ZONING PROCEDURES IN URBAN AREAS

REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 6

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*** Mr. Frost, deceased, September 18, 1969.

ZONING PROCEDURES IN URBAN AREAS

REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

During the 1968 Session of the General Assembly the Fairfax County delegation, at the suggestion of the Fairfax County Board of Supervisors, introduced in the Senate a special bill to change the planning and zoning structure and procedures of the County. The bill had been drawn in accordance with an extensive study and report by a special group, the Fairfax County Zoning Procedures Study Committee, appointed in 1966 by the County Board of Supervisors. Because time was too short to permit careful examination of the bill, the General Assembly adopted a resolution directing the Virginia Advisory Legislative Council to study the bill, Senate Bill No. 455, and other matters related to zoning procedures, and recommend a course of action to the 1970 Session of the General Assembly. The resolution follows:

SENATE JOINT RESOLUTION NO. 61

Directing the Virginia Advisory Legislative Council to study zoning procedures in urbanized areas of the State.

Whereas, the rapidly increasing population of the State has created problems in certain compacted areas; and

Whereas, in order to take care of the population growth in these areas, planning through zoning ordinances is becoming increasingly important; and

Whereas, in certain areas geographically compacted and crowded with persons, long-range future plans for zoning are necessary; now, therefore, be it

Resolved by the Senate of Virginia, the House of Delegates concurring, That the Virginia Advisory Legislative Council is directed to study the zoning procedures in the large urbanized counties and cities of the State with a view to devising a system whereby land use regulations may be adopted pertaining to the use and development of land, including subdivision control regulations and zoning regulations, but excluding building, plumbing, sanitary and electrical codes. All agencies of the State shall assist the Council in its study. The Council shall complete its study and submit its report to the Governor and the General Assembly not later than November one, nineteen hundred sixty-nine.

The Council selected Lewis A. McMurran, Jr., of Newport News, member of the House of Delegates and member of the Council, to serve as Chairman of a Committee to make the initial study and report to the Council. Selected to serve as members of the Committee with Mr. McMurran were the following: Thomas A. Cary, President of the Home Builders Association of Virginia, Springfield; Nicholas E. Gretakis, President of the Virginia Real Estate Association, Norfolk; William B.

Hopkins, member of the Senate of Virginia and Chairman of the Senate Committee on Counties, Cities and Towns, Roanoke; Joseph B. Johnson, President of the League of Virginia Counties, Manassas; Roy B. Martin, Jr., Mayor, City of Norfolk and President of the Virginia Municipal League, Norfolk; R. Maclin Smith, member of the House of Delegates and Chairman of the House Committee on Counties, Cities and Towns, Kenbridge; and T. Edward Temple, Director of the Division of State Planning and Community Affairs, Richmond.

Senator Hopkins was elected and served as Vice-Chairman.

A public hearing was held and statements sought from interested parties; as a result, helpful suggestions and valuable information were received. Particularly interesting reports were made by Fred A. Mauck, Consultant to the Fairfax County Zoning Procedures Study Committee; Rosser H. Payne, a former Fairfax County planning official; Senators Omer Hirst and Robert Fitzgerald of Fairfax; and The Virginia Section of the American Institute of Planners.

The Committee did not confine its study to Senate Bill No. 455, which was applicable only to Fairfax County, but also considered the advisability of general legislation on subjects covered by that bill and other matters pertaining to zoning which were brought to its attention by the hearings, correspondence, and discussions of the Committee.

At the conclusion of its study, the Committee reported to the Council. The Council has carefully considered the report of the Committee, and makes the following recommendations:

RECOMMENDATIONS

1. That Senate Bill No. 455, which contains a revision of zoning procedure applicable only to Fairfax County, not be adopted by the General Assembly.

2. That the stated policy that charter provisions supersede general zoning legislation be revised, so that all localities (counties, cities and towns) are subject to the same general zoning legislation.

3. That to aid in enforcement of the conflict of interest provisions all applicants for zoning changes be required to file a statement identifying the members of the governing body who have an interest in the property.

4. a. That the local governments be prohibited from requiring developers or builders to donate sites for schools, parks or other purposes without compensation, but that they be permitted to require them to reserve such land so long as adequate compensation is paid by the locality.

b. That localities be empowered to require developers to build oversized sewers, drains, streets, or other facilities, provided they pay for the excess cost.

5. That a procedure for public hearings be provided to encourage a fairer, briefer, and more orderly proceeding, and to provide a meaningful record for judicial review.

6. That specific provision for judicial review to be applied for within 90 days be set out in the enabling legislation.

In 1962, after an extensive study, the General Assembly adopted uniform enabling legislation, to apply to all local governments (counties, cities and towns), delegating to them the power to enact ordinances relating to planning, zoning, and development. These provisions are found in §§ 15.1-427 through 15.1-503 of the Code of Virginia. Cities and towns are not limited by these provisions, however, if their charters conflict with them.

