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INTRODUCED

HB198

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A BILL to amend and reenact §§ 15.2-2285 and 15.2-2314 of the Code of Virginia, relating to local
governing body; review of decision by board of zoning appeals; procedures for filing petition.

7 Patron—Thomas
8
9 Committee Referral Pending

10 Be it enacted by the General Assembly of Virginia:

11 1. That §§ 15.2-2285 and 15.2-2314 of the Code of Virginia are amended and reenacted as follows:

12 § 15.2-2285. Preparation and adoption of zoning ordinance and map and amendments thereto;
13 appeal.

14 A. The planning commission of each locality may, and at the direction of the governing body shall,
15 prepare a proposed zoning ordinance including a map or maps showing the division of the territory into
16 districts and a text setting forth the regulations applying in each district. The commission shall hold at least
17 one public hearing on a proposed ordinance or any amendment of an ordinance, after notice as required by
18 § 15.2-2204, and may make appropriate changes in the proposed ordinance or amendment as a result of the
19 hearing. Upon the completion of its work, the commission shall present the proposed ordinance or
20 amendment including the district maps to the governing body together with its recommendations and
21 appropriate explanatory materials.

22 B. No zoning ordinance shall be amended or reenacted unless the governing body has referred the
23 proposed amendment or reenactment to the local planning commission for its recommendations. Failure of
24 the commission to report 100 days after the first meeting of the commission after the proposed amendment or
25 reenactment has been referred to the commission, or such shorter period as may be prescribed by the
26 governing body, shall be deemed approval, unless the proposed amendment or reenactment has been
27 withdrawn by the applicant prior to the expiration of the time period. The governing body shall hold at least
28 one public hearing on a proposed reduction of the commission's review period. The governing body shall
29 publish a notice of the public hearing in a newspaper having general circulation in the locality at least two
30 weeks prior to the public hearing date and shall also publish the notice on the locality's website, if one exists.
31 In the event of and upon such withdrawal, processing of the proposed amendment or reenactment shall cease
32 without further action as otherwise would be required by this subsection.

33 C. Before approving and adopting any zoning ordinance or amendment thereof, the governing body shall
34 hold at least one public hearing thereon, pursuant to public notice as required by § 15.2-2204, after which the
35 governing body may make appropriate changes or corrections in the ordinance or proposed amendment.
36 However, no land may be zoned to a more intensive use classification than was contained in the
37 documentation made available for examination pursuant to subsection A of § 15.2-2204 without an additional
38 public hearing after notice required by § 15.2-2204. Zoning ordinances shall be enacted in the same manner
39 as all other ordinances.

40 D. Any county which has adopted an urban county executive form of government provided for under
41 Chapter 8 (§ 15.2-800 et seq.) may provide by ordinance for use of plans, profiles, elevations, and other such
42 demonstrative materials in the presentation of requests for amendments to the zoning ordinance.

43 E. The adoption or amendment prior to March 1, 1968, of any plan or ordinance under the authority of
44 prior acts shall not be declared invalid by reason of a failure to advertise, give notice or conduct more than
45 one public hearing as may be required by such act or by this chapter, provided a public hearing was
46 conducted by the governing body prior to the adoption or amendment.

47 F. Every action contesting a decision of the local governing body adopting or failing to adopt a proposed
48 zoning ordinance or amendment thereto or granting or failing to grant a special exception shall be filed within
49 thirty 30 days of the decision with the circuit court having jurisdiction of the land affected by the decision.
50 Such 30-day filing requirement shall be mandatory and jurisdictional. However, nothing in this subsection
51 shall be construed to create any new right to contest the action of a local governing body.

52 § 15.2-2314. Review decision of board; who may file petition in circuit court; who are necessary
53 parties; when petition and response to petition may be served; determinations by and procedure for
54 circuit court in certain appeals.

