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HOUSE BILL NO. 2159

Offered January 12, 2005

Prefiled January 11, 2005

A BILL to amend and reenact § 15.2-2309 of the Code of Virginia, relating to boards of zoning appeals.

Patrons—Reese and Amundson

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-2309 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision.

2. To authorize upon appeal or original application in specific cases such variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in ~~unnecessary~~ a clearly demonstrable hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship ~~approaching confiscation~~, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

No such variance shall be authorized by the board unless it finds:

a. That the strict application of the ordinance would produce ~~undue~~ a clearly demonstrable hardship;

b. That the clearly demonstrable hardship is not shared generally by other properties in the same zoning district and the same vicinity; and

c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No variance shall be authorized except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the

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59 occupants of abutting property and property immediately across the street or road from the property
60 affected, the board may give such notice by first-class mail rather than by registered or certified mail.
61 The board shall not have the power to change substantially the locations of district boundaries as
62 established by ordinance.

63 5. No provision of this section shall be construed as granting any board the power to rezone property
64 or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by
65 the governing body.

66 6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The
67 board may impose such conditions relating to the use for which a permit is granted as it may deem
68 necessary in the public interest, including limiting the duration of a permit, and may require a guarantee
69 or bond to ensure that the conditions imposed are being and will continue to be complied with.

70 No special exception may be granted except after notice and hearing as provided by § 15.2-2204.
71 However, when giving any required notice to the owners, their agents or the occupants of abutting
72 property and property immediately across the street or road from the property affected, the board may
73 give such notice by first-class mail rather than by registered or certified mail.

74 7. To revoke a special exception previously granted by the board of zoning appeals if the board
75 determines that there has not been compliance with the terms or conditions of the permit. No special
76 exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when
77 giving any required notice to the owners, their agents or the occupants of abutting property and property
78 immediately across the street or road from the property affected, the board may give such notice by
79 first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the
80 right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that
81 there has not been compliance with the terms and conditions of the permit, then it may also revoke
82 special exceptions in the manner provided by this subdivision.

83 8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days
84 to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to
85 act, finds and declares that weather or other conditions are such that it is hazardous for members to
86 attend the meeting. Such finding shall be communicated to the members and the press as promptly as
87 possible. All hearings and other matters previously advertised for such meeting in accordance with
88 § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.