

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 15.2-2307 of the Code of Virginia, relating to zoning; nonconforming uses;*
 3 *manufactured homes.*

4 [H 1463]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 15.2-2307 of the Code of Virginia is amended and reenacted as follows:**8 **§ 15.2-2307. Vested rights not impaired; nonconforming uses.**

9 A. Nothing in this article shall be construed to authorize the impairment of any vested right. Without
 10 limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use
 11 and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner
 12 (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing
 13 development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and
 14 (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance
 15 on the significant affirmative governmental act.

16 B. For purposes of this section and without limitation, the following are deemed to be significant
 17 affirmative governmental acts allowing development of a specific project: (i) the governing body has
 18 accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing
 19 body has approved an application for a rezoning for a specific use or density; (iii) the governing body or
 20 board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of
 21 zoning appeals has approved a variance; (v) the designated agent has approved a preliminary subdivision plat,
 22 site plan or plan of development for the landowner's property and the applicant diligently pursues approval of
 23 the final plat or plan within a reasonable period of time under the circumstances; (vi) the designated agent has
 24 approved a final subdivision plat, site plan or plan of development for the landowner's property; or (vii) the
 25 zoning administrator or other administrative officer has issued a written order, requirement, decision or
 26 determination regarding the permissibility of a specific use or density of the landowner's property that is no
 27 longer subject to appeal and no longer subject to change, modification or reversal under subsection C of
 28 § 15.2-2311.

29 C. A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not
 30 conform to the zoning prescribed for the district in which they are situated may be continued only so long as
 31 the then existing or a more restricted use continues and such use is not discontinued for more than two years,
 32 and so long as the buildings or structures are maintained in their then structural condition; and that the uses of
 33 such buildings or structures shall conform to such regulations whenever, with respect to the building or
 34 structure, the square footage of a building or structure is enlarged, or the building or structure is structurally
 35 altered as provided in the Uniform Statewide Building Code (§ 36-97 et seq.). If a use does not conform to
 36 the zoning prescribed for the district in which such use is situated, and if (i) a business license was issued by
 37 the locality for such use and (ii) the holder of such business license has operated continuously in the same
 38 location for at least 15 years and has paid all local taxes related to such use, the locality shall permit the
 39 holder of such business license to apply for a rezoning or a special use permit without charge by the locality
 40 or any agency affiliated with the locality for fees associated with such filing. Further, a zoning ordinance may
 41 provide that no nonconforming use may be expanded, or that no nonconforming building or structure may be
 42 moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming use.

43 D. Notwithstanding any local ordinance to the contrary, if (i) the local government has issued a building
 44 permit, the building or structure was thereafter constructed in accordance with the building permit, and upon
 45 completion of construction, the local government issued a certificate of occupancy or a use permit therefor,
 46 (ii) a property owner, relying in good faith on the issuance of a building permit, incurs extensive obligations
 47 or substantial expenses in diligent pursuit of a building project that is in conformance with the building
 48 permit and the Uniform Statewide Building Code (§ 36-97 et seq.), or (iii) the owner of the building or
 49 structure has paid taxes to the locality for such building or structure for a period of more than the previous 15
 50 years, a zoning ordinance shall not provide that such building or structure is illegal and subject to removal
 51 solely due to such nonconformity. Such building or structure shall be nonconforming. A zoning ordinance
 52 may provide that such building or structure be brought in compliance with the Uniform Statewide Building
 53 Code, provided that to do so shall not affect the nonconforming status of such building or structure. If the
 54 local government has issued a permit, other than a building permit, that authorized construction of an
 55 improvement to real property and the improvement was thereafter constructed in accordance with such
 56 permit, the ordinance may provide that the improvements are nonconforming, but not illegal. If the structure

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57 is one that requires no permit, and an authorized local government official informs the property owner that
58 the structure will comply with the zoning ordinance, and the improvement was thereafter constructed, a
59 zoning ordinance may provide that the structure is nonconforming but shall not provide that such structure is
60 illegal and subject to removal solely due to such nonconformity. In any proceeding when the authorized
61 government official is deceased or is otherwise unavailable to testify, uncorroborated testimony of the oral
62 statement of such official shall not be sufficient evidence to prove that the authorized government official
63 made such statement.

