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HOUSE BILL NO. 447

Offered January 14, 2026

A BILL to amend and reenact §§ 15.2-2285 and 15.2-2314 of the Code of Virginia, relating to contesting local governing body or board of zoning appeals land use decisions; third-party standing requirements.

Patron—Simon

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

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

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

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

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be prescribed by the governing body, shall be deemed approval, unless the proposed amendment or reenactment has been withdrawn by the applicant prior to the expiration of the time period.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

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

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

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

F. Every action contesting a decision of the local governing body adopting or failing to adopt a proposed zoning ordinance or amendment thereto or granting or failing to grant a special exception shall be filed within thirty days of the decision with the circuit court having jurisdiction of the land affected by the decision. However, nothing in this subsection shall be construed to create any new right to contest the action of a local governing body.

G. A person who has an ownership interest in the property that is the direct subject of the governing body's action shall have standing in an action pursuant to subsection F. Additionally, a person who does not have an ownership interest in the property that is the direct subject of the governing body's action initiated pursuant to subsection F shall have standing if such person has alleged with particularity and proven by clear and convincing evidence that he (i) has an immediate, pecuniary, and substantial interest in the litigation, and not a remote or indirect interest; (ii) owns or occupies real property within or in close proximity to the property that is the subject of the land use determination; and (iii) has suffered (a) a particularized harm to a personal or property right, legal or equitable, or (b) an imposition of a burden or

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obligation different from that suffered by the general public. For purposes of this subsection, a "burden" or "obligation" does not include alleged changes in property values, traffic, transportation, parking, noise, or air pollution impacts or a claim that the approved land use will adversely affect general safety.

§ 15.2-2314. Certiorari to review decision of board.

A. 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, or any person described in subsection B 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 grounds of the decision appealed from and shall be verified.

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

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

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

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

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

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

B. Any person who does not have an ownership interest in the property that is the direct subject of the decision of the board of zoning appeals shall be deemed aggrieved and have standing to file a petition pursuant to this section if such person has alleged with particularity and proven by clear and convincing evidence that he (i) has an immediate, pecuniary, and substantial interest in the litigation, and not a remote or indirect interest; (ii) owns or occupies real property within or in close proximity to the property that is the subject of the land use determination; and (iii) has suffered (a) a particularized harm to a personal or property right, legal or equitable, or (b) an imposition of a burden or obligation different from that suffered by the general public. For purposes of this subsection, a "burden" or "obligation" does not include alleged

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122 *approved land use will adversely affect general safety. A person who has an ownership interest in the*
123 *property that is the direct subject of the decision of the board of zoning appeals shall have standing as*
124 *provided in this section.*

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