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SENATE BILL NO. 711
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Local Government
on _____)
(Patron Prior to Substitute—Senator Stuart)

A BILL to amend and reenact § 15.2-2314 of the Code of Virginia, relating to board of zoning appeals; circuit court writ of certiorari to review decision of board; pleadings, discovery, and evidence prohibited.

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.

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.

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 shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board 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. 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

31 grounds of the decision appealed from and shall be verified. *Once the court orders the writ and the record is*
32 *produced no party shall file any pleadings, conduct discovery, or introduce evidence.*

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

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

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

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

52 In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board,
53 any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of
54 the Supreme Court of Virginia.

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

61 frivolous.