55 A. Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or
56 any aggrieved taxpayer or any officer, department, board, or bureau of the locality, may, within 30 days after
57 the final decision of the board, file with the clerk of the circuit court for the county or city a petition that shall
58 be styled "[Petitioner v. Respondent] In Re: [date] Decision of the Board of Zoning Appeals of [locality]

59 name]" specifying the grounds on which aggrieved ~~within 30 days after the final decision of the board. Such~~
60 ~~30-day filing requirement shall be mandatory and jurisdictional.~~

61 Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of
62 the governing body, the applicant before the board of zoning appeals, and the landowner of record, if such
63 landowner of record is a different party from the applicant, shall prescribe therein the time within which a
64 return thereto must be made and be the necessary parties to the proceedings in the circuit court. All necessary
65 parties shall be listed as either petitioner or respondent as appropriate. The circuit court may permit
66 intervention by any other person or persons jointly or severally aggrieved by any decision of the board of
67 zoning appeals. The petition shall be served upon all necessary parties and the secretary of the board of
68 zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than
69 40 within 30 days and may be extended by the court after the petition is filed with the clerk of the circuit
70 court. Once the writ of certiorari is served, the board of zoning appeals shall have 21 days or as ordered by
71 the court to respond. The allowance of the writ shall not stay proceedings upon the decision appealed from,
72 but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.
73 Service of process upon a respondent more than 30 days after the petition is filed shall be timely upon a
74 finding by the court that the petitioner exercised due diligence to have timely service made upon the
75 respondent. Failure to timely file and serve the petition shall result in a dismissal of the matter.

76 Any review of a decision of the board shall not be considered an action against the board and the board
77 shall not be a necessary party to the proceedings; however, the board shall participate in the proceedings to
78 the extent required by this section or to the extent required by the circuit court. The governing body, the
79 landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings
80 in the circuit court. The court may permit intervention by any other person or persons jointly or severally
81 aggrieved by any decision of the board of zoning appeals.

82 The timely filing and service of a petition shall not stay the proceedings of an appeal of a decision by the
83 board of zoning appeals but the circuit court may, upon motion by a petitioner with notice to the board of
84 zoning appeals and all necessary parties, grant a temporary restraining order or preliminary injunction
85 pursuant to Rule 3:26 of the Rules of the Supreme Court of Virginia.

86 B. The filing of the record of the proceedings by the secretary of the board of zoning appeals and the
87 filing of a response by any respondent shall be in accordance with the provisions of this subsection. The
88 secretary of the board of zoning appeals shall, within 21 days of being served with the petition, file the record
89 of the proceedings at issue in the petition unless extended by the circuit court for good cause shown. The
90 filing of the record of the proceedings shall not require the board of zoning appeals shall not be required to
91 return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof
92 or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts
93 as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

94 Any respondent may file a response to the petition within 21 days of (i) the filing of the record of the
95 proceedings or (ii) service of the petition upon such respondent, whichever is later, unless such time to file a
96 response is extended by the circuit court for good cause shown. No petitioner shall file a reply unless granted
97 leave by the circuit court to do so for good cause shown.

98 C. The circuit court shall conduct a hearing as promptly as possible to make a ruling on the petition and
99 any response made to the petition. Any party may introduce evidence in the proceedings in the court in
100 accordance with the Rules of Evidence of the Supreme Court of Virginia, however the methods and
101 procedures of discovery pursuant to Part 4 of the Rules of the Supreme Court of Virginia shall not apply to
102 the proceedings described in this section.

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

105 D. The following cases brought before the circuit court shall be conducted as follows:

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

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

118 3. In the case of an appeal by a person of any decision of the board of zoning appeals that denied or
119 granted application for a special exception, the decision of the board of zoning appeals shall be presumed to
120 be correct. The petitioner may rebut that presumption by showing to the satisfaction of the circuit court that

121 the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of
122 zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of
123 the purpose and intent of the zoning ordinance, and is not fairly debatable.

124 ~~In the ease of an appeal from the board of zoning appeals to the circuit court of a decision of the board,
125 any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of
126 the Supreme Court of Virginia.~~

127 E. Costs shall not be allowed against the locality or the governing body, unless it shall appear to the
128 *circuit court* that the locality or the governing body acted in bad faith or with malice. In the event the decision
129 of the board is affirmed and the court finds that the appeal was frivolous, the *circuit court* may order the
130 person or persons who ~~requested the issuance of the writ of certiorari filed the petition to pay the costs~~
131 incurred in ~~making the return of the record pursuant to the writ of certiorari filing the record of the~~
132 ~~proceedings before the board of zoning appeals.~~ If the petition is withdrawn subsequent to the filing of the
133 ~~return record of the proceedings,~~ the locality or the governing body may request that the *circuit court* hear the
134 matter on the question of whether the appeal was frivolous.