



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Jason S. Miyares
Attorney General

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202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
Fax 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Patrick A. Hope
Member, Virginia House of Delegates
Post Office Box 3148
Arlington, Virginia 22203

Dear Delegate Hope:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire regarding the application of Chapter 752 of the 2024 Acts of the Assembly, which amended Code § 15.2-2306 (the “2024 Amendment”). You specifically ask whether the 2024 Amendment prohibits a locality from issuing a demolition permit for a structure that a locality is considering whether to designate as a historic structure.

Response

It is my opinion that, while the 2024 Amendment does set a time constraint on the issuance of a demolition permit, the 2024 Amendment does not otherwise prohibit a locality from issuing a permit to demolish a structure that is under consideration for designation as a historic structure.¹

Applicable Law and Discussion

The General Assembly has long recognized that a locality may desire to preserve physical aspects of its history.² Accordingly, the General Assembly has “provided for the protection, perpetuation, and regulation of historical sites” by authorizing localities “to enact comprehensive ordinances regulating the erection, construction, reconstruction, and demolition of buildings and structures”³ Code § 15.2-2306

¹ I offer no opinion on any other impediments to a locality issuing a demolition permit for a historic structure, whether within § 15.2-2306 or otherwise.

² See 1966 Va. Acts ch. 480 (authorizing certain counties to designate historic landmarks) (subsequently codified by reference in VA. CODE ANN. § 15.1-503.1 (1979)). Section 15.1-503.1 was later re-enacted as § 15.1-503.2, see 1972 Va. Acts ch. 270, the predecessor statute to current § 15.2-2306.

³ *Madison v. Loudoun Cnty. Bd. of Supervisors*, 69 Va. Cir. 469, 471 (2006) (discussing the history of § 15.2-2306 and its predecessor statutes).

provides the framework by which any locality is empowered to first “set[] forth” and then restrict the alteration or demolition of historic structures by the adoption of an ordinance.⁴

Subsection (A) of § 15.2-2306, in three subdivisions, sets out various provisions that such an ordinance either may or must contain. In general, but among other things, Subdivision 1 authorizes localities, by ordinance, to designate historic structures and districts and to condition development related thereto; Subdivision 2 addresses the demolition of a historic structure; and Subdivision 3 establishes judicial review procedures and owners’ demolition rights.

The 2024 Amendment inserted the following sentence into Subdivision 1: “The filing of the building permit or demolition application shall stay the locality from issuing any permit to . . . demolish the historic . . . structure until 30 days after the rendering of the final decision of the governing body of the locality.”⁵ You ask whether this amendment prohibits a locality from issuing a demolition permit if the permit is for a structure that is under consideration for historic designation by the locality. Your inquiry involves the meaning of the term “final decision,” as used in the 2024 Amendment.

The “primary objective” in interpreting a statute is “‘to ascertain and give effect to legislative intent,’ as expressed by the language used in the statute.”⁶ “[A] statute should be read and considered as a whole, and the language of a statute should be examined in its entirety to determine the intent of the General Assembly from the words contained in the statute.”⁷ In interpreting a statute, words cannot be read in isolation.⁸ Rather, terms are to be read in the context of the statute as a whole.⁹ Moreover, courts seek “to adopt that sense of the words which harmonizes best with the context, and promotes in the fullest manner the apparent policy and objects of the legislature.”¹⁰ Accordingly, the 2024 Amendment must be read “not in a vacuum, but with reference to the statutory context, ‘structure, history, and purpose.’”¹¹ Because the meaning of the term “final decision” in the 2024 Amendment is informed by the structure of § 15.2-2306 and the use of the term “final decision” elsewhere in § 15.2-2306,¹² a closer examination of Subsection (A) of § 15.2-2306 is warranted.

