



March 21<sup>st</sup>, 2020

The Honorable Ralph S. Northam  
Governor of Virginia  
P.O. Box 1475  
Richmond, VA 23218

Dear Governor Northam,

On behalf of the Home Builders Association of Virginia (HBAV), we write to express our sincere gratitude for the work of your Administration and state agencies to mitigate the impact of the COVID-19 pandemic on our communities, our economy, and the most vulnerable populations in our Commonwealth. We applaud the Administration's swift action in entering Executive Order Number Fifty-One (2020), *Declaration of a State of Emergency Due to Novel Coronavirus COVID-19*, and subsequent Orders of the Governor and State Health Commissioner Declaration of Public Health Emergency (together, the "Orders").

As you know, HBAV is comprised of single-family and multi-family builders, land developers, and the related trade partners and professionals that support the development and construction of for-sale and rental residential dwelling units. Over the last several weeks, our members around the Commonwealth have expressed significant concerns about the public health emergency's impact on the residential land development and construction industry's ability to deliver new, for-sale and rental dwelling units to the market; and the potential to exacerbate the already dire housing supply/demand imbalance which has played a large role in rising rents and sales prices over the last several years. In recent days, we and our partners in local government have observed, firsthand, the impact of this crisis upon our respective constituencies.

First, following the prudent social distancing recommendations of your Administration and health officials, we anticipate that office closures, alternative working arrangements and employee absences among the state and local government workforce will impact essential government functions. These functions include the timely processing of approvals related to existing permits, licenses, registrations and other authorizations issued by the Commonwealth or any agency or political subdivision thereof. The extension of such licenses and permits customarily requires the public to enter public buildings and interacts with state and local government employees and other persons, which may be contrary to prudent social distancing as outlined in the Orders. At the local government level, this includes the staff of local planning, permitting and inspections, public works, public utilities, and environmental engineering departments, as well as the county/city/town attorneys and their staff. As you know, these departments, and others, play an essential role in evaluating, modifying, and approving various aspects of land development and construction projects.

Second, there is also a great deal of uncertainty related to the ability for local governing bodies, planning commissions and other public bodies to meet, hold public hearings, and deliberate on applications and matters related to development and construction. Providing local public bodies and appointed commissions with the authority to utilize electronic meeting technology would allow these entities to conduct their business safely and with minimal disruption to local government services and processes. However the unknown duration of the emergency casts doubt as to whether local implementation of these technologies would be completed in time to resume business in a timely manner or in time to meet statutory deadlines as specified in [Sections §15.2-2209.1](#),

[§15.2-2259](#), [§15.2-2260](#) and others of the Code of Virginia that institute deadlines for review or other action. To illustrate the extent of the issue, we have included in this communication several scenarios supplied by our members. As an aside, there is still widespread uncertainty regarding local government's statutory authority to utilize such technology, which we understand has been the subject of several inquiries to your office, as well as the Office of the Attorney General.

Although the Federal Reserve's recent round of monetary policy stimulus and actions by the United States Congress may ease the rise in mortgage rates and restore some stability to the economy, our members believe that additional, temporary action will be needed at the state level to stabilize the housing sector, and provide some "relief" to local governments who are currently confronted with a great deal of uncertainty.

Given the potential for significant disruption to Virginia's housing industry and economy, we respectfully request that your Administration consider exercising its executive authority in this time of emergency to:

(i) Extend the date of expiration of all existing approvals issued by the Commonwealth or any agency or political subdivision thereof, including without limitation, any permits, licenses, registrations and other authorizations due to expire during the state of emergency under applicable laws and regulations for a period equal to the number of days comprising the duration of the state of emergency (i.e. March 12, 2020 until the date upon which the state of emergency is ordered terminated), and

(ii) Toll for a period commencing on March 12, 2020 and terminating on the date upon which the state of emergency is ordered terminated the running of any applicable period or deadline imposed by the governing body of any agency or subdivision of the Commonwealth pursuant to any general or special law enacted by the General Assembly or the governing body of any subdivision of the Commonwealth, which shall expressly include, without limitation, the period of validity of all special use permits, conditional use permits, preliminary and final site plans and subdivision plats, and building permits but expressly excluding any period or deadline imposed by Title 8.01 (Civil Remedies and Procedure) and Title 19.2 (Criminal Procedure) of the Code of Virginia (1950).

(iii) As your administration considers any additional declarations or public health orders as a result of the crisis, it is essential that communities have access to our professionals to build and maintain essential services including: building, plumbing, electrical, HVAC systems, waste/wastewater treatment plants and power generations. Home construction should be designated as "essential" because it is necessary to maintain safety, sanitation, and economic security within our communities and therefore, we respectfully request that any additional declarations or public health orders: (1) Recognize that construction of housing is essential and should be allowed to continue under a remain in place order; (2) Permit government functions related to the building and development process, such as inspections, permitting and plan review services, to be modified to protect the public health, but fundamentally should continue and serve the construction of housing (E.g., Allow qualified private third-party inspections in case of government shutdown); (3) Permit supply stores necessary to serve the construction, repair and maintenance of housing to operate; and (4) Allow those working in building trades to continue to maintain the essential operation of residences and other operating businesses.

