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SENATE BILL NO. 992

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 15.2-2209, 15.2-2309, and 15.2-2311 of the Code of Virginia, relating to civil penalties for certain repeat zoning violations in Planning District 23; appeals.

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Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2209, 15.2-2309, and 15.2-2311 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2209. Civil penalties for violations of zoning ordinance.

Notwithstanding subdivision A 5 of § 15.2-2286, any locality may adopt an ordinance which that establishes a uniform schedule of civil penalties for violations of specified provisions of the zoning ordinance. The schedule of offenses shall not include any zoning violation resulting in injury to any persons, and the existence of a civil penalty shall not preclude action by the zoning administrator under subdivision A 4 of § 15.2-2286 or action by the governing body under § 15.2-2208.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than \$200 for the initial summons and not more than \$500 for each additional summons. However, for any violation involving nonpermitted commercial uses in Planning District 23, the penalty shall be not more than (i) \$200 for the initial violation, (ii) \$1,000 for a second violation, and (iii) \$1,500 for a third or subsequent violation, not to exceed an aggregate amount of \$4,200 for all such violations within a 12-month period. For purposes of this section, "nonpermitted commercial uses" means any use devoted to usual and customary business purposes for the sale of goods and services when such use is not authorized or permitted under the locality's zoning ordinance. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and, for violations that do not involve nonpermitted commercial uses in Planning District 23, a series of specified violations arising from the same operative set of facts shall not result in civil penalties which that exceed a total of \$5,000. Designation of a particular zoning ordinance violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor, provided, however, that when such civil penalties total \$5,000 or more, the violation may be prosecuted as a criminal misdemeanor.

The zoning administrator or his deputy may issue a civil summons as provided by law for a scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. Notwithstanding a court's authority to order the abatement or remedy of a zoning violation, any person who enters a waiver of trial and admits liability shall be required to abate or remedy the nonpermitted commercial violation within a period of time specified by the locality that is no less than 30 days but no more than 24 months from the date of admission of liability.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. If the violation remains uncorrected at the time of the admission of liability or finding of liability, the court may order the violator to abate or remedy the violation in order to comply with the zoning ordinance. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within a period of time as determined by the court, but not later than six months of the date of admission of liability or finding of liability. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

No provision herein shall be construed to allow the imposition of civil penalties (i) for activities related to land development or (ii) for violation of any provision of a local zoning ordinance relating to the posting of

59 signs on public property or public rights-of-way.

60 **§ 15.2-2309. Powers and duties of boards of zoning appeals.**

61 Boards of zoning appeals shall have the following powers and duties:

62 1. To hear and decide appeals from any order, requirement, decision, or determination made by an
63 administrative officer in the administration or enforcement of this article or of any ordinance adopted
64 pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the
65 administrative officer was correct. The determination of the administrative officer shall be presumed to be
66 correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after
67 which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of
68 the evidence. *Altering the order of evidence is a reversible error.* The board shall consider any applicable
69 ordinances, laws, and regulations in making its decision. For purposes of this section, determination means
70 any order, requirement, decision, or determination made by an administrative officer. Any appeal of a
71 determination to the board shall be in compliance with this section, notwithstanding any other provision of
72 law, general or special.

73 2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original
74 application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be
75 on the applicant for a variance to prove by a preponderance of the evidence that his application meets the
76 standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

77 Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence
78 shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of
79 the property or that the granting of the variance would alleviate a hardship due to a physical condition
80 relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate
81 a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on
82 behalf of, a person with a disability, and (i) the property interest for which the variance is being requested
83 was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the
84 granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the
85 proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so
86 general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be
87 adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not
88 otherwise permitted on such property or a change in the zoning classification of the property; and (v) the
89 relief or remedy sought by the variance application is not available through a special exception process that is
90 authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a
91 zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance
92 application. Any variance granted to provide a reasonable modification to a property or improvements
93 thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is
94 no longer in need of the modification to such property or improvements provided by the variance, subject to
95 the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42
96 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is
97 appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act
98 of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a
99 variance from the board of zoning appeals under this section is required in order for such request to be
100 granted.

101 No variance shall be considered except after notice and hearing as required by § 15.2-2204. However,
102 when giving any required notice to the owners, their agents or the occupants of abutting property and
103 property immediately across the street or road from the property affected, the board may give such notice by
104 first-class mail rather than by registered or certified mail.

105 In granting a variance, the board may impose such conditions regarding the location, character, and other
106 features of the proposed structure or use as it may deem necessary in the public interest and may require a
107 guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
108 Notwithstanding any other provision of law, general or special, the property upon which a property owner has
109 been granted a variance shall be treated as conforming for all purposes under state law and local ordinance;
110 however, the structure permitted by the variance may not be expanded unless the expansion is within an area
111 of the site or part of the structure for which no variance is required under the ordinance. Where the expansion
112 is proposed within an area of the site or part of the structure for which a variance is required, the approval of
113 an additional variance shall be required.