⁴ VA. CODE ANN. § 15.2-2306 (Supp. 2025). Section 15.2-2306 alternatively uses the terminology “setting forth” and “designated” to refer to structures that a locality identifies in an ordinance as “having an important historic . . . interest.” Compare § 15.2-2306(A)(1) (“Any locality may adopt an ordinance setting forth . . . structures . . . having an important historic . . . interest.”) with § 15.2-2306(E) (“‘[H]istoric structure’ means a structure designated as having an important historic . . . interest or designated as a contributing structure by an ordinance passed pursuant to subsection A.”). Thus, for purposes of § 15.2-2306, a structure that is “set[] forth” in an ordinance as a historic structure is synonymous with a structure that is “designated” as such. See MERRIAM WEBSTER’S COLLEGIATE DICTIONARY p. 313 (10th ed. 1997) (defining “designate” as “to indicate and set apart for a specific purpose, office, or duty”).

⁵ 2024 Va. Acts ch. 752.

⁶ *Berry v. Bd. of Supervisors*, 302 Va. 114, 127 (2023) (quoting *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425 (2012)).

⁷ *Dep’t of Med. Assistance Servs. v. Beverly Healthcare of Fredericksburg*, 268 Va. 278, 285 (2004).

⁸ *Young v. Commonwealth*, 273 Va. 528, 533 (2007).

⁹ *Id.*

¹⁰ *Thornton v. Commonwealth*, 78 Va. App. 321, 330 (2023) (internal quotation marks omitted) (quoting *Colbert v. Commonwealth*, 47 Va. App. 390, 394 (2006)).

¹¹ *Abramski v. United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)).

¹² *Va. Electric & Power Co. v. Bd. Of Cnty. Supvrs.*, 226 Va. 382, 388 (1983) (“[I]t is our duty to interpret the several parts of a statute as a consistent and harmonious whole so as to effectuate the legislative goal.”).

Prior to the enactment of the 2024 Amendment, Subdivision 3 contained § 15.2-2306's only use of the term "final decision." It requires a locality's historic preservation ordinance to include a right of appeal to the local circuit court and sets out a property owner's right to demolish his historic structure, if certain conditions are met.

More specifically, the first paragraph of Subdivision 3 affords a right of appeal

from any *final decision* of the governing body pursuant to [S]ubdivisions 1 and 2 . . . provided that the petition [for appeal] is filed within 30 days after the *final decision* is rendered by the governing body. The filing of the petition shall stay the decision of the governing body pending the outcome of the appeal to the court, except that the filing of the petition shall not stay the decision of the governing body if the decision denies the right to . . . demolish a historic . . . structure.¹³

In empowering localities to adopt an ordinance designating historic districts and historic structures, Subdivision 1 also authorizes the establishment of "a review board to administer the ordinance." Subdivision 1 then allows the ordinance to include "a provision that no building or structure . . . shall be erected, reconstructed, altered, or restored within any [historic] district unless approved by the review board or, on appeal, by the governing body . . ." ¹⁴ Subdivision 2 similarly permits the ordinance to provide that "no historic . . . structure within any district shall be . . . demolished . . . until the . . . demolition . . . thereof is approved by the review board or, on appeal, by the governing body after consultation with the review board."¹⁵ Final decisions made pursuant to these approval provisions are subject to appeal as set out in Subdivision 3.

For owners of historic structures subject to demolition approval under Subdivision 2, the second paragraph of Subdivision 3 provides that the owner "shall, as a matter of right, be entitled to raze or demolish such . . . structure" upon meeting certain conditions. One condition is the making of an offer to sell the historic structure within "one year after a *final decision* by the governing body."¹⁶ That is, if a property owner's application to demolish the structure is denied, the owner may comply with the provisions of Subdivision 3 and then "be entitled to . . . demolish such . . . structure."¹⁷ If no sale is offered within "one year after a *final decision* by the governing body," then "the owner may renew his request . . . to approve the . . . demolition of the historic . . . structure."¹⁸

Accordingly, in the demolition context, the "final decision" subject to appeal under Subdivision 3 is the decision whether to approve the demolition of a historic structure under an ordinance containing the

¹³ Section 15.2-2306(A)(3) (emphasis added). The stay provided for under this paragraph does not preclude the demolition of the structure during the 30-day window granted for filing the appeal. The local governing body designates in the ordinance what parties may appeal the final decision. Section 15.2-2306(A)(3).