Because it was intended to apply to jurisdictions with widely differing needs, the enabling legislation was made broad and flexible. It provides a structure under which a rapidly developing county such as Fairfax, with a large and sophisticated planning staff, can provide for such innovations as a planned new town (Reston) or planned unit developments, while sparsely populated rural areas with no staff at all can enact very simple zoning ordinances. At the same time, since both are subject to the same ground rules, each can profit from the other's example. If the two should be in the same regional planning district, or should consolidate, special legislation to unify planning systems would not be necessary. Both can profit from the court decisions in other parts of the State. Federal or State agencies advising each may do so with a minimum of confusion over the applicable law. An outsider wishing to bring his business to Virginia, or a Virginian wishing to do business in another part of the State, may master the zoning and planning requirements of different areas with little confusion over the underlying legal structure.

Senate Bill No. 455 violates this principle. It is by its terms applicable only to Fairfax County. Instead of providing specific exceptions to present law, it is in effect a completely new enabling act, applicable to one county, in every respect far more specific than the general legislation. Many of the provisions are so detailed and specific that they would have to be continuously revised as times change.

The Council recognizes that Fairfax County is exceptional, as it is developing at a more feverish pace than most other areas in the State. However, the Council has concluded that whatever legislation is proposed should be integrated more carefully into the existing zoning legislation and made applicable to all jurisdictions in the State.

In discussing which parts of the bill would be beneficial to the whole State, the Council found that many of the provisions of the bill were unnecessary, as the solutions they proposed were available under present law. The proposed organization of the Department of Planning and the provision for use of planned unit developments are two examples. Other provisions are a radical departure from present law.

The most significant proposal is the complete reorganization of the Fairfax County planning and zoning apparatus. The proposal reverses the roles of the planning commission and the planning staff, giving the policy function to the staff and making the lay commission a subordinate advisory body. Even more importantly, it gives a professional, nonelective group, the Land Use Review Board, power to decide rezoning applications.

In the opinion of the Council, neither of these changes would be wise. The proposal would serve to divorce the planning function from the citizens of the county. The present legislation permits a member of the local administration to be a voting member of the planning

commission. The Council believes that adequate representation from the staff can be obtained in this manner. The Land Use Review Board would consist of full-time employees of the county, neither closely involved in the planning process nor accountable to the people. It is the conclusion of the Council that the decision of rezoning applications should not be divorced both from the people and from the whole planning process.

The Fairfax County report cites the present delay in the processing of rezoning applications as one justification for their proposed reorganization.

Some of this delay is necessary and proper; the locality should be allowed enough time for its planning commission, staff, and governing body to examine and research each petition carefully before making a decision. Some delay is caused by the use by planning departments of procedures which are unduly complicated and lengthy. The Council feels that the localities themselves can and should rectify this problem where it appears, and can do so easily within the existing enabling legislation.

In 1968, the General Assembly amended the zoning legislation to provide that, in lieu of separate hearings, the planning commission and governing body could have a single joint hearing on an ordinance or amendment. There has been no complaint that this procedure has been misused, and it shoud be an excellent vehicle for reducing delay. It is the feeling of the Council that further steps toward expedition must depend largely on the efforts of the localities rather than amended legislation.

Senate Bill No. 455 contains a section empowering this governing body of the County to impose reasonable conditions before granting a zoning petition. The Council has concluded that this provision would be a dangerous one, encouraging a governing body to set conditions on every zoning petition and ultimately control the type of business transacted on each plot of land. The present legislation requires that zoning districts have uniform restrictions, in order to ensure that those in equal situations are treated equally. Under the proposed scheme, every landowner would be subject to different and perhaps very specific rules, which would not be set out in the ordinance, and which might be a surprise to a subsequent purchaser of the property.

The Fairfax Bill also provides for regulation of development timing, by creation of three zones: one for immediate development, one for development in the near future, and the third to be held in non-intensive uses for an indefinite period, until the time is ripe for its development. The Council feels that close regulation of development timing, and especially the use of the holding zone, would be unacceptable and impractical, both for developers and those wishing to settle in the county. It therefore does not recommend that these methods be authorized.

MUNICIPAL CHARTER PROVISIONS

Under present law, § 15.1-501 of the Code of Virginia, all municipal charter provisions related to zoning and planning remain unchanged by the general zoning legislation. The Council concludes that this provision should be repealed, and be replaced by a provision making the general legislation applicable to all cities and towns. As discussed at length above, the existence of separate ground rules for different juris-

dictions complicates regional planning in interdependent areas, confuses those who wish to develop interests in the State, complicates the advisory function of State agencies, and prevents communities from profiting by each other's example. As the general legislation is broad and flexible, the change is not likely to cause undue hardship.

As a concomitant recommendation, the Council suggests that in the future the General Assembly refrain from enacting charters which supersede the general zoning legislation.

CONFLICTS OF INTEREST

Senate Bill No. 455 contains detailed and specific provisions designed to prevent conflicts of interest. It sets forth rules preventing the planning personnel from owning property in the county as well as more general rules of disclosure and disqualification.

After Senate Bill No. 455 was drafted, the General Assembly passed general amendments to §§ 15.1-444.1 and 15.1-73.2, dealing with conflicts of interest in planning commissions and governing bodies, respectively, and added § 15.1-73.4, applicable only to Fairfax County, to the Code. It is the feeling of the Council that these provisions are adequate, if § 15.1-73.4, applicable to Fairfax County, is extended to apply to the whole State.

