

COMMONWEALTH OF VIRGINIA

SENATOR MAMIE E. LOCKE, Chair
DELEGATE CARRIE E. COYNER, Vice-Chair
ELIZABETH A. PALEN, Executive Director



701 EAST FRANKLIN STREET, SUITE 704
RICHMOND, VIRGINIA 23219

vhc.virginia.gov

(804) 967-3994

VIRGINIA HOUSING COMMISSION

Summary

Local Land-use and Community Living Workgroup
Tuesday, August 20, 2024; 10:00 a.m.-12:26 p.m.
Senate Room C, the General Assembly Building

Introduction:

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

Workgroup members present: Delegate David Bulova, Delegate Carrie E. Coyner, Delegate Daniel W. Marshall (virtually), Delegate Briana Sewell, Martin Johnson, Gubernatorial Appointee, Ashley Welburn, Gubernatorial Appointee, Director Elizabeth Palen, Bismah Ahmed, Laura Bateman, Andrew Clark, Troy Garret, Michelle Gowdy, Randy Grumbine, Bryan Horn, Erin Kormann, Brian Koziol, Joe Lerch, Pia Trigiani, Henry Watkins, Jerry Wright.

Staff present: Molly Bowers, Jesseca Hoff.

The meeting began with introductions and opening remarks followed by presentations and discussion.

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

Presentations

Property Owners' Associations and Managed Conservation Landscaping – HB 528 (Krizek, P., 2024)

Pia Trigiani, Common Interest Communities Attorney

Pia Trigiani provided an update on the ongoing discussions surrounding HB 528, that focuses on alternative types of landscaping within property owners' associations. She reported that while proponents of the bill and various property owners' associations have been actively negotiating to find a compromise, they have yet to reach a consensus. Trigiani noted that the proposals remain under review, and discussions will continue between common interest communities and legislators to explore potential solutions.

Entering Adjoining Property for Repair, Maintenance – SB 123 (VanValkenberg, S., 2024)

Jesseca Hoff, Virginia Housing Commission

Jesseca Hoff mentioned several provisions from laws in other states that may be worth consideration for potential inclusion in Virginia legislation concerning property access. Those provisions are

DELEGATE CARRIE E. COYNER
DELEGATE DAVID L. BULOVA
DELEGATE DANIEL W. MARSHALL II
DELEGATE ADELE Y. MCCLURE
DELEGATE BRIANA D. SEWELL

SENATOR MAMIE E. LOCKE
SENATOR GHAZALA F. HASHMI
SENATOR WILLIAM M. STANLEY

JOSHUA GOLDSCHMIDT
MARTIN JOHNSON
ASHLEY WELBURN

- Requiring owners requesting entry to adjoining property to restore the adjacent land to its condition prior to entry;
- Requiring the owner requesting access to adjacent property to file a bond to ensure payment to the adjacent landowner if damages occur;
- Expressly prohibiting entry into buildings that may be on adjoining property, meaning access is limited to exterior adjacent land;
- Limiting approved work requiring entry to adjacent land to necessary repairs and maintenance while excluding improvements to property; and
- Requiring owners requesting entry to adjacent land to make a good faith effort to obtain permission prior to filing a court order

Joseph Hudgins, Independent Insurance Agencies

As Joseph Hudgins could not attend the meeting in person, Elizabeth Palen, the Director of the Housing Commission, read his prepared statement.

Joseph Hudgins highlighted concerns regarding the assumption that insurance would cover damages resulting from accessing a property through a neighboring one, as proposed in SB123. He pointed out that properties often insured by surplus lines carriers—such as those requiring rehabilitation or being vacant—may have restrictive coverage terms not regulated by the Virginia Bureau of Insurance. Hudgins emphasized that common insurance policies, including homeowner, general liability, personal liability, and commercial auto insurance, typically exclude coverage for damages that are "expected or intended," which is likely in scenarios where property access causes damage. He also noted that while a bond could be considered as an alternative, it is not equivalent to insurance and would require repayment if it responds to a claim, potentially not covering expected or intended damages.