There is precedent for the actions detailed above. For example, on March 12<sup>th</sup>, Governor Larry Hogan of Maryland issued a series of orders to protect public health and safety and limit the spread of the COVID-19 pandemic, which included 1) an extension of the expiration date of "all licenses, permits, registrations, and *other authorizations* issued by the State of Maryland" (emphasis added), state agency, or political subdivision of the state of Maryland; and 2) delegation of authority to local governing authorities to extend deadlines associated with land use permits similar to those described above. A copy of Governor Hogan's order can be found [here](#). In regard to (iii), the Governors of California, New York, Nevada, Kentucky, Illinois and elsewhere have

classified the construction industry as “essential” and permitting the industry to continue operations during the crisis. The housing and construction industries are essential components of our local and state economies – a full mandate to close every construction site would be devastating to our industry.

This Association recognizes that the Commonwealth is in uncharted waters and understand the countless challenges that you are facing, as well as the difficult nature of making the decisions that must be made to ensure the health, safety, and welfare of all Virginians. With that said, we understand that your Administration must take into consideration a vast array of perspectives and factors that are outside the scope of our Association and industry. Our members stand ready to assist your office and state agencies in any way possible during this difficult time and are prepared to continue the vital work of ensuring that development and construction of for-sale and rental dwelling units for individuals and families across the income spectrum. We believe that undertaking the actions outlined above, or a variation of the actions outlined above, will confer public health protections upon our industry and others, while clarifying the legal status of countless approvals, the validity of which may otherwise be cast into doubt or even invalidated during the prolonged period of the emergency.

Thank you for your consideration of this request and for your service to our Commonwealth during these challenging times. Please contact us if we may be of assistance to your Office in any way.

Very truly yours,



Daniel T. Sandoval  
President, Home Builders Association of Virginia  
Republic Home Builders



M. Craig Toalson  
Chief Executive Officer  
Home Builders Association of Virginia



Andrew C. Clark  
Vice President, Government Affairs  
Home Builders Association of Virginia

CC (via email):

The Honorable Clark Mercer, Chief of Staff to the Governor  
The Honorable Brian Ball, Secretary of Commerce and Trade  
Angela Navarro, Deputy Secretary of Commerce and Trade  
Matt Mansell, Director of the Office of Policy and Legislative Affairs  
Erik Johnston, Director of the Department of Housing and Community Development  
T. Preston Lloyd, Jr., Esq., Williams Mullen, General Counsel to the Home Builders Association of Virginia

## Illustrative Example Scenarios

*(Excerpted from Member Correspondence)*

### Scenario 1:

In response to Federal law requiring private activity bonds (such as multifamily housing revenue bonds) to have a public hearing and then be approved by the governing body of the project's host jurisdiction, [Section § 15.2-4906\(C\)](#) of the Code of Virginia has its own requirement that the governing body act within 60 days of the public hearing being held by the bond issuing authority (typically, an EDA or Redevelopment and Housing Authority). [The Applicant] has a housing bond issue that had its public hearing and was approved by a local housing authority on February 18<sup>th</sup>, 2020, and so its 60 days runs out on April 17<sup>th</sup>, 2020. [The Applicant] was scheduled to be considered by the jurisdiction's City Council next Tuesday, March 24<sup>th</sup>, 2020 but is waiting to hear if the meeting will be canceled. If it is canceled, and the next meeting on April 14 is also canceled, {The Applicant} will face having to start over the public approval process, including advertising again in the newspaper for a new public hearing once public meetings resume.

### Scenario 2:

Applications to perfect preliminary or subdivision plans subject to the July 1, 2020 deadline pursuant to Virginia Code Section [15.2-2209.1](#) have been submitted to several jurisdictions in the Fredericksburg area. When filed earlier this year, the expectation was that, based on prior similar applications, there would be sufficient time for local government staff to complete their ministerial reviews prior to July 1, 2020. However, some of these jurisdictions have indicated over the last week that only a skeleton crew will be in the office with the possibility of others telecommunicating. The concern is that staff will be unable to meet its statutory times frames for review under [15.2-2259](#) and plans will not be approved prior to July 1, 2020 and the underlying preliminary plans will expire.

### Scenario 3:

Businessowner A or Homeowner A was issued a building permit for their commercial or residential building project. Under local rules, the permit expires six months after the last approved inspected activity onsite (*note: this is the rule in [Redacted] County*). The businessowner/homeowner is two weeks out from the next inspection activity, which would put them over the six-month limit if the inspection does not occur. The locality continues to schedule inspections, but at a much slower rate than normal, in response to a local and state declared state of emergency. The businessowner/homeowner is unable to obtain an inspection in time, causing the permit to lapse. The businessowner/homeowner misses contractual deadlines and/or their contractors cite them for overages based on delays due to the expired permit.

### Scenario 4:

A developer has sold contracts to potential homeowners for future townhomes. Part of the work requires removing and installing new public water/sewer infrastructure in adjacent right of way. Due to an unforeseen delay, the developer is unable to install the infrastructure during the term of the permit. The permit may be renewed under local rules, but it requires additional filings and fees to be reviewed and processed by the locality. The locality has stopped accepting in-person permit submissions (*note: this is true in [Redacted] County and [Redacted] County, as of this email*), and all permits must be submitted and reviewed online by staff. The permit lapses due to staff shortages, and the developer is unable to provide water and sewer to the property on time to deliver new homes on schedule. *An automatic extension helps businesses with unforeseen delays during this public health crisis.*