This provision sets forth certain business relationships, which, in addition to an interest in the property or the outcome of the case, might prejudice a voting member of the governing body. The section also requires that the applicant for an individual zoning change identify those who have the specified relationships. The Council recommends that this provision be broadened so that the applicant must identify not only those with the interests specified, but also those with any interest in the property.

As a member of a governing body or planning commission may not always know that he has an interest in a piece of property, the requirement that the applicant report it may serve as a reminder as well as an additional safeguard.

The Council has concluded that these changes will be sufficient to eliminate conflict of interest in the final decision of zoning matters. If any local government feels that further rules are necessary, such as preventing key planning personnel from acquiring interests in real estate in the locality, it is free to do so by ordinance.

One other matter deserves mention here. The 1968 General Assembly authorized a Commission to study the conflict of interest legislation and draft a single law to cover all State and local offices, agencies, and employees. The Council recommends that the zoning conflict of interest legislation recommended above be included in the general act.

DONATION OF SCHOOL AND OTHER PUBLIC SITES

In order to obtain land for schools, parks, and other public facilities, many localities have pursued a practice of requiring a developer to donate land as a prerequisite to approval of his plat under the site plan or subdivision ordinance. They have done so without specific statutory authority; in fact, the General Assembly has on several occasions refused to enact legislation which would authorize the practice. The rationale for the practice is that the developer is creating the need

for the facilities, and that since the developer will pass the cost of the donated land on to the ultimate buyer of the lots or buildings, part of the cost of the public facilities is being borne by those who will benefit from them.

Many developers are content with the present system; it is often possible to donate undevelopable land, and the location of a school or park nearby may be a good selling point. On the other hand, the local government has an opportunity to exercise arbitrary power, close to blackmail, by requiring donations as a prerequisite to approval of a plat. Moreover, the developer of a large tract is often required to donate such a site when his smaller competitor, who will benefit equally from the proximity of the facility, is not asked to donate because his lots would be too small to use. This gives the smaller developer a competitive advantage, as he does not have to include the cost of the donated land in the price of his product. Finally, it is an inefficient method of obtaining public facilties, as the locality must either choose sites where land is being developed or wait until the owner of the best site chooses to develop.

The Council believes that this device is inequitable and should be prohibited.

A similar problem is the provision of facilities such as streets, drains, water mains, or sewers. Developers are generally required to supply such facilities for their own subdivisions. Typically one subdivision is followed by others, and later settlers will use the facilities of the first subdivision. Some jurisdictions have required the original developer to build oversized facilities as a condition of approval of his plat. The Council recommends that this practice be authorized, but only if the locality is required to reimburse the developer within ten years for the difference in cost between the installation of oversized facilities and the installation of those necessary for his subdivision. To provide funds for reimbursement, the jurisdiction should be empowered to charge subsequent developers for their share of the cost.

HEARING PROCEDURES

The present zoning legislation requires public hearings for many different purposes. For example, they are required before the adoption of a comprehensive plan, zoning ordinance, official map, subdivision ordinance, or an amendment of any of the above. Except for notice requirements, the legislation provides no guide to the proper procedure to be followed.

There is no need for the procedure to be uniform, so long as it is fair to all parties. In fact, uniform rules would not be desirable, as the situation in each community is different, and the nature of the proceedings varies, according to subject, from quasi-judicial to legislative.

However, because procedural standards closely affect substantive ights, the Council has concluded that certain requirements should be ncluded within the enabling legislation, to be applicable to all hearings held under the zoning and planning provisions of the Code, whether held by the governing body or the planning commission. The procedural requirements recommended are intended to ensure that each individual obtains a fair hearing and that if appeal is taken a court will have a meaningful record on which to make a decision. The

requirements are flexible since they must apply to different types of hearings and different local situations. Such procedures as cross-examination or testimony under oath are left to the localities, as in some situations they might be desirable, whereas in others they would be unwieldy or discourage participation. It would not be desirable to set any rules which would make it difficult for an interested party to participate without professional advice.

The Council recommends that the General Assembly require a governing body or planning commission which is to conduct a hearing to adopt and make readily available beforehand the procedure to be followed. Besides rules of order, the published rules should cover the order of speakers, time limits, the types of evidence and exhibits which will be acceptable and whether oaths will be required or cross-examination or rebuttal permitted. In addition, the governing body or commission should be authorized to include provisions for limiting testimony which is irrelevant, inflammatory, or unduly repetitive.

In addition, the proposed legislation requires that a verbatim record be taken at every hearing before the governing body, by reporter or electronic means, and be made available to all interested parties at cost; that all written materials to be considered by the governing body be filed 10 days before the matter comes before the body, and be available for inspection by interested parties; and that all physical evidence presented at the hearing, or an exact copy thereof, be retained after the hearing as a part of the record. In order for a court to discover the basis for a decision, and an aggrieved party to decide whether an appeal would be feasible, the governing body is required to make written findings of fact and conclusions, either in the minutes or separately, to be filed within 10 days of decision with the record of the case. Finally, all comprehensive plans or amendments or parts thereof and zoning ordinances or amendments are required to be filed in the clerk's office of the jurisdiction. The Council has also concluded that it is unnecessary for a quorum of a planning commission to be present for a public hearing held by that body, so long as one member is present to conduct the hearing. A quorum will still be required, of course, if any action is taken.

