

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

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### Meeting Summary

Local Land-Use and Community Living Workgroup  
Wednesday, June 5, 2024, 10:00 AM  
Senate Room C (Room 311), The General Assembly Building

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#### **Introduction:**

Delegate David Bulova, Chair, called the meeting to order at 10:00 a.m.

Members present: Delegate David Bulova, Delegate Carrie Coyner, Delegate Danny Marshall, Joshua Goldschmidt, Gubernatorial Appointee, Elizabeth Palen, Executive Director

Members absent: Senator Bill Stanley, Delegate Briana Sewell, Laura Lafayette, Gubernatorial Appointee

The meeting began with introductions and opening remarks followed by presentations and discussion/consideration of property owners' associations and managed conservation landscaping, entering adjoining property for repair, and existing blight tools to promote housing access.

Materials presented at the meeting are accessible through the [Commission's website](#).

#### **Presentations:**

**Entering Adjoining Property for Repair, Maintenance - SB 123 (VanValkenberg, S., 2024)**  
*Senator Schuyler Van Valkenberg*

**Senator VanValkenberg** said he was accompanied by Terence Graves, the attorney who represented one of his constituents in a lawsuit. He discussed how the constituent's case led to this legislation regarding zero-lot-line properties. He explained that a zero-lot-line property is a piece of residential real estate in which the structure comes up to, or extremely near to, the edge of the property line leaving little to no room between the house and the boundary.

In most homes built after the 1900s the property deed will have an access easement allowing the homeowner to access their neighbor's property to perform maintenance or make repairs. However, in a few of the older neighborhoods in Richmond, Norfolk, or Alexandria they do not have easements in the property deeds making it difficult to comply with code regulations because a homeowner cannot enter the neighbor's property to make repairs on their own property.

He stated the bill ([SB 123](#)) was introduced to offer homeowners the right to access a neighbor's property to make repairs or maintain their property if no easement is present.

## Questions:

*Joseph Hudgins, Independent Insurance Agents of Virginia* asked if there should be some thought given to who has liability in these zero-lot-line situations because with homeowner and commercial policies there might be some issues with respect to who is going to be responsible for damage if there is an occurrence in which a homeowner needs to enter the neighbor's property.

*Senator VanValkenberg* replied that in lines 23 to 25 of ([SB 123](#)) (VanValkenberg, S., 2024), the last sentence describes how no such entry shall be deemed a trespass, and the licensee will be liable to the adjoining owner for damages occurring because of the entry.

*Delegate Bulova* asked if there was a particular concern as this bill was going through the regular session that stopped it or if it was because they wanted more time to study it.

*VanValkenberg* said there were several issues that made it more complicated and suggested it be discussed further by the Virginia Housing Commission.

*Bulova* asked if there could also be a legal issue in which the homeowner should need to not only be liable but also be able to demonstrate that he or she would have the means to fix whatever damage may occur to the neighbor's property during the repair.

*VanValkenberg* reiterated that the bill had been sent to the Commission because he thinks adding language addressing these issues on the last line of the bill would make sense and does not want the complicated legal issues to hold up the bill. He explained these are very rare circumstances in which people cannot make the repairs they need to make, so there needs to be a mechanism in place that allows them to access a neighbor's property.

*Delegate Coyner* said her concern is the broadness of the scope of the bill. Her first concern is the definition of what a repair or maintenance might be versus making an improvement such as adding a pool, and second, the legal and insurance issues it could present.

*Pia Trigiani, Common Interest Communities Attorney* suggested that the issue is more complicated and added it might be possible to address in the same manner common party walls in apartments, condominiums, and townhouses are handled.

*Terence Graves, Attorney* gave additional information on the litigation surrounding the bill.

*Joseph Hudgins, Independent Insurance Agents of Virginia* explained that the insurance issue is very important because policies will only cover damage caused by negligence but will not cover damage that might occur in the normal course of making a repair or performing maintenance.

*Joe Lerch, Virginia Association of Counties* suggested that the language in the bill could be limited to repairs and maintenance specific to code violations and not include improvements to narrow the scope of the bill.

*Delegate Coyner* said that even by narrowing the scope and using Code restrictions, she still has concerns about imposing a law on other private property owner's rights.

*Delegate Bulova* asked for confirmation that this bill refers to exterior repairs or maintenance to a property and does not include interior work.

The answer was, yes, this refers to exterior access only and the bill language should be drafted to assure this item.

*Bulova* suggested forming a smaller work group to discuss the issues that came to the forefront such as maintenance and repair and not new improvements. He said other financial assurance other than insurance such as bonding should be considered. There needs to be more discussion regarding making sure that contractors are covered. Delegate Coyner, Jerry Wright, Andrew Clark and Michelle Gowdy volunteered to be part of the small workgroup.

## **Property Owner’s Associations and Managed Conservation Landscaping – HB 528 (Krizek, P., 2024)**

*Renee Grebe, Nature Forward (formerly Audubon Naturalist Society)*

**Renee Grebe**, Northern Virginia conservation advocate for Nature Forward, formerly known as the Audubon Naturalist Society spoke about how homeowners’ associations (HOAs) can work with their boards to get conservation landscaping on their common property.

