

Home Builders Association of Virginia

2019 General Assembly Session Priorities

The Home Builders Association of Virginia (HBAV) is the professional trade association for the Commonwealth's residential land development and construction industry, representing over 3,200 builders, developers, and the various trades involved in the development and construction of single-family and multi-family for-sale and rental dwelling units. HBAV is the state association of the National Association of Home Builders and is comprised of 15 affiliated local associations from around the Commonwealth

This document will be updated to incorporate our industry's position on legislation as it is introduced

Supporting Revisions to Virginia's Proffer System:

In 2016, the General Assembly enacted and the Governor signed SB 549 (the "Proffer Law") – the legislation had been drafted by the HBAV in response to the growing sentiment among industry in some regions that Virginia's system of conditional zoning (ie, proffers) had evolved from a system of reasonable and voluntary mitigation of a development's impact on a locality's infrastructure to one of forced exactions with varying degrees of disconnect from the development's actual impact on public facilities. With any significant change in land-use law, there was an expected transition period for both local governments and industry.

Implementation of the 2016 legislation has been varied: Some localities have implemented the legislation and continued to process and approve residential rezoning applications; others have implemented the law and approved residential rezoning applications but still maintain the position that the bill "crippled" their ability to adequately address impacts on infrastructure; and in some localities, residential rezonings have simply "shut down" or have been significantly curtailed.

Recognizing the diversity of land-use and development practices around the Commonwealth, HBAV formally committed to engaging local government officials around the Commonwealth to identify and understand their challenges with the 2016 Proffer Legislation. Furthermore, HBAV has worked to proactively draft and build industry-consensus around several common-sense and substantive amendments to address many of those concerns. The intent of these amendments is to open the lines of communication between local governments and applicants; and to allow localities and applicants greater flexibility to discuss and agree upon voluntary offsite proffers to mitigate a development's impact on the community.

- **Communication:** There have been some localities that have interpreted the provisions of the 2016 law to diminish or eliminate a locality's ability to communicate or discuss any component of a residential rezoning because the legislation "prohibits a locality from **requesting, suggesting, or accepting** an unreasonable proffer". Communication between an applicant and a locality is key to smart land-use development – and these discussions between both sides ensure that the needs of the community and the local government are addressed. HBAV's proposal makes several modifications and additions to current law to ensure that applicants and local governments can engage in meaningful discussion about all components of a residential rezoning application.
- **Flexibility:** The purpose of Virginia's conditional zoning system (or "proffer system") is to allow landowners and local governments to negotiate the *terms and conditions* by which a property could be developed and used. It allows for a legally binding method by which an applicant may add or modify their rights under an existing zoning classification in a manner that 1) addresses concerns of the adjacent or surrounding community and/or 2) accounts for the development goals and objectives of the locality. One of the concerns that has been expressed by some in the housing industry, as well as local

governments, is that the 2016 legislation limited the ability of both parties to discuss and agree upon different types of offsite proffers that could mitigate the concerns raised by local governments and the surrounding community during the local government's development review process. HBAV's amendments seek to allow local governments and applicants greater flexibility to offer and accept different types of offsite proffers, while still preserving the long-standing legal principle that proffers are "voluntary".

Elevating Affordable Housing by Reducing Financial Barriers to Entry

There is a well-documented need for greater supply of housing at all price-points, both nationally and in the Commonwealth of Virginia. Despite a relatively strong economy and the surging demand for housing, the residential land development and construction industry is still relatively weak from the economic downturn almost a decade ago. According to many estimates, our nation needs nearly a million newly built housing units per year just to make up for those lost to fire, decay, demolition, or other destruction. Population increases and other sources of new demand push those estimates to over a million additional new units per year.

Despite the increasing need, the supply of housing is not keeping pace – and specifically, both private-sector and non-profit entities are finding it increasingly more difficult to pursue "affordable housing" or "workforce housing" developments. According to a report issued by the Harvard University's Joint Center for Housing Studies, "The lack of new, more affordable rentals is in part a consequence of sharply rising construction costs, including labor and materials." The report goes on to say, "Tight land use regulations also add to costs by limiting the land zoned for higher-density housing and entailing lengthy approval processes"

Affordable housing developments are shaped by a patchwork of procedures, regulations, and policies at the local, state, and Federal levels – each with associated costs. Furthermore, most affordable housing developments rely on multiple financing streams which can result in additional regulatory and compliance costs. These financial realities, in addition to the often-times more complex and uncertain local development approval process, are a significant impediment to the production of affordable housing units.

During the 2019 General Assembly Session, the Home Builders Association of Virginia will be advancing two pieces of legislation that seek to reduce the financial barriers to entry for affordable housing development projects.