JUDICIAL REVIEW

Although there is no provision in the Code for judicial review of an action of a governing body in a zoning matter, review is presently available in the circuit or corporation court of the jurisdiction. The case is often brought as a suit for declaratory judgment, challenging the authority of the governing body or the reasonableness of the decision, though other methods are also used. The standards of review are not set out in the statute.

At present, a suit may be brought at any time within two years of the decision by the governing body. As pointed out in the Fairfax County report, this long time period is detrimental to the locality, which may have destroyed some of its evidence, or had a turnover in staff during that time. On the other hand, a reasonable length of time is necessary for the aggrieved party to discover whether or not he has a good case.

The Council recommends that a uniform procedure be set out in the statute to govern appeal from a decision of the governing body in a zoning ordinance or amendment thereto. The procedure should be exclusive, and should be modeled after that set out in § 15.1-497

for appeal from a decision of the board of zoning appeals, with a few exceptions. Instead of the time period of thirty days, the Council recommends ninety days, as the typical record of a zoning case is far more complicated and voluminous than one from a decision of a board of zoning appeals. Also, due to the fact that a complete record is required in a zoning proceeding before the governing body, the appeal will be on the record, and additional evidence will be heard only if good cause is shown.

CONCLUSION

We desire to thank the members of the Committee for their careful and thorough study of the subjects covered by this report; and further to express our appreciation to B. C. Leynes, Jr., Chief, and W. Sidney Druen, Special Counsel, from the Local and Regional Planning Section of the Division of State Planning and Community Affairs for their invaluable advice and assistance; to Mary R. Spain and Sally T. Warthen of the Division of Statutory Research and Drafting, who acted as secretaries and staff for the Committee, and to those citizens and pubic officials who took the time to appear at the public hearings or to submit their suggestions in writing.

Respectfully submitted,

C. W. Cleaton, Chairman
J. C. Hutcheson, Vice-Chairman
Russell M. Carneal
Robert C. Fitzgerald
J. D. Hagood
Edward E. Lane
Garnett S. Moore
Lewis A. McMurran, Jr.
Sam E. Pope
Arthur H. Richardson
*William F. Stone
James M. Thomson
Edward E. Willey

*Senator Stone dissents from the recommendation that the general zoning law supersedes municipal charters.

A BILL to amend and reenact §§ 15.1-73.2, 15.1-435, 15.1-440, 15.1-448, 15.1-450, 15.1-452, 15.1-456, 15.1-459, 15.1-460, 15.1-464, 15.1-466, 15.1-467, 15.1-470, 15.1-493, 15.1-495, 15.1-496, 15.1-500, and 15.1-501, as severally amended, of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 15.1-431.1, 15.1-466.1, 15.1-493.1 and 15.1-493.2; relating to planning, zoning and subdivisions, to revise zoning procedures in the counties and municipalities of the State; and to repeal § 15.1-73.4 of the Code of Virginia, relating to disclosure by certain county boards of supervisors.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-73.2, 15.1-435, 15.1-440, 15.1-448, 15.1-450, 15.1-452, 15.1-456, 15.1-459, 15.1-460, 15.1-464, 15.1-466, 15.1-467, 15.1-470, 15.1-493, 15.1-495, 15.1-496, 15.1-500, and 15.1-501, as severally amended, of the Code of Virginia, be amended and reenacted, and that the Code of Virginia be amended by adding thereto sections numbered 15.1-431.1, 15.1-466.1, 15.1-493.1, and 15.1-493.2 as follows:

§ 15.1-73.2. Member of governing body having interest in pending zoning case to make disclosure and refrain from participating in proceedings.—(a) In any zoning case involving amendment of a zoning ordinance based upon an application for a change in the zoning map, which does not constitute the adoption of a comprehensive zoning plan or ordinance applicable throughout the political subdivision, and which is pending before the governing body of any political subdivision in which an individual member of such governing body owns, or has any interest in, the land to be rezoned, or any pecuniary interest in the outcome of the decision in such rezoning cases, such member shall, prior to any hearing on the matter or at such hearing, make a full, public disclosure of the exact nature of his interest, and shall refrain from voting or participating in any way in such case or in any hearing thereon. For the purpose of this section, "owning" or "having an interest in the land to be rezoned" means ownership by such member or any member or members of his immediate household, or ownership by way of partnership or as holder of ten percent or more of the outstanding shares of stock in or as a director or officer of a corporation owning such land, directly or indirectly, by such member or members of his immediate household. Having an interest in the outcome of the decision in such rezoning case means any interest by such member or any member or members of his immediate household, or through a partnership or corporation as above specified, in the outcome of the decision in such rezoning case.