She said that she was not going to talk about conservation landscaping in common areas, just about [HB 528](#) (Krizek, P., 2024). The intent of the bill is to provide HOA residents the right to install managed conservation landscaping on their private property. Conservation landscaping is the practice of modifying the visible features of turf grass or bare soils, to an area of land that incorporates environmentally sensitive design, low impact development, non-invasive native plants, and/or integrated pest management.

She explained that six other states have already passed similar laws which ensure that common interest communities and HOAs cannot unreasonably restrict homeowners from installing conservation landscaping. In Florida, California, Texas, and Colorado these laws are focused on water conservation and low-water usage gardening. In Maryland and Maine, the laws are focused on rain retention, low-impact landscaping, and habitat.

The National Association of Realtors unveiled their sustainability survey on May 23, 2024, suggesting that the industry is right at the beginning of a “green revolution” noting that half of their clients expressed interest in sustainability which reflects a broader societal shift towards eco-conscious living.

She noted that although eco-conscious living is trending, there are still instances in which the HOAs do not approve of managed conservation landscaping which could lead to costly lawsuits and added that this is important because of the number of communities in Virginia with HOAs.

She went on to explain how flash floods have increased in Virginia and how this will impact infrastructure which could affect HOAs. She added that by passing this bill ([HB 528](#)) homeowners could be part of the solution to this problem.

Nature Forward worked in collaboration with the Community Associations Institute and agreed that managed conservation landscaping should meet the following criteria:

- It should not include turf grass lawns left unattended for the purpose of returning to a natural state.
- It should not adversely affect drainage on neighboring properties.
- It should not impede public rights-of-way such as sidewalks or roads.
- It should be routinely maintained.

The key takeaways were:

- Nearly one in four Virginia residents live in an HOA.
- Virginia would not be the first state to pass a similar law supporting HOA managed conservation landscaping.
- Virginia is seeing a trend in wetter weather, bringing excess stormwater, which causes economic impacts.

- Managed conservation landscaping is not just beautiful, it is practical and can help us clean our drinking water, enhance biodiversity, and help support our economy.
- HOA residents need legislative support to allow them to pursue conservation landscaping projects on their private property.

## Questions:

*Delegate Bulova* asked what major operational parts of the Maryland and Maine legislation were used as a guideline to draft the bill for Virginia.

*Renee Grebe* replied that they looked at the Maryland legislation as a good template for Virginia and learned Maryland's legislation is vastly different than Virginia's. She noted they realized the language that passed in Maryland would never pass in Virginia, so they used that legislation as an inspiration for the bill using language that was more appropriate for Virginia.

### ***Melinda Soltys, Northern Virginia Chapter of Wild Ones***

**Melinda Soltys**, President of the Northern Virginia chapter of Wild Ones said that her experience with her HOA inspired her to cofound her local chapter of Wild Ones, which is a national non-profit organization. She shared why legislation allowing managed conservation landscaping would have helped her and her HOA.

She explained how she spent seven years creating a pollinator garden which was very popular with the residents. However, she received a violation letter from her HOA saying she had to replace the entire garden with turf grass. She was told she had to apply for permission to plant her garden. Her application was denied on the grounds that the gardens must be harmonious and well maintained. After nine months of meetings and intense negotiations she finally reached a compromise with the HOA.

She concluded by saying that the good news is legislation works and gave the example of how her HOA began receiving multiple applications to install solar panels on homes in her community and thanks to legislation many families were able to install them on their homes.

### ***Kathleen Machado, Community Associations Institute (CAI)***

**Kathleen Machado** is a licensed Virginia attorney, and her practice is devoted exclusively to representing common interest communities. She added she was at this meeting to voice the interest of CAI which represents thousands of common interest communities in the U.S. and internationally.

She explained that while they support the use of conservation landscaping and although the concept is simple, the implications of this bill are far reaching for both those looking to install and maintain conservation landscaping as well as for the neighbors within a community and the volunteers who govern any applicable common interest covenants or declarations.

Delegate Krizek and representatives of Nature Forward discussed two concerns:

- The protection of restrictive covenants and the expectations of persons who bind themselves to these covenants within a common interest community.
- The ability to enforce these covenants and how to enforce them is one of the main concerns.

She suggested the workgroup consider the following items:

- Determine a clear definition of managed conservation landscaping.
- Ensure that associations are not exceeding their authorities and overregulating.

- Create language that applies to distinct types of communities, such as being in a rural setting versus an urban setting or having large or small lot sizes.
- Include language that allows for reasonable restrictions to assist associations with writing their covenants.

## Questions:

*Delegate Bulova* asked for clarification for when Community Associations Institute assists with writing restrictive covenants or declarations. He said they are using a very broad definition of managed conservation landscaping.