New Construction Affordable Housing Tax Abatement:

There are variety of incentives available at the local, state, and Federal levels that help reduce the financial barriers to entry for affordable housing developments. The Code of Virginia currently allows localities to enact tax abatement programs which allow for a homeowner or property owner to reduce the taxable value of a property, for a period of time, by the value of the improvements made to the structure. By reducing a property's real estate tax burden, the program has proven to be an effective way of incentivizing the private and non-profit sectors to pursue residential multi-family, commercial, and mixed-use redevelopment and revitalization projects in localities around the Commonwealth. Furthermore, in localities with aging single-family building stock, the tax abatement program has been an important tool for individual homeowners looking to renovate, remodel, or expand their existing home. Real estate taxes can represent a major expense for many homeowners – tax abatement programs can result in considerable savings for the homeowner and also help improve the re-sale value of the home. The local tax abatement program, in conjunction with other incentives, have played a critical role in expanding the size and value of a locality's real estate stock and tax base.

Many of the tax abatement programs currently permitted in the Code of Virginia are focused on rehabilitation development projects. Virginia Code [58.1-3219.4](#) does allow local governments to enact tax abatement programs for new construction, however the requirement that the structures be located in “redevelopment or conservation areas or rehabilitation districts” can limit the applicability and scope of the incentive or make implementation more challenging.

Given the drastic shortage of “affordable” or “workforce” housing that exists in the Commonwealth, the Home Builders Association of Virginia will be asking the General Assembly to consider legislation that would grant all localities the authority to create a voluntary tax abatement program for new construction projects without the requirement of being in a designated “zone”. The legislation will also specify that any local enabling ordinances for this abatement shall include a requirement that a percentage of the units within a project seeking the tax abatement be designated as “affordable” for individuals and/or families at a range of Area Median Income (AMI).

Affordable Housing Fee Waiver Authority:

Bending the Cost Curve” – lowering the cost of developing affordable housing – is just one approach to meeting the increased demand for affordable housing; and there are countless ways that both local and state government can reduce or remove these financial “barriers to entry”, including the waiver of fees imposed by local governments during the development approval and construction stages.

According to NAHB’s 2017 Construction Cost survey, the share of construction costs that goes to fees and permits (building permits, impact fees, and water/sewer fees), on the other hand, rose from 3.2% in 2015 to 4.6% in 2017. The monthly NAHB/Wells Fargo Housing Market Index solicits feedback from builders across the Country on the top challenges that they are facing in their markets – builders indicated that these fees were significant challenge for 46% of builders in 2013, compared to 61% in 2017.

Although private-sector and non-profit developers may face different challenges in making a project come to fruition, affordable housing developments are inherently more complex and challenging for all entities. Given the magnitude of the shortage of affordable housing units, it is critical for local and state governments to bring as many entities to the table on these projects as possible. Virginia Code 15.2-958.4 currently allows a locality to enact ordinances providing for the waiver of building permit fees and other local fees associated with the construction, renovation, or rehabilitation of housing by a 501(c)(3) organization with a primary purpose of assisting with the provision of affordable housing. During the 2019 Session, the Home Builders Association of Virginia will be asking the General Assembly to consider amending this code section to allow localities to also extend these fee waivers to private-sector entities pursuing affordable housing developments.

Although not a “panacea” for the shortage of affordable housing units, allowing local governments to waive certain fees associated with the construction, renovation, or rehabilitation of affordable housing would be another tool for local governments to help incentivize more private-sector participation in these types of deals.

Maintaining Virginia’s Nationally-Recognized Code Development Process:

The Uniform Statewide Building Code (USBC) and the Statewide Fire Prevention Code (SFPC) are two important regulatory documents for the residential land development and construction industry. These codes establish a baseline of standards by which all structures – commercial, residential, and others – must be constructed and maintained to ensure healthy, safe, and sustainable structures and communities. They are also reflective of the extensive research and deliberation conducted by industry, first responders, local governments and various other stakeholders on how to balance the need to protect the health, safety, and welfare of those that will occupy the structure with the need to maintain reasonable costs of construction.

Virginia has been nationally recognized for both the caliber of the code review process and the strength of our codes. In 2018, the Insurance Institute for Business and Home Safety released a report assessing elements of code enforcement and administration and contractor licensing in the 18 states along the Atlantic Coast and Gulf of Mexico. Virginia was ranked No. 2, one point behind Florida¹.

Virginia's national reputation for strong codes has been the result of the Virginia Department of Housing and Community Development's (DHCD) commitment to inclusiveness, transparency, and fairness during its code development cycles. Assisted by the staff at DHCD, the Board of Housing and Community Development (BHCD) reviews and votes on countless code proposals from industry stakeholders, local government, and citizens. The BHCD is comprised of 14 citizen members from a diverse array of professional experiences including energy efficiency, construction and development, fire services, and local government

Establishing separate code development processes for the building and fire codes would only put Virginia further behind in adopting the most cost-effective and current building design, energy efficiency, and fire-safety innovations and best practices. Virginia's current code development process has proven to be an effective and efficient way to protect the health, safety, and welfare of our citizens in the buildings where they live, work, and spend time with friends and family.

During the 2019 Session, the Home Builders Association of Virginia will oppose any legislation that would alter the Commonwealth's current code development process.

For more information on the Home Builders Association of Virginia's 2019 General Assembly Session Priorities, please contact HBAV's CEO Craig Toalson at CToalson@HBAV.com or HBAV's Vice President of Government Affairs, Andrew Clark, at AClark@HBAV.com.

¹ <https://disastersafety.org/ibhs-public-policy/rating-the-states/>