(a-1) In addition to the disclosure required in subsection (a), each member of the governing body of any political subdivision shall, in each case described in subsection (a), make a full public disclosure of any business or financial relationship which such member has or has had within the twelve-month period prior to such hearing, with (1) the applicant in such zoning case, or (2) with the title owner, contract purchaser or lessee of the land to be rezoned, or (3) if any of the foregoing is a trustee (other than a trustee under a corporate mortgage or deed of trust securing one or more issues of corporate mortgage bonds), with any trust beneficiary having an interest in such land, or (4) with the agent, attorney or real estate broker of any of the foregoing. For the purpose of this subsection, "business or financial relationship" shall mean any such relationship (other than an ordinary customer relation-

ship with or by a retail establishment or public utility) which a member of the governing body or any member of his immediate household, either directly or by way of a partnership in which any of them is a partner, employee, agent or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent or attorney or holds ten percent or more of the outstanding bonds or shares of stock of a particular class, has, or has had within the twelve-month period prior to such hearing, with the applicant in the zoning case, or with the title owner, contract purchaser or lessee of the land to be rezoned, or with any of the other persons above specified. For the purpose of this subsection "business or financial relationship" shall also mean the receipt by a member of the governing body or by any person, firm, corporation or committee in his behalf from the applicant in the zoning case or from the title owner, contract purchaser or lessee of the land to be rezoned or from any of the other persons above specified, during the twelve-month period prior to the hearing in such zoning case, of any gift or donation having a value of one hundred dollars or more.

If at the time of the hearing in any such zoning case a member of such governing body has a business or financial interest, as above defined, with the applicant in the zoning case or with the title owner, contract purchaser or lessee of the land to be rezoned or with any of the other persons above specified involving the specific relationship, in any manner between them, of employee-employer, agent-principal, or attorney-client, he shall, prior to any hearing on the matter or at such hearing, in addition to making disclosure of such relationship, be ineligible to vote or participate in any way in such case or in any hearing thereon.

(a-2) In any zoning case described in subsection (a) hereof pending before a governing body the applicant in the rezoning case shall, prior to any hearing on the matter, file with the governing body a statement in writing and under oath identifying by name and last known address each person, corporation, partnership or other association

(1) who is an owner, contract purchaser, or lessee of the property to be rezoned; or

(2) *who has, at the time of application, a relationship as attorney, client, employer, employee, agent, or principal with any applicant, owner, contract purchaser or lessee of the property to be rezoned.*

(b) Any person knowingly and willfully violating the provisions of this section shall be guilty of a misdemeanor.

§ 15.1-431.1. Whenever a hearing is provided for by this chapter, the following requirements shall be applicable:

(a) The commission, board or governing body to conduct the hearing shall adopt and make readily available to the public rules of procedure to be applicable to the hearing or hearings conducted by that commission, board or body. Such rules shall include:

(1) general rules of order;

(2) rules governing time limits and order of speakers;

(3) whether or not oaths will be required;

(4) any applicable provisions for rebuttal or cross-examination;

(5) rules governing the acceptance of exhibits and exclusion of evidence. Such rules may include the warning that irrelevant, inflammatory, or unduly repetitious evidence will be excluded.

(b) In every hearing before the governing body, a verbatim transcript shall be made by reporter or electronic means, and be made available to interested parties at cost.

(c) All reports by any agency or staff of the municipality or county, and all written opinions or letters, shall be filed and made available for inspection by interested parties at least ten days before the matter is considered by the governing body.

(d) All physical evidence presented at a hearing before the governing body, or an exact copy thereof, shall be retained by the county or municipality as part of the record of the case, and made available for inspection by interested parties.

(e) The commission, board or body in charge of the hearing shall, as a basis of its decision, prepare a written opinion with specific findings of fact and reasons for its conclusions. Such opinions shall be filed with the record of the hearing within ten days of decision and made available for inspection by interested parties.

§ 15.1-435. Procedure for adoption of plan and amendments thereto.—The commission may recommend, or thereafter recommend amendments to, the comprehensive plan by resolution approved by at least a majority of its entire membership but the plan or amendments thereto shall not become effective as to a participating political subdivision until approved and adopted by a majority vote of the governing body thereof. Before recommending, or recommending amendments to such plan, however, the commission shall first submit it, or the relevant parts of it, to the planning commissions of the several jurisdictions comprising the region and shall give each of them a reasonable period of time, not less than thirty days, in which to submit their comments. The regional planning commission shall also hold at least one public hearing *in accordance with the provisions of § 15.1-431.1,* after giving notice as provided in § 15.1-431. *Upon adoption of a regional comprehensive plan, the governing body shall cause it to be filed in the office of the clerk of court of the county or city wherein deeds are admitted to record.*

§ 15.1-440. Quorum; majority vote.—A majority of the members shall constitute a quorum and no action of the local commission shall be valid unless authorized by a majority vote of those present; *provided, that any public hearing held by the local commission shall be valid despite the absence of a quorum so long as one member is present to conduct the hearing.*

§ 15.1-448. Notice and hearing on plan; recommendation by local commission to governing body.—Prior to the recommedation of a comprehensive plan or any part thereof, the local commission shall give notice and hold a public hearing on the plan *in accordance with the provisions of § 15.1-431.1* after notice as required by § 15.1-431. After such public hearing has been held the commission may by resolution recommend the plan to the governing body.

