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## HOUSE BILL NO. 1637

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Local Government  
on February 17, 2009)

(Patron Prior to Substitute—Delegate Cole)

A BILL to amend and reenact §§ 15.2-2308 and 15.2-2312 of the Code of Virginia, relating to boards of zoning appeals.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 15.2-2308 and 15.2-2312 of the Code of Virginia are amended and reenacted as follows:**

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. For the conduct of any hearing ~~and the taking of any action~~, a quorum shall be not less than a majority of all the members of the board. *No action of the board shall be valid unless authorized by a majority vote of those present and voting.* The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice.

E. Notwithstanding any contrary provisions of this section, in the City of Virginia Beach, members of the board shall be appointed by the governing body. The governing body of such city shall also appoint at least one but not more than three alternates to the board.

§ 15.2-2312. Procedure on appeal.

60 The board shall fix a reasonable time for the hearing of an application or appeal, give public notice  
61 thereof as well as due notice to the parties in interest and make its decision within ninety days of the  
62 filing of the application or appeal. In exercising its powers the board may reverse or affirm, wholly or  
63 partly, or may modify, an order, requirement, decision or determination appealed from. The concurring  
64 vote of a majority of ~~the membership of the board~~ *the members of the board present and voting* shall be  
65 necessary to reverse any order, requirement, decision or determination of an administrative officer or to  
66 decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or  
67 to effect any variance from the ordinance. The board shall keep minutes of its proceedings and other  
68 official actions which shall be filed in the office of the board and shall be public records. The chairman  
69 of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of  
70 witnesses.