*Kathleen Machado* replied that many of the restrictive covenants will include a general obligation for an association and for a homeowner to maintain and take care of their lot. This varies between communities and that is why there needs to be a clear definition of what maintenance means in the bill.

Several members of the workgroup offered comments on how broad the language in bill HB 528 ((Krizek, P., 2024) is expressing their concerns on how difficult it could be to create language that covers all the diverse types of neighborhoods for the purpose of writing restrictive covenants.

## Presentation: Existing Blight Tools to Promote Housing Access

*Kelly Harris-Braxton, Executive Director, Virginia First Cities*

**Kelly Harris-Braxton**, Executive Director, Virginia First Cities explained that she was there to discuss one of two budget amendments that Delegate Bulova introduced during the 2024 session for Virginia First Cities, which is the Housing Revitalization Zone Fund ([Section 36-167](#)) found in the Code of Virginia.

She gave an overview of Virginia First Cities. It was founded in 2000 to advocate for increased state funding for the Commonwealth's older cities. It consists of seventeen of the state's oldest and most historic cities, and its mission is to support them.

She explained that the organization's focus has been the following:

- Ameliorating conditions that result in urban blight has been VFC's main concern.
- Work to create a state housing trust fund to support the development and retention of affordable housing.
- Provide incentives for workforce housing so workers can live in communities where they work.
- Fund Virginia's existing Housing Revitalization Zone Program and target implementation to urban areas to support housing development and focused revitalization activities.

She added that the Housing Revitalization Zone Program was never funded and that is the purpose of her presentation to the workgroup. Virginia First Cities believes the statute needs to be revised since it was passed in 2000 and has not had any revisions in over 20 years.

She discussed blight and housing and explained that in 2023 Virginia First Cities conducted a housing survey among members with workforce and blight housing questions. These are some of the results of the survey:

- Blighted properties decrease the availability of safe, solid housing that is needed at all levels of affordability.
- Infrastructure such as water, sewage, natural gas, and electricity are needed for redevelopment.
- The lack of landlords who would accept housing choice vouchers could increase.
- There need to be incentives for developers to build market rate homes.

The bottom line is that Virginia First Cities has been looking to use tools already in the Code of Virginia that would be helpful for our cities in need of redevelopment for housing. VFC's seventeen members all said they

need a state funding partner as they undertake holistic measures to redevelop areas of concentrated poverty. She declared these cities are desperate for infrastructure and removal costs.

## Questions:

*Michelle Gowdy, Virginia Municipal League* asked if this statute still requires work and would this workgroup discussion be looking more thoroughly into the regulatory process and the content of the regulations.

*Kelly Harris-Braxton* confirmed that regulations have not been established yet and she believes that the requirement by code is that the Virginia Department of Housing and Community Development (DHCD) would be creating those regulations.

*Andrew Clark, Homebuilders Association of Virginia* commented that instead of having DHCD promote regulations perhaps it could offer the localities more flexibility to create their own zones.

*Harris-Braxton* explained that the housing revitalization zone program says the applicants can decide some of the local incentives themselves as part of the application in combination with state incentives.

*Christie Marra, Poverty Law Center* asked if there had been conversations about creating limitations regarding the use of those funds since individuals or corporations can apply for funding. She expressed her concern that the funds would be used to redevelop housing that is not affordable.

*Harris-Braxton* answered that there have not been many conversations regarding the program and that's where VFC thinks it would be good for DHCD and workgroups such as this one to come together and have these conversations to make sure there are set parameters.

*Delegate Bulova* asked how far along VFC has gotten with the revisions to their metrics. He mentioned there were workgroup members who would be willing to look at the revisions and asked for an estimated timeframe.

*Harris-Braxton* confirmed that over the summer would be a great time to do it and would be open to working with this group.

*Delegate Coyner* commented that she would like to see the program coupled with other programs allowing individuals to purchase property and take advantage of those incentives. That would be helpful and would increase the opportunity for homeownership to individuals of a certain income level.

*Harris-Braxton* agreed that coupling these programs would be beneficial to individuals who do not have access to funding for improvements to their existing homes or for purchasing property.

*Delegate Bulova* asked if VFC's assessment of the Urban Public-Private Partnership Redevelopment Fund ([Code of VA Chapter 24.1](#)) is that it's not useful or needs to be removed, or is the Housing Revitalization Zone Program Virginia First Cities priority.

*Harris-Braxton* said they thought that the Housing Revitalization Zone Program should be the first.

*Delegate Bulova* mentioned that there were individuals in the workgroup interested in helping work through the revisions. Andrew Clark, Michelle Gowdy, Christie Marra and Joe Lerch offered their assistance.

## **Public comments:**

*Jimmy Blackford, VA Progressives* expressed his grave concerns regarding the two million Virginians who live under prohibitions imposed by homeowners' associations regarding turf grass. He wants the grass to be allowed to grow to return to its natural state. He asked that lines 22 through 24 of bill ([HB 528](#)) be eliminated.

The meeting adjourned at 11:46 AM.