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HOUSE BILL NO. 1073

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 15.2-2297, 15.2-2298 and 15.2-2303 of the Code of Virginia, relating to conditional zoning.

Patrons—Dudley and McQuigg

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2297, 15.2-2298 and 15.2-2303 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2297. Same; conditions as part of a rezoning or amendment to zoning map.

A. A zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map; provided that (i) the rezoning itself must give rise for the need for the conditions; (ii) the conditions shall have a reasonable relation to the rezoning; (iii) the conditions shall not include a cash contribution to the locality; (iv) the conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in § 15.2-2241; (v) the conditions shall not include a requirement that the applicant create a property owners' association under Chapter 26 (§ 55-508 et seq.) of Title 55 which includes an express further condition that members of a property owners' association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments and other public facilities not otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation; (vi) the conditions shall not include payment for or construction of off-site improvements except those provided for in § 15.2-2241; (vii) no condition shall be proffered that is not related to the physical development or physical operation of the property; and (viii) all such conditions shall be in conformity with the comprehensive plan as defined in § 15.2-2223. *The governing body may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal.* Once proffered and accepted as part of an amendment to the zoning ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions. However, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendments to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. The notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property.

Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements

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59 of this subsection shall acquire no rights pursuant to this section.

60 D. The provisions of subsections B and C of this section shall be effective prospectively only, and
61 not retroactively, and shall not apply to any zoning ordinance text amendments which may have been
62 enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation
63 pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

64 Nothing in this section shall be construed to affect or impair the authority of a governing body to:

65 1. Accept proffered conditions which include provisions for timing or phasing of dedications,
66 payments, or improvements; or

67 2. Accept or impose valid conditions pursuant to provision 3 of § 15.2-2286 or other provision of
68 law.

69 § 15.2-2298. Same; additional conditions as a part of rezoning or zoning map amendment in certain
70 high-growth localities.

71 A. Except for those localities to which § 15.2-2303 is applicable, this section shall apply to (i) any
72 locality which has had population growth of ten percent or more from the next-to-latest to latest
73 decennial census year, based on population reported by the United States Bureau of the Census; (ii) any
74 city adjoining such city or county; (iii) any towns located within such county; and (iv) any county
75 contiguous with at least three such counties, and any town located in that county.

76 In any such locality, notwithstanding any contrary provisions of § 15.2-2297, a zoning ordinance may
77 include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior
78 to a public hearing before the governing body, in addition to the regulations provided for the zoning
79 district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map, provided that
80 (i) the rezoning itself gives rise to the need for the conditions; (ii) the conditions have a reasonable
81 relation to the rezoning; and (iii) all conditions are in conformity with the comprehensive plan as
82 defined in § 15.2-2223. Reasonable conditions shall not include, however, conditions that impose upon
83 the applicant the requirement to create a property owners' association under Chapter 26 (§ 55-508 et
84 seq.) of Title 55 which includes an express further condition that members of a property association pay
85 an assessment for the maintenance of public facilities owned in fee by a public entity, including open
86 space, parks, schools, fire departments, and other public facilities not otherwise provided for in
87 § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or
88 special street lighting in public rights-of-way not maintained by the Department of Transportation. *The*
89 *governing body may also accept amended proffers once the public hearing has begun if the amended*
90 *proffers do not materially affect the overall proposal.* Once proffered and accepted as part of an
91 amendment to the zoning ordinance, the conditions shall continue in effect until a subsequent
92 amendment changes the zoning on the property covered by the conditions; however, the conditions shall
93 continue if the subsequent amendment is part of a comprehensive implementation of a new or
94 substantially revised zoning ordinance.

95 No proffer shall be accepted by a locality unless it has adopted a capital improvement program
96 pursuant to § 15.2-2239 or local charter. In the event proffered conditions include the dedication of real
97 property or payment of cash, the property shall not transfer and the payment of cash shall not be made
98 until the facilities for which the property is dedicated or cash is tendered are included in the capital
99 improvement program, provided that nothing herein shall prevent a locality from accepting proffered
100 conditions which are not normally included in a capital improvement program. If proffered conditions
101 include the dedication of real property or the payment of cash, the proffered conditions shall provide for
102 the disposition of the property or cash payment in the event the property or cash payment is not used
103 for the purpose for which proffered.

104 B. In the event proffered conditions include a requirement for the dedication of real property of
105 substantial value, or substantial cash payments for or construction of substantial public improvements,
106 the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map
107 for the property subject to such conditions, nor the conditions themselves, nor any amendments to the
108 text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the
109 governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio,
110 or the density of use permitted in the zoning district applicable to the property, shall be effective with
111 respect to the property unless there has been mistake, fraud, or a change in circumstances substantially
112 affecting the public health, safety, or welfare.

113 C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of
114 substantial value, or substantial cash payments for or construction of substantial public improvements,
115 the need for which is not generated solely by the rezoning itself, but who has not substantially
116 implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail
117 prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. The notice
118 shall identify the property to be developed, the zoning district, and the proffers applicable thereto.
119 Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement
120 the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good

faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B above, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no rights pursuant to this section.

D. The provisions of subsections B and C of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

Nothing in this section shall be construed to affect or impair the authority of a governing body to:

1. Accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or

2. Accept or impose valid conditions pursuant to provision 3 of § 15.2-2286 or other provision of law.

§ 15.2-2303. Conditional zoning in certain localities.

A. A zoning ordinance may include reasonable regulations and provisions for conditional zoning as defined in § 15.2-2201 and for the adoption, in counties, or towns therein which have planning commissions, wherein the urban county executive form of government is in effect, or in a city adjacent to or completely surrounded by such a county, or in a county contiguous to any such county, or in a city adjacent to or completely surrounded by such a contiguous county, or in any town within such contiguous county, and in the counties east of the Chesapeake Bay as a part of an amendment to the zoning map of reasonable conditions, in addition to the regulations provided for the zoning district by the ordinance, when such conditions shall have been proffered in writing, in advance of the public hearing before the governing body required by § 15.2-2285 by the owner of the property which is the subject of the proposed zoning map amendment. Reasonable conditions shall not include, however, conditions that impose upon the applicant the requirement to create a property owners' association under Chapter 26 (§ 55-508 et seq.) of Title 55 which includes an express further condition that members of a property owners' association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments, and other public facilities not otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation. *The governing body may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal.* Once proffered and accepted as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by such conditions. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subdivision shall acquire no rights pursuant to this section.

182 D. Subsections B and C of this section shall be effective prospectively only, and not retroactively,
183 and shall not apply to any zoning ordinance text amendments which may have been enacted prior to
184 March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to
185 July 1, 1990, or any such litigation nonsuited and thereafter refiled.

186 E. Nothing in this section shall be construed to affect or impair the authority of a governing body to
187 (i) accept proffered conditions which include provisions for timing or phasing of dedications, payments,
188 or improvements; or (ii) accept or impose valid conditions pursuant to provision 3 of § 15.2-2286,
189 provision 5 of § 15.2-2242, or other provision of law.

190 F. In addition to the powers granted by the preceding subsections, a zoning ordinance may include
191 reasonable regulations to implement, in whole or in part, the provisions of §§ 15.2-2296 through
192 15.2-2302.