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HOUSE BILL NO. 1063

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns
on February 8, 2010)

(Patrons Prior to Substitute—Delegates Athey [HB 1064] and Abbott [HB 811])

*A BILL to amend and reenact §§ 15.2-2311 and 15.2-2314 of the Code of Virginia, relating to appeal of board of zoning appeals decisions.***Be it enacted by the General Assembly of Virginia:****1. That §§ 15.2-2311 and 15.2-2314 of the Code of Virginia are amended and reenacted as follows:****§ 15.2-2311. Appeals to board.**

A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to § 15.2-2286. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. *The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal.* The appeal period shall not commence until the statement is given. A written notice of a zoning violation or a written order of the zoning administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section. The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. *The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs to process the appeal. For jurisdictions that impose civil penalties for violations of the zoning ordinance, any such civil penalty shall not accrue or be assessed during the pendency of the 30-day appeal period.*

B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical or other nondiscretionary errors.

§ 15.2-2314. Certiorari to review decision of board.

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition *that shall be styled "In Re: [date] Decision of the Board of Zoning Appeals of [locality name]"* specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the ~~relator's~~ *attorney secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals*, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

60 *Any review of a decision of the board shall not be considered an action against the board and the*
61 *board shall not be a party to the proceedings; however, the board shall participate in the proceedings*
62 *to the extent required by this section. The governing body, the landowner and the applicant before the*
63 *board of zoning appeals shall be necessary parties to the proceedings. The court may permit*
64 *intervention by any other person or persons jointly or severally aggrieved by any decision of the board*
65 *of zoning appeals.*

66 The board of zoning appeals shall not be required to return the original papers acted upon by it but it
67 shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called
68 for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to
69 show the grounds of the decision appealed from and shall be verified.

70 If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition
71 of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and
72 report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a
73 part of the proceedings upon which the determination of the court shall be made. The court may reverse
74 or affirm, wholly or partly, or may modify the decision brought up for review.

75 In the case of an appeal from the board of zoning appeals to the circuit court of an order,
76 requirement, decision or determination of a zoning administrator or other administrative officer in the
77 administration or enforcement of any ordinance or provision of state law, or any modification of zoning
78 requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on
79 questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by
80 proving by a preponderance of the evidence, including the record before the board of zoning appeals,
81 that the board of zoning appeals erred in its decision. Any party may introduce evidence in the
82 proceedings in the court. The court shall hear any arguments on questions of law de novo.

83 In the case of an appeal by a person of any decision of the board of zoning appeals that denied or
84 granted an application for a variance, or application for a special exception, the decision of the board of
85 zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing
86 to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or
87 where the discretion of the board of zoning appeals is involved, the decision of the board of zoning
88 appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance.

89 Costs shall not be allowed against the ~~board~~ *locality*, unless it shall appear to the court that it acted
90 in bad faith or with malice ~~in making the decision appealed from~~. In the event the decision of the board
91 is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons
92 who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the
93 record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the
94 return, the ~~board~~ *locality* may request that the court hear the matter on the question of whether the
95 appeal was frivolous.