

HOUSE BILL NO. 419

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns

on \_\_\_\_\_)

(Patron Prior to Substitute—Delegate Cole, N.)

*A BILL to amend and reenact § 15.2-2286 of the Code of Virginia, relating to zoning amendments.*

**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.

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

31        The governing body of the City of Richmond may impose a condition upon any special use permit issued  
32        after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit  
33        shall be subject to an automatic review by the governing body upon a change in possession, a change in the  
34        owner of the business, or a transfer of majority control of the business entity. Upon review by the governing  
35        body, it may either amend or revoke the special use permit after notice and a public hearing as required by  
36        § 15.2-2206.

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

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

55        Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of less  
56        than 30 days, but not less than 10 days, for a notice of violation involving (a) the storage or disposal of  
57        nonagricultural excavation material, waste, and debris or (b) temporary or seasonal commercial uses, parking  
58        of commercial trucks in residential zoning districts, maximum occupancy limitations of a residential dwelling  
59        unit, or similar short-term, recurring violations.

60        Where provided by ordinance, the zoning administrator may be authorized to grant a modification from  
61        any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of

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

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

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

90 However, any conviction resulting from a violation of provisions regulating the storage or disposal of  
91 nonagricultural excavation material, waste, and debris shall be punishable by a fine of \$2,000. Failure to

92 abate the violation within the specified time period shall be punishable by a fine of \$5,000, and any such  
93 failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day  
94 period punishable by a fine of \$7,500.

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

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

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

119 In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment  
120 to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as  
121 may be necessary which shall not exceed 12 months unless the applicant requests or consents to action  
122 beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the

123 zoning ordinance or map, or both. *No later than 30 days prior to the expiration of the 12-month period, the*  
124 *locality shall notify the applicant in writing that the applicant may request or consent to an extension of time.*  
125 *The locality shall grant any extension requested or consented to by the applicant. If the applicant requests or*  
126 *consents to an extension of time beyond the 12-month period, the locality shall reimburse the applicant for all*  
127 *application, processing, and review fees paid to the locality in connection with such motion, resolution, or*  
128 *petition.* In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease  
129 without further action as otherwise would be required by this subdivision.

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

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

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

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

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

152 13. Provisions to incorporate generally accepted national environmental protection and product safety

153 standards for the use of solar panels and battery technologies for solar photovoltaic (electric energy) projects,  
154 such as those developed for existing product certifications and standards including the National Sanitation  
155 Foundation/American National Standards Institute No. 457, International Electrotechnical Commission No.  
156 61215-2, Institute of Electrical and Electronics Engineers Standard 1547, and Underwriters Laboratories No.  
157 61730-2.

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

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

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

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