Questions and Discussions

Pia Trigiani suggested to limit potential expenses by putting the cases in general district courts rather than circuit courts. She explained that common interest communities seek abatement orders in general district courts because they are quicker, less expensive and accrue lower legal fees.

Delegate Bulova emphasized the importance of incorporating five key aspects from Jesseca Hoff's presentation into the Commission's bill.

Local Government Actions related to Comprehensive Plans - HB 1236 / SB 721 (Marshall, D., 2024) / (Mulchi, T., 2024).

Bryan Horn, Director of Virginia Department of Housing and Community Development

Bryan Horn elaborated that the bill was crafted to expedite actions by a specific deadline, emphasizing that time is a critical factor in development. He highlighted that SB 296, which pertains to residential plat review, operates at the same standard as residential projects but incorporates clearly defined deadlines. Horn underscored the consensus on the need for increased housing and expressed that accelerating the permitting and approvals process would directly contribute to the construction of more homes, thereby addressing the housing shortage.

Andrew Hopewell, AICP, President, Virginia Chapter of the American Planning Association, Director, Town of Culpeper Department of Planning & Community Development

Will Cockrell, AICP, Land Use Education Program (LUEP) Director at Virginia Commonwealth University; Senior Planner with EPR, PC; Adjunct Faculty

The presentation by the Virginia Chapter of the American Planning Association (APA) to the Virginia Housing Commission highlighted concerns about recent legislative changes (SB 721 / HB 1236) that could significantly impact local land-use and community living. The APA focused on three main issues: the potential invalidation of ordinances that incorporate Comprehensive Plans, the removal of an applicant's ability to petition the Circuit Court, and the automatic approval of plats if not acted upon within a set timeframe. **Andrew Hopewell** and **Will Cockrell** said that these changes could lead to conflicts with existing Virginia law, increase the burden on local governments, and result in forced application denials due to insufficient time for revisions.

Additionally, The APA suggested that the legislation could complicate rezoning processes by reducing the time available for localities to process applications, potentially leading to higher costs, delays, and transparency issues. The APA expressed concerns that these changes might undermine local planning efforts and hinder the effective development of communities across Virginia. The APA agreed that they want the process to be timely, but they also want to protect communities and have sufficient time to check potential hazards before issues arise.

Andrew Clark, Home Builders Association of Virginia

Andrew Clark proposed several key improvements to the development approval process, including a four-month review period and a 45-day resubmission timeline. He stressed the importance of restricting ministerial acts and establishing clear, objective criteria for project approval. Clark highlighted the frequent misunderstanding of Comprehensive Plans, noting that while they may be discussed in broad terms at the General Assembly, they carry significant influence at the local level, even if they do not hold the same legal status as zoning ordinances. He also pointed out the challenges posed by community opposition to land use changes, emphasizing that without adequate protections in the Comprehensive Plan, decisions can become more subjective. Additionally, Clark referenced the Healthy Communities Bill, questioning whether developments effectively address issues like food deserts and noting the difficulty of advancing projects that align with zoning but lack Comprehensive Plan support. He advocated for a balanced approach that expedites the approval process, increases predictability, and ensures both efficiency and community protection.

Questions and Discussions

Andrew Clark asked if the Code of Virginia imposes limits on when resubmissions can be made. **Andrew Hopewell** responded, explaining that the decision on resubmission timelines is left to localities and is not governed by the Code of Virginia.

Clark then provided an example where minor modifications or adjustments to proposals might accidentally omit a small detail, requiring the project to wait an additional 45 days and incur a \$1,500 fee. He emphasized that he was not advocating for a comprehensive overhaul of Comprehensive Plans but rather seeking a more efficient process to address minor issues.

Martin Johnson stressed the urgent need for more housing in the Commonwealth and asked the APA to propose solutions that could help meet this need, instead of simply opposing the proposed legislation. **Hopewell** suggested that one possible solution could be to limit the number of iterations allowed in the revision process. However, he noted that because each locality has its own unique circumstances, a statewide mandate might not be practical.

Clark agreed with **Hopewell's** suggestion to limit the number of revision iterations and pointed out that many localities, such as Prince William County, do not have the staff capacity to meet expedited timelines, making it difficult to adhere to a strict 10-day timeline.