§ 15.1-450. Adoption or disapproval of plan by governing body.—After certification of the plan or a part thereof the governing body after a public hearing *in accordance with the provisions of § 15.1-431.1,*

with notice as required by § 15.1-431, shall proceed to a consideration of the plan and shall approve and adopt, amend and adopt, or disapprove the same within six months after such certification. *Upon approval, the plan and any amendments made thereto shall be filed in the office of the clerk of the court of the county or city wherein deeds are admitted to record.*

§ 15.1-452. Adoption of parts of plan.—As the work of preparing the comprehensive plan progresses, the local commission may, from time to time, recommend, and the governing body approve and adopt, parts thereof; any such part shall cover one or more major sections or divisions of the county or municipality or one or more functional matters. *Upon adoption, such part shall be filed as provided in § 15.1-450.*

§ 15.1-456. Legal status of plan.—Whenever the local commission shall have recommended a comprehensive plan or part thereof for the county or municipality and such plan shall have been approved and adopted *and filed* by the governing body, it shall control the general or approximate location, character and extent of each feature shown on the plan. Thereafter no street, park or other public area, public building or public structure, public utility or public service corporation other than railroads, whether publicly or privately owned shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the local commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination the commission may, and at the direction of the governing body shall, hold a public hearing *in accordance with the provisions of § 15.1-431.1,* after notice as required by § 15.1-431.

The commission shall communicate its findings to the governing body, indicating its approval or disapproval with written reasons therefor. The governing body may overrule the action of the commission by a vote of a majority of the membership thereof. Failure of the commission to act within sixty days of such submission, unless such time shall be extended by the governing body, shall be deemed approval when the commission notifies the owner or owners or their agents by certified mail. In the case of approval the owner or owners or their agents may appeal the decision of the local commission to the governing body within ten days after the decision of the commission. The appeal shall be by written petition to the governing body setting forth the reasons for the appeal. A majority vote of the governing body shall overrule the commission.

Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless involving a change in location or extent of a street or public area.

§ 15.1-459. Adoption; filing in office of clerk of court.—After such map has been prepared and recommended by the local commission it shall be certified by the commission to the governing body of the county or municipality. The governing body may then approve and adopt the same by a majority vote of the membership thereof and publish it as the official map of the county or municipality. No official map shall be adopted by the governing body or have any effect until approved by ordinance duly passed by the governing body of the county or municipality after

a public hearing *in accordance with the provisions of § 15.1-431.1,* preceded by public notice as required by § 15.1-431.

Within thirty days after adoption of the official map the governing body shall cause it to be filed in the office of the clerk of the court or courts of the county or city wherein deeds are admitted to record.

§ 15.1-460. Additions and modifications.—After adoption of the official map in accordance with this article, all streets, waterways, and public areas on subsequently recorded plats of subdivision shall be deemed additions or modifications of the official map and shall be placed thereon. No public hearing need be held or notice given in this connection.

The governing body may by ordinance make, from time to time, other additions to or modifications of the official map by placing thereon the location of proposed streets, street widenings, or street vacations, waterways and public areas in accordance with the procedures applicable to such county or municipality.

Prior to making any such additions or modifications of the official map, the governing body shall refer the same to the local commission for its consideration. The commission shall take action on such proposed additions or modifications within sixty days and report its recommendations to the governing body.

Upon receipt of the report of the commission, the governing body shall hold a public hearing *in accordance with the provisions of § 15.1-431.1* on the proposed addition or modification to the official map and shall give notice of such hearing in accordance with § 15.1-431. All such reports of the commission, when delivered to the governing body, shall be available for public inspection.

Any ordinance embodying additions to or modifications of the official map shall be adopted by at least the vote required for original adoption of the official map. After the public hearing and the final passage of such ordinance, the additions or modifications shall become a part of the official map of the county or municipality. All changes, additions or modifications of the official map shall be filed with the clerk of the court as provided in § 15.1-459.

§ 15.1-464. Local commissions to prepare and submit annually to governing body or official charged with preparation of budget.—A local commission may, and at the direction of the governing body shall, prepare and revise annually a program of capital improvement projects based on the comprehensive plan of the county or municipality for a period not to exceed the ensuing five years. The commission shall submit the same annually to the governing body, or to the city or town manager, county manager, county executive or other official charged with preparation of the budget for the municipality or county, at such time as it or he shall direct. Such capital outlay program shall include the commission's recommendations, and estimates of cost of such projects and the means of financing them, to be undertaken in the ensuing fiscal year and in a period not to exceed the next four years, as the basis of the capital budget for the county or municipality. In the preparation of its capital budget recommendations, the commission shall consult with the city or town manager, county manager, county executive or other executive head of the government of the county or municipality, the heads of departments and interested citizens and organizations and shall hold such public hearings *in accordance with the provisions of § 15.1-431.1* as it deems necessary.