64 E. A zoning ordinance shall permit the owner of any residential or commercial building damaged or
65 destroyed by a natural disaster or other act of God to repair, rebuild, or replace such building to eliminate or
66 reduce the nonconforming features to the extent possible, without the need to obtain a variance as provided in
67 § 15.2-2310. If such building is damaged greater than 50 percent and cannot be repaired, rebuilt or replaced
68 except to restore it to its original nonconforming condition, the owner shall have the right to do so. The owner
69 shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in
70 compliance with the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.) and any work done
71 to repair, rebuild or replace such building shall be in compliance with the provisions of the local flood plain
72 regulations adopted as a condition of participation in the National Flood Insurance Program. Unless such
73 building is repaired, rebuilt or replaced within two years of the date of the natural disaster or other act of God,
74 such building shall only be repaired, rebuilt or replaced in accordance with the provisions of the zoning
75 ordinance of the locality. However, if the nonconforming building is in an area under a federal disaster
76 declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to
77 the declaration, then the zoning ordinance shall provide for an additional two years for the building to be
78 repaired, rebuilt or replaced as otherwise provided in this paragraph. For purposes of this section, "act of
79 God" shall include any natural disaster or phenomena including a hurricane, tornado, storm, flood, high
80 water, wind-driven water, tidal wave, earthquake or fire caused by lightning or wildfire. For purposes of this
81 section, owners of property damaged by an accidental fire have the same rights to rebuild such property as if
82 it were damaged by an act of God. Nothing herein shall be construed to enable the property owner to commit
83 an arson under § 18.2-77 or 18.2-80, and obtain vested rights under this section.

84 F. Notwithstanding any local ordinance to the contrary, an owner of real property shall be permitted to
85 replace an existing on-site sewage system for any existing building in the same general location on the
86 property even if a new on-site sewage system would not otherwise be permitted in that location, unless access
87 to a public sanitary sewer is available to the property. If access to a sanitary sewer system is available, then
88 the connection to such system shall be required. Any new on-site system shall be installed in compliance with
89 applicable regulations of the Department of Health in effect at the time of the installation.

90 G. Nothing in this section shall be construed to prevent a locality, after making a reasonable attempt to
91 notify such property owner, from ordering the removal of a nonconforming sign that has been abandoned. For
92 purposes of this section, a sign shall be considered abandoned if the business for which the sign was erected
93 has not been in operation for a period of at least two years. Any locality may, by ordinance, provide that
94 following the expiration of the two-year period any abandoned nonconforming sign shall be removed by the
95 owner of the property on which the sign is located, if notified by the locality to do so. If, following such two-
96 year period, the locality has made a reasonable attempt to notify the property owner, the locality through its
97 own agents or employees may enter the property upon which the sign is located and remove any such sign
98 whenever the owner has refused to do so. The cost of such removal shall be chargeable to the owner of the
99 property. Nothing herein shall prevent the locality from applying to a court of competent jurisdiction for an
100 order requiring the removal of such abandoned nonconforming sign by the owner by means of injunction or
101 other appropriate remedy.

102 H. Nothing in this section shall be construed to prevent the land owner or home owner from removing a
103 valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home
104 with another comparable manufactured home that meets the current HUD manufactured housing code. *A land*
105 *owner or home owner may also place a manufactured home that meets the current HUD manufactured*
106 *housing code upon any open lot in a valid nonconforming mobile or manufactured home park regardless of*
107 *whether a valid nonconforming manufactured home is currently located on such lot.* In such mobile or
108 manufactured home park, a single-section home may replace a single-section home and a multi-section home
109 may replace a multi-section home.

110 I. The owner of a valid nonconforming mobile or manufactured home not located in a mobile or
111 manufactured home park may replace that home with a newer manufactured home, either single- or
112 multi-section, that meets the current HUD manufactured housing code. *For the purposes of determining*
113 *whether a use has been continuous pursuant to subsection C and this subsection, an existing mobile or*
114 *manufactured home shall be considered a valid nonconforming mobile or manufactured home regardless of*
115 *whether such mobile or manufactured home has been occupied during the preceding two-year period.* Any
116 such replacement home shall retain the valid nonconforming status of the prior home.