

25103931D

HOUSE BILL NO. 1795

Offered January 13, 2025

Prefiled January 6, 2025

A BILL to amend and reenact § 15.2-2314 of the Code of Virginia, relating to board of zoning appeals; petition for appeal.

Patron—Wright

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2314 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2314. Certiorari to review decision of board of zoning appeals.

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition that shall be styled "~~In Re: date Decision of the Board of Zoning Appeals of [locality name]~~" specifying the grounds on which aggrieved within 30 days after the final decision of the board of zoning appeals. The petition shall be styled substantially in the form of "[Name of aggrieved party] v. [Name(s) of any other necessary party or parties]." The petition shall identify the board of zoning appeals, including the name of the locality in which the board of zoning appeals sits, and the date of the decision of the board of zoning appeals.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be extended by the court. Once the writ of certiorari is served, the board of zoning appeals shall have 21 days or as ordered by the court to respond. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Any review of a decision of the board of zoning appeals shall not be considered an action against the board of zoning appeals and the board of zoning appeals shall not be a party to the proceedings; however, the board of zoning appeals shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings in the circuit court. Service of process shall be obtained on such necessary parties as in other actions at law. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law de novo.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board of

59 *zoning appeals*, any party may introduce evidence in the proceedings in the court in accordance with the  
60 Rules of Evidence of the Supreme Court of Virginia.

61 Costs shall not be allowed against the locality or the governing body, unless it shall appear to the court  
62 that the locality or the governing body acted in bad faith or with malice. In the event the decision of the board  
63 of *zoning appeals* is affirmed and the court finds that the appeal was frivolous, the court may order the person  
64 or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return  
65 of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the  
66 return, the locality or the governing body may request that the court hear the matter on the question of  
67 whether the appeal was frivolous.

68 **2. That the provisions of § 15.2-2314 of the Code of Virginia, as amended by this act, are declarative of**  
69 **existing law and public policy since July 1, 2010, with respect to the notice requirements for appealing**  
70 **any decision of the board of zoning appeals. For any petition filed from that date until June 30, 2025,**  
71 **that has not been finally adjudicated, including all appeals, the petition is hereby validated and shall**  
72 **not be dismissed for failure to name a necessary party if the petition was otherwise properly filed with**  
73 **a caption in the style of "In Re: [date] Decision of the Board of Zoning Appeals of [locality name]" and**  
74 **was otherwise properly served on all necessary parties within the time limitation set forth in §**  
75 **8.01-275.1 of the Code of Virginia. To that extent, the contrary holdings in *Frace v. Johnson*, 289 Va.**  
76 **198, 768 S.E.2d 427 (2015), *Boasso America Corporation v. Zoning Administrator of Chesapeake*, 293**  
77 **Va. 203, 796 S.E.2d 545 (2017), and related cases are hereby superseded.**

78 **3. That an emergency exists and this act is in force from its passage.**