Virginia Department of*
107 *Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.), shall complete its review*
108 *within 45 days of receipt of the preliminary plat upon first submission and within 45 days for any*
109 *proposed plat that has previously been disapproved, provided, however, that the time period set forth in*
110 *§ 15.2-2222.1 shall apply to plats triggering the applicability of said section. The Virginia Department of*
111 *Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.) shall allow use of public*
112 *rights-of-way for public street purposes for placement of utilities by permit when practical and shall not*
113 *unreasonably deny plat approval. If a state agency or public authority authorized by state law does not*
114 *approve the plat, it shall comply with the requirements, and be subject to the restrictions, set forth in*
115 *§ 15.2-2259 A with the exception of the time period therein specified. Upon receipt of the approvals*
116 *from all state agencies, the local agent shall act upon a preliminary plat within 35 days.*

117 *C. If a commission has the responsibility of review of preliminary plats and conducts a public*
118 *hearing, it shall act on the plat within forty-five days after receiving approval from all state agencies. If*
119 *the local agent or commission does not approve the preliminary plat, the local agent or commission shall*
120 *set forth in writing the reasons for such denial and shall state what corrections or modifications will*

121 permit approval by such agent or commission. However, no commission or agent shall be required to
122 approve a preliminary subdivision plat in less than sixty days from the date of its original submission to
123 the commission or agent, and all actions on preliminary subdivision plats shall be completed by the
124 agent or commission and, if necessary, state agencies, within a total of ninety days of submission to the
125 local agent or commission.

126 D. If the commission or other agent fails to approve or disapprove the preliminary plat within ninety
127 days after it has been officially submitted for approval, the subdivider after ten days' written notice to
128 the commission, or agent, may petition the circuit court for the locality in which the land involved, or
129 the major part thereof, is located to enter an order with respect thereto as it deems proper, which may
130 include directing approval of the plat.

131 E. If a commission or other agent disapproves a preliminary plat and the subdivider contends that the
132 disapproval was not properly based on the ordinance applicable thereto, or was arbitrary or capricious,
133 he may appeal to the circuit court having jurisdiction of such land and the court shall hear and
134 determine the case as soon as may be, provided that his appeal is filed with the circuit court within
135 sixty days of the written disapproval by the commission or other agent.

136 F. Once a preliminary subdivision plat is approved, it shall be valid for a period of five years,
137 provided the subdivider (i) submits a final subdivision plat for all or a portion of the property within
138 one year of such approval or such longer period as may be prescribed by local ordinance, and (ii)
139 thereafter diligently pursues approval of the final subdivision plat. "Diligent pursuit of approval" means
140 that the subdivider has incurred extensive obligations or substantial expenses relating to the submitted
141 final subdivision plat or modifications thereto. However, no sooner than three years following such
142 preliminary subdivision plat approval, and upon ninety days' written notice by certified mail to the
143 subdivider, the commission or other agent may revoke such approval upon a specific finding of facts
144 that the subdivider has not diligently pursued approval of the final subdivision plat.

145 G. *For site plans and plans of development involving commercial property, as that term is defined in*
146 *§ 15.2-2259.1, preliminary approval shall be governed by the time frames in §§ 15.2-2259.1 and*
147 *15.2-2259.2.*