¹⁴ *Id.* Subdivision 1 also "allows a locality to require—as a condition of developing property in an area of known historical or architectural significance—documentation . . . that the development will preserve or accommodate historical or archaeological resources." 2014 Op. Va. Att'y Gen. 181, 182.

¹⁵ Section 15.2-2306(A)(2). Subdivision 2 also addresses moving such historic structures.

¹⁶ Section 15.2-2306(A)(3) (emphasis added).

¹⁷ I offer no opinion on the impact, if any, on a property owner's right to demolish under Subdivision 3 if there is a pending appeal that seeks to prevent the demolition of a historic structure by overturning a final decision of the governing body that approved a demolition permit for such structure.

¹⁸ Section 15.2-2306(A)(3) (emphasis added).

provisions allowed by Subdivision 2.¹⁹ Any proper party has a 30-day period after the governing body renders that decision to file an appeal with the circuit court.²⁰ Upon filing the appeal, a final decision approving the demolition application is stayed pending the outcome of the appeal. With respect to an owner's rights, the term "final decision" is clearly linked with a request to demolish a historic structure. In short, "final decision" as used in the statute prior to the 2024 Amendment referred to the final decision of a locality whether to approve an application to demolish a historic structure when such approval is required by the locality's historic preservation ordinance.

Considering the context and meaning of "final decision" elsewhere in § 15.2-2306, I conclude that the term "final decision" in the 2024 Amendment refers to the final decision of a governing body whether to approve an application to demolish a historic structure that is subject to the approval requirement in Subdivision 2. Significantly, in contrast to the construction and demolition approvals contemplated by Subdivisions 1 and 2, Code § 15.2-2306 is silent on what role, if any, a review board might play in the initial historic designation process; unlike the approval of a construction or demolition application, which can be made by the review board, the designation of a particular district or structure requires the local governing body to pass an ordinance to effect the designation.²¹ The decision to adopt an ordinance is distinct from a decision to take any particular action pursuant to an ordinance, once adopted. Because Subdivision 3 affords eligible parties judicial review of the locality's "specific act under the [historic preservation] ordinance," not the ordinance provisions themselves,²² the designation of a structure as historic via ordinance is not a "final decision" as used in Subdivision 3.

In addition, requiring a delay between approval of the demolition application and the issuance of the demolition permit fits within the existing appeal procedures of Subdivision 3, which allow an appeal "from any final decision of the governing body pursuant to [S]ubdivisions 1 and 2" to be made "within 30 days after the final decision is rendered"²³ To safeguard the structure during that 30-day window, the 2024 Amendment provides a party seeking to appeal a demolition approval a concurrent 30-day stay period before the actual demolition permit is issued.

¹⁹ As noted above, Subdivision 3 also makes appealable those decisions that are made under ordinance provisions authorized under Subdivision 1 regarding applications to reconstruct, alter, or restore a building or structure within any designated historic district. *See* § 15.2-2306(A)(1) & (A)(3).

²⁰ Section 15.2-2306(A)(3).

²¹ In other words, there is a distinction between how a locality "set[s] forth" a historic structure and how a locality considers an application to demolish a historic structure. In § 15.2-2306(A), the General Assembly empowered localities to "*adopt an ordinance setting forth . . . any . . . structures within the locality having an important historic . . . interest[,]*" § 15.2-2306(A)(1) (emphasis added), but it separately permitted localities to prohibit, in such ordinance, certain construction activities in historic districts or the demolition of historic structures until applications to do so are "*approved by the review board or, on appeal, by the governing body.*" Section 15.2-2306(A)(1) & (A)(2) (emphasis added). Although I offer no opinion on purely local procedure or practice, I note that, even if a locality accepts applications for the designation of historic structures or allows the review board to make recommendations, it is not the "approval" of an application that confers status as a historic district or structure under § 15.2-2306, but rather the local governing body's adoption of "an ordinance setting forth . . . [the] structures . . . having an important historic . . . interest." Section 15.2-2306(A)(1). *Cf.* § 15.2-2306(E) (defining "historic structure" as either "a structure *designated* as having an important historic, architectural, archaeological, or cultural interest or *designated* as a contributing structure *by an ordinance passed pursuant to subsection (A).*")

²² *Norton v. City of Danville*, 268 Va. 402, 408 (2004).

