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**HOUSE BILL NO. 1851**

Offered January 12, 2005

Prefiled January 6, 2005

*A BILL to amend and reenact § 15.2-2286 of the Code of Virginia, relating to zoning; transfer of development rights.*

Patrons—Eisenberg, Brink and Ebbin

Referred to Committee on Counties, Cities and Towns

**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~~ 30 days, but not less than ~~ten~~ 10 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

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59 ~~twenty-one~~ 21 days of the date of the notice. If any adjoining property owner objects to said request in  
60 writing within the time specified above, the request shall be transferred to the Board of Zoning Appeals  
61 for decision.

62 The zoning administrator shall respond within ~~ninety~~ 90 days of a request for a decision or  
63 determination on zoning matters within the scope of his authority unless the requester has agreed to a  
64 longer period.

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

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

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

88 In any county having adopted such zoning ordinance, all motions, resolutions or petitions for  
89 amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such  
90 reasonable time as may be necessary which shall not exceed ~~twelve~~ 12 months unless the applicant  
91 requests or consents to action beyond such period or unless the applicant withdraws his motion,  
92 resolution or petition for amendment to the zoning ordinance or map, or both. In the event of and upon  
93 such withdrawal, processing of the motion, resolution or petition shall cease without further action as  
94 otherwise would be required by this subdivision.

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

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

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

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

107 12. Provisions for the clustering of single-family dwellings so as to preserve open space.

108 a. A locality may, at its option, provide in its zoning or subdivision ordinance standards, conditions  
109 and criteria for clustering of single-family dwellings and the preservation of open space developments.  
110 In establishing such standards, conditions and criteria, the governing body may, in its discretion, include  
111 any provisions it determines appropriate to ensure quality development, preservation of open space and  
112 compliance with its comprehensive plan and land use ordinances. The density calculation of the cluster  
113 development shall be based upon the same criteria for the property as would otherwise be permitted by  
114 applicable land use ordinances. As a locality determines, at its option, to provide for clustering of  
115 single-family dwellings and the preservation of open space developments, it may vary provisions for  
116 such developments for each different zoning area within the locality.

117 If proposals for clustering of single-family dwellings and the preservation of open space  
118 developments comply with the locality's adopted standards, conditions and criteria, the development and  
119 open space preservation shall be permitted by right under the local subdivision ordinance. The  
120 implementation and approval of the cluster development and open space preservation shall be done

121 administratively by the locality's staff and without a public hearing. No local ordinance shall require that  
122 a special exception, special use, or conditional use permit be obtained for such developments. However,  
123 any such ordinance may exempt developments of two acres or less from the provisions of this  
124 subdivision.

125 b. Additionally, in any zoning or subdivision ordinance adopted pursuant to subdivision A 12, a  
126 locality may, at its option, provide for the clustering of single-family dwellings and the preservation of  
127 open space at a density calculation greater than the density permitted in the applicable land use  
128 ordinance. To implement and approve such increased density development, the locality may, at its  
129 option, (i) establish and provide in its zoning or subdivision ordinance standards, conditions, and criteria  
130 for such development, and if the proposed development complies with those standards, conditions and  
131 criteria, it shall be permitted by right and approved administratively by the locality staff in the same  
132 manner provided in subdivision A 12 a, or (ii) approve the increased density development upon approval  
133 of a special exception, special use permit, conditional use permit or rezoning.

134 c. Any locality that provides for clustering of single-family dwellings and preservation of open space  
135 upon approval of a special exception, special use permit, conditional use permit or rezoning shall no  
136 later than July 1, 2004, amend its applicable land use ordinance to comply with the provisions of  
137 subdivision A 12. Any land use provisions for clustering of single-family dwellings and preservation of  
138 open space adopted after the effective date of this act shall comply with subdivision A 12.  
139 Notwithstanding any of the requirements of subdivision A 12 to the contrary, any local government land  
140 use ordinance in affect as of January 1, 2002, that provides for the clustering of single-family dwellings  
141 and preservation of open space development by right without requiring either a special exception, special  
142 use permit, conditional use permit or other discretionary approval may remain in effect at the option of  
143 the locality.

144 *13. For the transfer of some or all specified development rights, including density and other rights*  
145 *as defined by the locality, from one or more parcels of property located elsewhere in the locality. The*  
146 *transfer of development rights shall be subject to such terms as may be provided by zoning regulations,*  
147 *the conditions of a special use permit or special exception, or the proffered conditions of a rezoning*  
148 *application, including that the terms are binding on the owners of such property and on their successors*  
149 *and assigns.*

150 B. Prior to the initiation of an application for a special exception, special use permit, variance,  
151 rezoning or other land disturbing permit, including building permits and erosion and sediment control  
152 permits, or prior to the issuance of final approval, the authorizing body may require the applicant to  
153 produce satisfactory evidence that any delinquent real estate taxes owed to the locality which have been  
154 properly assessed against the subject property have been paid.