§ **15.1-466. Provisions of subdivision ordinance.**—A subdivision ordinance may include, among other things, reasonable regulations and provisions that apply to or provide:

(a) For size, scale and other plat details;

(b) For the orderly development of the general area;

(c) For the coordination of streets within the subdivision with other existing or planned streets within the general area as to location, widths, grades and drainage;

(d) For adequate provisions for drainage and flood control and other public purposes, and for light and air;

(e) For the extent to which and the manner in which streets shall be graded, graveled or otherwise improved and water and storm and sanitary sewer and other utilities or other facilities installed;

(f) For the acceptance of dedication for public use of any right of way located within any subdivision which has constructed therein, or proposed to be constructed therein, any street, curb, gutter, sidewalk, drainage or sewerage system or other improvement, financed or to be financed in whole or in part by private funds only if the owner or developer (1) certifies to the governing body that the construction costs have been paid to the person constructing such facilities, or (2) furnishes to the governing body a certified check in the amount of the estimated costs of construction or a bond, with surety satisfactory to the governing body, in an amount sufficient for and conditioned upon the construction of such facilities, or a contract for the construction of such facilities and the contractor's bond, with like surety, in like amount and so conditioned;

(g) For monuments of specific types to be installed establishing street and property lines;

(h) That unless a plat be filed for recordation within a reasonable time after final approval thereof such approval shall be withdrawn and the plat marked void and returned to the approving official; and

(i) For the administration and enforcement of such ordinance, not inconsistent with provisions contained in this chapter.

Nothing in this section shall be deemed to authorize a county or municipality to require a developer or subdivider to donate land for school, park or other public sites without compensation.

§ *15.1-466.1. The subdivision or site plan ordinance of a county or municipality may authorize the governing body to require a subdivider or developer of land to install within his subdivision or development public facilities, such as streets, sewers, drainage facilities and water mains, of a greater size, capacity, strength or durability than those which are reasonably necessary to service his subdivision or development, whenever such greater facilities will be necessary or desirable to service neighboring and surrounding subdivisions and developments which are in existence or may be constructed at a future date. Any such ordinance shall provide that any subdivider or developer who so installs such greater facilities shall be reimbursed by the county or municipality within ten years for the difference in cost between the installation of such oversized facilities and the installation of facilities which would be reasonably necessary to service his subdivision or development. The ordinance may also provide that any subdivider or developer*

whose subdivision is or will be benefitted by such oversized facilities shall pay to the county or municipality his pro-rata share of the cost of such facilities. Such payment shall not be due until such facilities are in operation.

§ 15.1-467. Application of municipal subdivision regulations beyond corporate limits of municipality.—The subdivision regulations adopted by a municipality shall apply within its corporate limits and may apply beyond, except as to counties with a population in excess of six hundred per square mile, if the ordinance so provides, within the distance therefrom set out below:

(a) Within a distance of five miles from the corporate limits of cities having a population of one hundred thousand or more;

(b) Within a distance of three miles from the corporate limits of cities having a population of less than one hundred thousand; and

(c) Within a distance of two miles from the corporate limits of incorporated towns.

Where the corporate limits of two municipalities are closer together than the sum of the distances from their respective corporate limits as above set forth, the dividing line of jurisdiction shall be halfway between the limits of the overlapping boundaries.

The foregoing distances may be modified by mutual agreement between the governing bodies concerned, depending upon their respective areas of interest, provided such modified limits bear a reasonable relationship to natural geographic considerations or to the comprehensive plans for the area. Any such modification shall be set forth in the respective subdivision ordinances, by map or description or both.

No such regulations shall be finally adopted by any such muncipality until the governing body of the county in which such area is located shall have been duly notified in writing by the governing body of the municipality or its designated agent of such proposed regulations, and requested to review and approve or disapprove the same; and if such county fail to notify the governing body of such municipality of its disapproval of such plan within forty-five days after the giving of such notice, such plan shall be considered approved. Provided, however, that in any county which has a duly appointed planning commission, the governing body or the council shall send a copy of such proposed regulations or amendments thereof to such commission which shall review and recommend approval or disapproval of the same. The county commission shall not take any such action until notice has been given and a hearing held as prescribed by §§ 15.1-431 *and 15.1-431.1.*

Such hearing shall be held by the county commission within sixty days after the giving of notice by the municipality or its agent. Such commission shall forthwith after such hearing make its recommendations to the governing body of the county which shall within thirty days after such hearing notify the municipality of its approval or disapproval of such regulations and no regulations effective beyond the corporate limits shall be finally adopted by the municipality until notification by the governing body of the county, except that if the county fails to notify the governing body of the municipality of its disapproval of such regulations within ninety days after copy of the regulations or amendments thereof are received by the county commission, the regulations shall be deemed to have been approved.

§ 15.1-470. Local commission to prepare and recommend ordinance; notice and hearing on ordinance.—In any county or municipality having a local commission, any proposed subdivision ordinance shall be prepared and recommended by such commission and be transmitted to the governing body. The governing body of any county or municipality may approve and adopt a subdivision ordinance only after a notice of intention so to do has been published, and a public hearing held, in accordance with §§ 15.1-431 *and 15.1-431.1.*

§ 15.1-493. Preparation and adoption of zoning ordinance and map and amendments thereto.—The local commission of each county or municipality may, and at the direction of the governing body shall, prepare a proposed zoning ordinance including a map or maps showing the division of the territory into districts and a text setting forth the regulations applying in each district. The commission shall hold at least one public hearing *in accordance with the provisions of § 15.1-431.1* on such proposed ordinance or any amendment of an ordinance, after notice as required by § 15.1-431, and may make appropriate changes in the proposed ordinance or amendment as a result of such hearing. Upon the completion of its work, the commission shall present the proposed ordinance or amendment including the district maps to the governing body together with its recommendations and appropriate explanatory materials.