²³ Section 15.2-2306(A)(3).

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Moreover, because the “task in statutory interpretation is ‘to give reasonable effect to every word’ in a statute[,]”²⁴ a court may not “‘delet[e] language from a statute’ in the guise of interpreting that statute.”²⁵ Here, the 2024 Amendment “stay[s] the locality from issuing any permit to . . . demolish *the historic* . . . structure.”²⁶ The 2024 Amendment also references filed “building permit[s] or demolition application[s]”; it does not mention designation processes. Accordingly, per its plain language, the 2024 Amendment applies only to those structures already designated by the locality as historic.²⁷

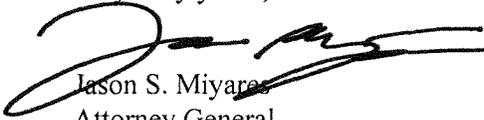
In sum, I conclude that the 2024 Amendment only prohibits a locality from issuing a demolition permit until 30 days after the governing body’s final decision to approve the application to demolish a historic structure that is subject to the approval requirement in Subdivision 2, not until 30 days after a structure is “set[] forth” as historic pursuant to an adopted ordinance.²⁸

Conclusion

Accordingly, it is my opinion that the 2024 Amendment does not prohibit a locality from issuing a permit to demolish a structure that is under consideration for designation as a historic structure, but rather only prohibits a locality from issuing a demolition permit until 30 days after the decision of the governing body to approve an application to demolish a historic structure whose demolition is subject to approval under the locality’s ordinance.

With kindest regards,

Very truly yours,



Jason S. Miyares
Attorney General

²⁴ *Berry*, 302 Va. at 145 (quoting *Jones v. Conwell*, 227 Va. 176, 181 (1984)).

²⁵ *Id.* at 133 (alteration in original) (quoting *Appalachian Power Co. v. State Corp. Comm’n*, 284 Va. 695, 706 (2012)).

²⁶ 2024 Va. Acts ch. 752 (emphasis added).

²⁷ *See id.* (further amending § 15.2-2306 to define, for purposes of tax incentives for conservation of historic structures within historic districts, “historic structure” as “a structure *designated* as having an important historic, architectural, archaeological, or cultural interest or *designated* as a contributing structure *by an ordinance passed pursuant to subsection (A)*.” 2024 Va. Acts ch. 533 (codified at VA. CODE ANN. § 15.2-2306(E) (Supp. 2025)) (emphasis added). Moreover, as introduced, the 2024 Amendment employed the phrase “*proposed* historic landmark, building, or structure,” HB 1395 (2024) (emphasis added), but the modifier “proposed” was stricken in committee. The General Assembly knows how to express its intent, and it chooses with care the words that it uses, *see Alger v. Commonwealth*, 267 Va. 255, 261 (2004). Clearly, had the General Assembly wanted to provide that the stay provision of the 2024 Amendment would apply to structures under consideration for designation as historic, it could have done so. *See Doulgerakis v. Commonwealth*, 61 Va. App. 417, 421 (2013) (examining legislative history to determine whether “secured” meant “locked” for purposes of Code § 18.2–308(B)(10) and determining that “[i]n accepting the Governor’s proposed change [*i.e.*, replacing the bill’s use of “locked” with “secured”], the legislature made it clear that in this amendment, “secured” does not mean “locked.” Had the legislature intended for “secured” and “locked” to be synonymous, they would have disregarded the Governor’s recommendation and adopted the amendment as originally written.”).

²⁸ For the foregoing reasons, I reject an alternative interpretation that reads the phrase “final decision of the governing body” as referring to a final decision as to whether to designate a structure as historic.