

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact § 15.2-2286 of the Code of Virginia, relating to voluntary downzoning agreements.*

[H 1978]

Approved

**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.

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.

The governing body or the board of zoning appeals of any city with a population between 260,000 and 264,000 may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time.

The governing body of any city with a population between 200,000 and 210,000 may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307. Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of less than thirty days, but not less than ten days, for a notice of violation involving temporary or seasonal commercial uses, parking of commercial trucks in residential zoning districts, or similar short-term, recurring violations.

Where provided by ordinance, the zoning administrator may be authorized to grant a variance from any building setback requirement contained in the zoning ordinance if the administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the variance. Prior to the granting of a variance, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for variance, and an opportunity to respond to the request within twenty-one days of the date of the notice. If any adjoining property owner objects to said request in writing within the time specified above, the request shall be transferred to the Board of Zoning Appeals

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57 for decision.

58 The zoning administrator shall respond within ninety days of a request for a decision or  
59 determination on zoning matters within the scope of his authority unless the requester has agreed to a  
60 longer period.

61 5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any  
62 such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000.  
63 If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or  
64 remedy the violation in compliance with the zoning ordinance, within a time period established by the  
65 court. Failure to remove or abate a zoning violation within the specified time period shall constitute a  
66 separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, and any  
67 such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for  
68 each ten-day period punishable by a fine of not less than \$100 nor more than \$1,500.

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

72 7. For the amendment of the regulations or district maps from time to time, or for their repeal.  
73 Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the  
74 governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or  
75 classifications of property. Any such amendment may be initiated (i) by resolution of the governing  
76 body, (ii) by motion of the local planning commission, or (iii) by petition of the owner, contract  
77 purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the  
78 subject of the proposed zoning map amendment, addressed to the governing body or the local planning  
79 commission, who shall forward such petition to the governing body; however, the ordinance may  
80 provide for the consideration of proposed amendments only at specified intervals of time, and may  
81 further provide that substantially the same petition will not be reconsidered within a specific period, not  
82 exceeding one year. Any such resolution or motion by such governing body or commission proposing  
83 the rezoning shall state the above public purposes therefor.

84 In any county having adopted such zoning ordinance, all motions, resolutions or petitions for  
85 amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such  
86 reasonable time as may be necessary which shall not exceed twelve months unless the applicant requests  
87 or consents to action beyond such period or unless the applicant withdraws his motion, resolution or  
88 petition for amendment to the zoning ordinance or map, or both. In the event of and upon such  
89 withdrawal, processing of the motion, resolution or petition shall cease without further action as  
90 otherwise would be required by this subdivision.

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

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

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

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

103 B. Prior to the initiation of an application for a special exception, special use permit, variance,  
104 rezoning or other land use permit, or prior to the issuance of final approval, the authorizing body may  
105 require the applicant to produce satisfactory evidence that any delinquent real estate taxes owed to the  
106 locality which have been properly assessed against the subject property have been paid.