114 3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as
115 provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the
116 occupants of abutting property and property immediately across the street or road from the property affected,
117 the board may give such notice by first-class mail rather than by registered or certified mail.

118 4. To hear and decide applications for interpretation of the district map where there is any uncertainty as
119 to the location of a district boundary. After notice to the owners of the property affected by the question, and

120 after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to
 121 carry out the intent and purpose of the ordinance for the particular section or district in question. However,
 122 when giving any required notice to the owners, their agents or the occupants of abutting property and
 123 property immediately across the street or road from the property affected, the board may give such notice by
 124 first-class mail rather than by registered or certified mail. The board shall not have the power to change
 125 substantially the locations of district boundaries as established by ordinance.

126 5. No provision of this section shall be construed as granting any board the power to rezone property or to
 127 base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the
 128 governing body.

129 6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The
 130 board may impose such conditions relating to the use for which a permit is granted as it may deem necessary
 131 in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to
 132 ensure that the conditions imposed are being and will continue to be complied with.

133 No special exception may be granted except after notice and hearing as provided by § 15.2-2204.
 134 However, when giving any required notice to the owners, their agents or the occupants of abutting property
 135 and property immediately across the street or road from the property affected, the board may give such notice
 136 by first-class mail rather than by registered or certified mail.

137 7. To revoke a special exception previously granted by the board of zoning appeals if the board
 138 determines that there has not been compliance with the terms or conditions of the permit. No special
 139 exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving
 140 any required notice to the owners, their agents or the occupants of abutting property and property
 141 immediately across the street or road from the property affected, the board may give such notice by first-class
 142 mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue
 143 special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been
 144 compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the
 145 manner provided by this subdivision.

146 8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to
 147 which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds
 148 and declares that weather or other conditions are such that it is hazardous for members to attend the meeting.
 149 Such finding shall be communicated to the members and the press as promptly as possible. All hearings and
 150 other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at
 151 the continued meeting and no further advertisement is required.

152 **§ 15.2-2311. Appeals to board.**

153 A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or
 154 bureau of the locality affected by any decision of the zoning administrator or from any order, requirement,
 155 decision or determination made by any other administrative officer in the administration or enforcement of
 156 this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements
 157 pursuant to § 15.2-2286. Notwithstanding any charter provision to the contrary, any written notice of a zoning
 158 violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a
 159 statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a
 160 written order within 30 days in accordance with this section, and that the decision shall be final and
 161 unappealable if not appealed within 30 days. The zoning violation or written order shall include the
 162 applicable appeal fee and a reference to where additional information may be obtained regarding the filing of
 163 an appeal. The appeal period shall not commence until the statement is given and the zoning administrator's
 164 written order is sent by registered or certified mail *with proof of delivery* to, or posted at, the last known
 165 address or usual place of abode of the property owner or its registered agent, if any. There shall be a
 166 rebuttable presumption that the property owner's last known address is that shown on the current real estate
 167 tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the
 168 State Corporation Commission. The appeal shall be taken within 30 days after the decision appealed from by
 169 filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof.
 170 The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon
 171 which the action appealed from was taken. The fee for filing an appeal shall not exceed the costs of
 172 advertising the appeal for public hearing and reasonable costs. A decision by the board on an appeal taken
 173 pursuant to this section shall be binding upon the owner of the property ~~which~~ *that* is the subject of such
 174 appeal only if the owner of such property has been provided notice of the zoning violation or written order of
 175 the zoning administrator in accordance with this section. The owner's actual notice of such notice of zoning
 176 violation or written order or active participation in the appeal hearing shall waive the owner's right to
 177 challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning
 178 violation or written order. For jurisdictions that impose civil penalties for violations of the zoning ordinance,
 179 any such civil penalty shall not be assessed by a court having jurisdiction during the pendency of the 30-day
 180 appeal period.

181 B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning

182 administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion
183 cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a
184 restraining order granted by the board or by a court of record, on application and on notice to the zoning
185 administrator and for good cause shown.

186 C. In no event shall a written order, requirement, decision or determination made by the zoning
187 administrator or other administrative officer be subject to change, modification or reversal by any zoning
188 administrator or other administrative officer after 60 days have elapsed from the date of the written order,
189 requirement, decision or determination where the person aggrieved has materially changed his position in
190 good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven
191 that such written order, requirement, decision or determination was obtained through malfeasance of the
192 zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not
193 apply in any case where, with the concurrence of the attorney for the governing body, modification is
194 required to correct clerical errors.

195 D. In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie
196 vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the
197 appeal.