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HOUSE BILL NO. 1680

House Amendments in [] — January 27, 2009

A BILL to amend and reenact § 15.2-2307 of the Code of Virginia, relating to vested rights.

Patron Prior to Engrossment—Delegate Orrock

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-2307 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-2307. Vested rights not impaired; nonconforming uses.

Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

For purposes of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property.

A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of such buildings or structures shall conform to such regulations whenever, with respect to the building or structure, the square footage of a building or structure is enlarged, or the building or structure is structurally altered as provided in the Uniform Statewide Building Code (§ 36-97 et seq.). Further, a zoning ordinance may provide that no nonconforming use may be expanded, or that no nonconforming building or structure may be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming use.

Notwithstanding any local ordinance to the contrary, if (i) the local government has issued a building permit, the building or structure was thereafter constructed in accordance with the building permit, and upon completion of construction, the local government issued a certificate of occupancy or a use permit therefor, or (ii) the owner of the building or structure has paid taxes to the locality for such building or structure for a period in excess of 15 years, a zoning ordinance may provide that the building or structure is nonconforming, but shall not provide that such building or structure is illegal and shall be removed solely due to such nonconformity. Further, a zoning ordinance may provide that such building or structure be brought in compliance with the Uniform Statewide Building Code [*in effect at the time of the construction of the building or structure*].

A zoning ordinance shall permit the owner of any residential or commercial building damaged or destroyed by a natural disaster or other act of God to repair, rebuild, or replace such building to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance as provided in § 15.2-2310. If such building is damaged greater than 50 percent and cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code (§ 36-98 et seq.) and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program. Unless such building is repaired, or rebuilt within two years of the date of the natural disaster or replaced within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in accordance with

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59 the provisions of the zoning ordinance of the locality. However, if the nonconforming building is in an
60 area under a federal disaster declaration and the building has been damaged or destroyed as a direct
61 result of conditions that gave rise to the declaration, then the zoning ordinance shall provide for an
62 additional two years for the building to be repaired, rebuilt or replaced as otherwise provided in this
63 paragraph. *For purposes of this section, "act of God" [~~is defined as~~ shall include] any natural disaster*
64 *or phenomena including a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave,*
65 *earthquake or fire [- A caused by lightening or wildfire. Further, a] fire caused by an individual other*
66 *than the property owner shall not adversely affect the rights vested in the affected property.*

67 Nothing in this section shall be construed to prevent a locality, after making a reasonable attempt to
68 notify such property owner, from ordering the removal of a nonconforming sign that has been
69 abandoned. For purposes of this section, a sign shall be considered abandoned if the business for which
70 the sign was erected has not been in operation for a period of at least two years. Any locality may, by
71 ordinance, provide that following the expiration of the two-year period any abandoned nonconforming
72 sign shall be removed by the owner of the property on which the sign is located, if notified by the
73 locality to do so. If, following such two-year period, the locality has made a reasonable attempt to notify
74 the property owner, the locality through its own agents or employees may enter the property upon which
75 the sign is located and remove any such sign whenever the owner has refused to do so. The cost of such
76 removal shall be chargeable to the owner of the property. Nothing herein shall prevent the locality from
77 applying to a court of competent jurisdiction for an order requiring the removal of such abandoned
78 nonconforming sign by the owner by means of injunction or other appropriate remedy.

79 Nothing in this section shall be construed to prevent the land owner or home owner from removing a
80 valid nonconforming manufactured home from a mobile or manufactured home park and replacing that
81 home with another comparable manufactured home that meets the current HUD manufactured housing
82 code. In such mobile or manufactured home park, a single-section home may replace a single-section
83 home and a multi-section home may replace a multi-section home. The owner of a valid nonconforming
84 mobile or manufactured home not located in a mobile or manufactured home park may replace that
85 home with a newer manufactured home, either single- or multi-section, that meets the current HUD
86 manufactured housing code. Any such replacement home shall retain the valid nonconforming status of
87 the prior home.