* No zoning ordinance shall be amended or reenacted unless the governing body has referred the proposed amendment or reenactment to the local commission for its recommendations. Failure of the commission to report ninety days after the first meeting of the commission after the proposed amendment or reenactment has been referred to the commission, or such shorter period as may be prescribed by the governing body, shall be deemed approval.

Before approving and adopting any zoning ordinance or amendment thereof, the governing body shall hold at least one public hearing thereon *in accordance with the provisions of § 15.1-431.1* pursuant to public notice as required by § 15.1-431, after which the governing body may make appropriate changes or corrections in the ordinance or proposed amendment; provided, however, that no additional land may be zoned to a different classification than was contained in the public notice without an additional public hearing *in accordance with the provisions of § 15.1-431.1* after notice required by § 15.1-431. Such ordinances shall be enacted in the same manner as all other ordinances.

The adoption or amendment prior to March first, nineteen hundred and sixty-eight of any plan or ordinance under the authority of prior acts shall not be declared invalid by reason of a failure to advertise, give notice or conduct more than one public hearing as may be required by such act or by this chapter, provided a public hearing was conducted by the governing body prior to such adoption or amendment.

Within ten days after the adoption of a zoning ordinance, or any amendment thereto, the governing body shall cause it to be filed in the office of the clerk of the court of the county or city wherein deeds are admitted to record. Any ordinance or amendment not so filed shall be invalid.

§ 15.1-493.1.—Any person aggrieved by a decision of a governing body under § 15.1-493, or any officer, department, board or bureau of the county or municipality, may present to the court of record of the county or city a petition describing the piece of property and the grounds on which aggrieved within ninety days after the filing of the decision. Ex-

cept as otherwise provided in this section, such procedure shall be as specified in § 15.1-497.

All appeals shall be on the record made before the governing body, and no further evidence or testimony shall be received unless the party offering such evidence shall first demonstrate (1) that such evidence is essential to a proper consideration and disposition of the matter and (2) that there is good reason why such evidence was not presented or offered before the governing body.

The taking of an appeal as specified in this section shall be deemed the sole and exclusive means to seek and obtain judicial relief from a decision of a governing body under § 15.1-493.

15.1-493.2.—The court shall reverse or modify the decision of the governing body if it finds that

(1) there was no substantial evidence of probative value before the governing body upon which it could legally base its decision,

(2) that the decision was procured by fraud or undue influence, or that any voting member of the governing body had an interest in the property or the outcome of the case, as defined in § 15.1-73.2;

(3) that the decision is unconstitutional, or not in accord with the laws of Virginia or the standards set forth in this chapter; or

(4) that the procedures used by the governing body were such as to deprive the petitioner of due process.

§ 15.1-495. Powers and duties of zoning appeals.—Boards of zoning appeals shall have the following powers and duties:

(a) To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this artice or of any ordinance adopted pursuant thereto;

(b) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

No such variance shall be authorized by the board unless it finds:

(1) That the strict application of the ordinance would produce undue

(2) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

(3) That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No such variance shall be authorized except after notice and hearing as required by §§ 15.1-431 *and 15.1-431.1.*

No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

(c) To hear and decide appeals from the decision of the zoning administrator or applications for such special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

No such special exceptions may be granted except after notice and hearing as provided by §§ 15.1-431 *and 15.1-431.1.*

(d) To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to owners of the property affected by any such question, and after public hearing *in accordance with the provisions of* § *15.1-431.1* with notice as required by § 15.1-431, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The board shall not have the power, however, to rezone property or substantially to change the locations of district boundaries as established by ordinance.

§ 15.1-496. Applications for special exceptions; appeals to board; proceedings to prevent construction of buildings in violation of zoning ordinance.—Applications for special exceptions may be made by any property owner, tenant, government official, department, board or bureau. Such application shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board who shall place the matter on the docket. No such special exceptions shall be authorized except after notice and hearing as required by §§ 15.1-431 *and 15.1-431.1.* The zoning administrator shall also transmit a copy of the application to the local commission which may send a recommendation to the board or appear as a party at the hearing.

An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the county or municipality affected by any decision of the zoning administrator. Such appeal shall be taken within thirty days after the decision appealed from by

filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within sixty days. In exercising its powers the board may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination appealed from. The concurring vote of three members shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

Where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the board of zoning appeals.

§ 15.1-500. Effect on existing resolutions and ordinances.—This chapter shall not affect any resolution or ordinance enacted under any other law heretofore (prior to * *July first,* nineteen hundred and * *seventy*) adopted except as specifically provided.

§ 15.1-501. Effect of chapter on municipal charters.—*** *Notwithstanding any provision to the contrary in any municipal charter, this chapter shall be applicable to every city and town in the State.*

2. That § 15.1-73.4 is hereby repealed.