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SENATE BILL NO. 1422

Offered January 16, 2025

A BILL to amend and reenact § 15.2-2286 of the Code of Virginia, relating to zoning violations; appeals; fines.

Patron—Reeves

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2286 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties.

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

- 1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any district.
2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.

3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing. Conditions may include the period of validity for a special exception or special use permit; however, in the case of a special exception or special use permit for residential projects, the period of validity shall be no less than three years.

The governing body or the board of zoning appeals of the Cities of Hampton and Norfolk may impose a condition upon any special exception or use permit relating to retail alcoholic beverage control licensees which provides that such special exception or use permit will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility, or the passage of a specific period of time.

The governing body of the City of Richmond may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307 or subsection C of § 15.2-2311.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of a zoning ordinance that limits occupancy in a residential dwelling unit, which is subject to a civil penalty that may be imposed in accordance with the provisions of § 15.2-2209, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the attorney for the locality petition the judge of the general district court for his jurisdiction for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of less than 30 days, but not less than 10 days, for a notice of violation involving (a) the storage or disposal of

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59 *nonagricultural excavation material, waste, and debris or (b) temporary or seasonal commercial uses,*
 60 *parking of commercial trucks in residential zoning districts, maximum occupancy limitations of a residential*
 61 *dwelling unit, or similar short-term, recurring violations.*

62 Where provided by ordinance, the zoning administrator may be authorized to grant a modification from
 63 any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of
 64 land, including but not limited to size, height, location or features of or related to any building, structure, or
 65 improvements, if the administrator finds in writing that: ~~(i)~~ (1) the strict application of the ordinance would
 66 produce undue hardship; ~~(ii)~~ (2) such hardship is not shared generally by other properties in the same zoning
 67 district and the same vicinity; and ~~(iii)~~ (3) the authorization of the modification will not be of substantial
 68 detriment to adjacent property and the character of the zoning district will not be changed by the granting of
 69 the modification. Prior to the granting of a modification, the zoning administrator shall give, or require the
 70 applicant to give, all adjoining property owners written notice of the request for modification, and an
 71 opportunity to respond to the request within 21 days of the date of the notice. The zoning administrator shall
 72 make a decision on the application for modification and issue a written decision with a copy provided to the
 73 applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph.
 74 The decision of the zoning administrator shall constitute a decision within the purview of § 15.2-2311, and
 75 may be appealed to the board of zoning appeals as provided by that section. Decisions of the board of zoning
 76 appeals may be appealed to the circuit court as provided by § 15.2-2314.

77 The zoning administrator shall respond within 90 days of a request for a decision or determination on
 78 zoning matters within the scope of his authority unless the requester has agreed to a longer period. If the
 79 decision or determination by the zoning administrator could impair the ability of an adjacent property owner
 80 to satisfy the minimum storage capacity and yield requirements for a residential drinking well pursuant to §
 81 32.1-176.4 or any regulation adopted thereunder, the zoning administrator shall provide a copy of such
 82 decision or determination to such adjacent property owner so affected.

83 5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such
 84 violation shall be a misdemeanor punishable by a fine of not more than \$1,000. If the violation is uncorrected
 85 at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance
 86 with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning
 87 violation within the specified time period shall constitute a separate misdemeanor offense punishable by a
 88 fine of not more than \$1,000; any such failure during a succeeding 10-day period shall constitute a separate
 89 misdemeanor offense punishable by a fine of not more than \$1,500; and any such failure during any
 90 succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable
 91 by a fine of not more than \$2,000.

92 *However, any conviction resulting from a violation of provisions regulating the storage or disposal of*
 93 *nonagricultural excavation material, waste, and debris shall be punishable by a fine of \$2,000. Failure to*
 94 *abate the violation within the specified time period shall be punishable by a fine of \$5,000, and any such*
 95 *failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day*
 96 *period punishable by a fine of \$7,500.*

97 However, any conviction resulting from a violation of provisions regulating the number of unrelated
 98 persons in single-family residential dwellings shall be punishable by a fine of up to \$2,000. Failure to abate
 99 the violation within the specified time period shall be punishable by a fine of up to \$5,000, and any such
 100 failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day
 101 period punishable by a fine of up to \$7,500. However, no such fine shall accrue against an owner or
 102 managing agent of a single-family residential dwelling unit during the pendency of any legal action
 103 commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an
 104 overcrowding condition in accordance with the Virginia Residential Landlord and Tenant Act (§ 55.1-1200 et
 105 seq.). A conviction resulting from a violation of provisions regulating the number of unrelated persons in
 106 single-family residential dwellings shall not be punishable by a jail term.

107 6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices
 108 and other expenses incident to the administration of a zoning ordinance or to the filing or processing of any
 109 appeal or amendment thereto.

110 7. For the amendment of the regulations or district maps from time to time, or for their repeal. Whenever
 111 the public necessity, convenience, general welfare, or good zoning practice requires, the governing body may
 112 by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property.
 113 Any such amendment may be initiated (i) by resolution of the governing body; (ii) by motion of the local
 114 planning commission; or (iii) by petition of the owner, contract purchaser with the owner's written consent, or
 115 the owner's agent therefor, of the property which is the subject of the proposed zoning map amendment,
 116 addressed to the governing body or the local planning commission, who shall forward such petition to the
 117 governing body; however, the ordinance may provide for the consideration of proposed amendments only at
 118 specified intervals of time, and may further provide that substantially the same petition will not be
 119 reconsidered within a specific period, not exceeding one year. Any such resolution or motion by such

governing body or commission proposing the rezoning shall state the above public purposes therefor.

In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

8. For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

9. For areas and districts designated for mixed use developments or planned unit developments as defined in § 15.2-2201.

10. For the administration of incentive zoning as defined in § 15.2-2201.

11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the higher zoning classification. The locality may establish reasonable guidelines for determining the amount of excess real estate tax collected and the method and duration for applying the tax credit. For purposes of this section, "downzoning" means a zoning action by a locality that results in a reduction in a formerly permitted land use intensity or density.

12. Provisions for requiring and considering Phase I environmental site assessments based on the anticipated use of the property proposed for the subdivision or development that meet generally accepted national standards for such assessments, such as those developed by the American Society for Testing and Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as, but not limited to, those developed by the American Society for Testing and Materials, if the locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with regulations of the United States Environmental Protection Agency and the American Society for Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrative expense involved in such review.

13. Provisions to incorporate generally accepted national environmental protection and product safety standards for the use of solar panels and battery technologies for solar photovoltaic (electric energy) projects, such as those developed for existing product certifications and standards including the National Sanitation Foundation/American National Standards Institute No. 457, International Electrotechnical Commission No. 61215-2, Institute of Electrical and Electronics Engineers Standard 1547, and Underwriters Laboratories No. 61730-2.

14. Provisions for requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of subdivision and development plans.

15. For the enforcement of provisions of the zoning ordinance that regulate the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance with applicable local, state and federal fair housing laws.

16. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The zoning administrator or his agent may make an affidavit under oath before a magistrate or court of competent jurisdiction and, if such affidavit establishes probable cause that a zoning ordinance violation has occurred, request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purpose of determining whether violations of the zoning ordinance exist. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the zoning administrator or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was made. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

B. Prior to the initiation of an application by the owner of the subject property, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent, for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the locality and have been properly assessed against the subject property, have been paid, unless otherwise authorized by the treasurer.