Delegate Marshall requested the formation of a workgroup to address this issue, and the Chair, *Delegate Bulova* approved the request.

Director Palen asked that all who were interested in taking part in the workgroup email her at epalen@vhc.virginia.gov.

Zoning; Certified Recovery Residence - HB 646 (Coyner, C., 2024)

Brenda Castañeda, Deputy Director of Advocacy at Housing Opportunities Made Equal (H.O.M.E.)

Brenda Castañeda, Deputy Director of Advocacy at H.O.M.E., provided an overview of the ongoing legal case involving Tri-Hope Life Ministries and Powhatan County. Tri-Hope, a local non-profit organization operating recovery homes for individuals recovering from substance use disorders, encountered significant challenges when attempting to obtain a conditional use permit from Powhatan County to open a new recovery residence. The County's zoning ordinances, which categorize recovery homes as halfway houses requiring a conditional use permit, were criticized for being discriminatory and for treating individuals with disabilities differently.

Castañeda highlighted that despite Tri-Hope's efforts to comply with the County's requirements and their requests for reasonable accommodations under the Fair Housing Act, Powhatan County failed to engage in the legally mandated interactive process. She stated that public opposition was rooted in prejudice and discriminatory attitudes, and that she stated played a significant role in the County's decision-making process, ultimately leading to the denial of the conditional use permit application by the Board of Supervisors. Despite meeting the necessary definitions, Powhatan County has never granted a conditional use permit for recovery homes, reflecting discriminatory practices influenced by public opposition rooted in negative stereotypes rather than objective criteria.

Castañeda referenced a joint statement issued by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Justice (DOJ) in November 2016, which provided guidance on the Fair Housing Act (FHA) and its specific application to zoning and land-use laws. She emphasized that the FHA is very specific in prohibiting discrimination based on protected classes, including individuals with disabilities, and highlighted that the denial of the conditional use permit in this case was a violation of these protections. Castañeda argued that legislation could provide clearer guidance and protections for recovery residences, beyond what litigation alone can achieve.

Joe Lerch, Virginia Association of Counties

Joe Lerch explained that addiction is not currently recognized as a disability under Virginia law concerning housing. He shared that some localities are concerned about the implications of by-right zoning for recovery residences, particularly in relation to how these residences are certified and whether they fall under HIPAA regulations. Lerch highlighted the need for more information on the certification process to ensure recovery residences are not improperly categorized.

Sarah Scarbrough and David Rook both with VARR spoke in favor of HB 646. There were 32 members of their organizations in the audience who identified as being present in support of this legislation. Scarbrough outlined the standards of VARR certified recovery residences and how they are federally adopted by SAMHSA and inspected every year by VARR staff to ensure safe and supportive environments that meet their standards.

Sarah Scarbrough, Chair of the Virginia Association of Recovery Residences (VARR) and founder of REAL LIFE, which operates 11 recovery houses, clarified several points about the proposed legislation. She emphasized that the bill is not intended to circumvent existing laws but to align Virginia's laws with federal FHA standards. Scarbrough highlighted the stringent standards VARR enforces, including annual inspections to ensure safe and supportive environments. She also pointed out the complexities of adhering to federal guidelines and the challenges recovery residences face due to zoning laws and public opposition.

David Rook, former President of VARR and current leader at Frontier Recovery, shared his experience in operating recovery homes in Henrico County. He discussed the challenges of navigating single-family

zoning ordinances and the backlog of individuals who are in institutions and in need of recovery housing. Rook stressed the importance of proper certification and oversight to ensure recovery residences provide legitimate and effective services, and he raised concerns about the potential misuse of local government authority to block recovery homes under the guise of zoning issues.

Questions and Discussions

Delegate Bulova inquired if there was a need for new legislation given the ongoing lawsuit that might address the issue, but *Castañeda* responded that while case-by-case litigation is important, a legislative approach would offer more consistent and clear protections.

Delegate Coyner reasserted the necessity of the bill by adding that while people in recovery are a protected class at the federal level, they are not at the state level and also because localities reached out to her about the concerns regarding the certification of recovery residences. She emphasized that this legislation is about the certification process of DBHDS as a state process to certify recovery residences.

There was also a discussion about the maximum occupancy of recovery residences. *Delegate Bulova* inquired about the maximum number of residents allowed, as there appeared to be conflicting information. *Castañeda* clarified that single-family zoning does not impose a maximum number of residents, and recovery residences should be treated similarly.

Delegate Bulova asked *Delegate Coyner* to clarify the certification process for recovery residences in Virginia, specifically whether the process is governed by state law or regulation. He also inquired about who is responsible for certifying these residences, the extent of oversight that is provided over time, and what safeguards exist to ensure the quality of these certifications. Additionally, *Bulova* questioned what actions the state could take if the organizations responsible for certification were not fulfilling their duties effectively. *Delegate Coyner* responded by explaining that the certification process is based on national standards and is not directly managed at the state level.

Delegate Bulova reiterated concerns regarding the lack of maximum occupancy standards in the bill and suggested coming up with language to address a maximum number of allowable residents.

Delegate Bulova requested *Delegate Coyner* to convene a workgroup in her capacity as a legislator and report back to the Commission.

Low Income Housing Tax Credit (LIHTC) Extension

Stephanie Flanders, Virginia Housing; Tom Simplot, Housing Policy Director at Sugar Creek Capital

Stephanie Flanders from Virginia Housing provided a comprehensive update on the Housing Opportunity Tax Credit (HOTC) program. Flanders provided an overview of the program's performance from 2021 to 2023, highlighting the allocation and utilization of tax credits to support affordable housing developments across Virginia. For the 2024 HOTC application round, Virginia Housing received 24 applications requesting a total of \$24,255,871 in annual tax credits. However, only \$5,694,017 in annual credits were available for allocation, illustrating the high demand for affordable housing funding within the state. Flanders provided updates on various projects funded in previous years, with many in construction or finalizing funding sources. In total, those projects represent 1,303 affordable housing units with a combined annual HOTC allocation of \$27,305,983, underscoring Virginia Housing's commitment to expanding affordable housing options throughout the state.

Tom Simplot highlighted the role that Low Income Housing Tax Credits (LIHTC) and HOTC programs play in supporting affordable housing development in Virginia as well as financial strategies employed to make these projects successful and advocated for the extension of the HOTC program. He explained that 9% LIHTC's cover approximately 70% of project costs and is awarded through a competitive process, making it crucial for new construction and substantial rehabilitation projects. In contrast, the 4% LIHTC's,

often paired with tax-exempt bonds, cover about 30% of project costs. It is used for both new construction and acquisition/rehabilitation projects. Simplot emphasized the importance of extending the program and combining state credits with federal credits to fill financing gaps to make these affordable housing projects financially viable. He also mentioned how state credits can serve to fill gaps in funding, particularly in rural areas, where he suggested 33% of the credits as a set aside for rural areas.

Questions and Discussion

Delegate Bulova Raised concerns about extending the tax credit and suggested that any extension should be reviewed by both the House and Senate Appropriations Committees. He also called for a clearer definition of what constitutes "rural" versus "urban" areas in the context of credit allocation.

Andrew Clark Recalled discussions from 2019-2020 regarding affordable dwelling units and noted that there is strong support for the ideas presented. He mentioned that Sugar Creek has remained committed to Virginia and expressed his approval of the suggested strategies for affordable housing.

Brian Koziol Inquired about the differences between the first and second years of the program. ***Stephanie Flanders*** clarified that the first year's allocation was \$50 million. Koziol also asked whether other states had implemented similar programs, to which Tom Simplot responded that while it hasn't been widely adopted, there are ongoing discussions surrounding extending HOTC's.

The discussion touched on the high costs associated with building affordable housing, particularly due to stringent regulations. It was noted that zoning delays can lead to increased costs, which affordable housing providers cannot offset by raising rents, further emphasizing the need for efficient and effective financial strategies to support these projects.

Public Comment:

There was no public comment.

Conclusion:

The meeting was adjourned at 12:26 p.m.

The workgroup will meet on November 25 at 1:00 pm, 2024 in Senate Room C of the General Assembly Building.