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HOUSE BILL NO. 1561

Offered January 12, 2011

Prefiled January 4, 2011

A BILL to amend and reenact §§ 15.2-2286 and 15.2-2311 of the Code of Virginia, relating to appeal of zoning administrator decisions.

 Patron—Cole

 Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:**1. That §§ 15.2-2286 and 15.2-2311 of the Code of Virginia are amended and reenacted as follows:**

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties.

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any district.

2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.

3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing.

The governing body or the board of zoning appeals of the City of Norfolk may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time.

The governing body of the City of Richmond may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307 or subsection C of § 15.2-2311.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of a zoning ordinance that limits occupancy in a residential dwelling unit, which is subject to a civil penalty that may be imposed in accordance with the provisions of § 15.2-2209, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the attorney for the locality petition the judge of the general district court for his jurisdiction for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

INTRODUCED

HB1561

59 Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of
60 less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal
61 commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy
62 limitations of a residential dwelling unit, or similar short-term, recurring violations.

63 Where provided by ordinance, the zoning administrator may be authorized to grant a modification
64 from any provision contained in the zoning ordinance with respect to physical requirements on a lot or
65 parcel of land, including but not limited to size, height, location or features of or related to any building,
66 structure, or improvements, if the administrator finds in writing that: (i) the strict application of the
67 ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties
68 in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not
69 be of substantial detriment to adjacent property and the character of the zoning district will not be
70 changed by the granting of the modification. Prior to the granting of a modification, the zoning
71 administrator shall give, or require the applicant to give, all adjoining property owners written notice of
72 the request for modification, and an opportunity to respond to the request within 21 days of the date of
73 the notice. The zoning administrator shall make a decision on the application for modification and issue
74 a written decision with a copy provided to the applicant and any adjoining landowner who responded in
75 writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall
76 constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning
77 appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the
78 circuit court as provided by § 15.2-2314.

79 The zoning administrator shall respond within 90 days of a request for a decision or determination
80 on zoning matters within the scope of his authority unless the requester has agreed to a longer period.

81 *The zoning administrator shall provide notice to the governing body of the issuance of any written*
82 *order, requirement, decision, or determination regarding the permissibility of a specific use or density of*
83 *use of a landowner's property at the next public meeting of the governing body following such issuance.*
84 *The notice to the governing body shall be deemed as public notice to the interested parties for purposes*
85 *of calculating time limits for appealing or challenging the written order, requirement, decision, or*
86 *determination.*

87 5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any
88 such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000.
89 If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or
90 remedy the violation in compliance with the zoning ordinance, within a time period established by the
91 court. Failure to remove or abate a zoning violation within the specified time period shall constitute a
92 separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, and any
93 such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for
94 each 10-day period punishable by a fine of not less than \$100 nor more than \$1,500.

95 However, any conviction resulting from a violation of provisions regulating the number of unrelated
96 persons in single-family residential dwellings shall be punishable by a fine of up to \$2,000. Failure to
97 abate the violation within the specified time period shall be punishable by a fine of up to \$5,000, and
98 any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense
99 for each 10-day period punishable by a fine of up to \$7,500. However, no such fine shall accrue against
100 an owner or managing agent of a single-family residential dwelling unit during the pendency of any
101 legal action commenced by such owner or managing agent of such dwelling unit against a tenant to
102 eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55, as
103 applicable. A conviction resulting from a violation of provisions regulating the number of unrelated
104 persons in single-family residential dwellings shall not be punishable by a jail term.

105 6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of
106 notices and other expenses incident to the administration of a zoning ordinance or to the filing or
107 processing of any appeal or amendment thereto.

108 7. For the amendment of the regulations or district maps from time to time, or for their repeal.
109 Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the
110 governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or
111 classifications of property. Any such amendment may be initiated (i) by resolution of the governing
112 body; (ii) by motion of the local planning commission; or (iii) by petition of the owner, contract
113 purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the
114 subject of the proposed zoning map amendment, addressed to the governing body or the local planning
115 commission, who shall forward such petition to the governing body; however, the ordinance may
116 provide for the consideration of proposed amendments only at specified intervals of time, and may
117 further provide that substantially the same petition will not be reconsidered within a specific period, not
118 exceeding one year. Any such resolution or motion by such governing body or commission proposing
119 the rezoning shall state the above public purposes therefor.

120 In any county having adopted such zoning ordinance, all motions, resolutions or petitions for

amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

8. For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

9. For areas and districts designated for mixed use developments or planned unit developments as defined in § 15.2-2201.

10. For the administration of incentive zoning as defined in § 15.2-2201.

11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the higher zoning classification. The locality may establish reasonable guidelines for determining the amount of excess real estate tax collected and the method and duration for applying the tax credit. For purposes of this section, "downzoning" means a zoning action by a locality that results in a reduction in a formerly permitted land use intensity or density.

12. Provisions for requiring and considering Phase I environmental site assessments based on the anticipated use of the property proposed for the subdivision or development that meet generally accepted national standards for such assessments, such as those developed by the American Society for Testing and Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as, but not limited to, those developed by the American Society for Testing and Materials, if the locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with regulations of the United States Environmental Protection Agency and the American Society for Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrative expense involved in such review.

13. Provisions for requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of subdivision and development plans.

14. For the enforcement of provisions of the zoning ordinance that regulate the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance with applicable local, state and federal fair housing laws.

15. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The zoning administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a zoning ordinance violation has occurred, request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purpose of determining whether violations of the zoning ordinance exist. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

B. Prior to the initiation of an application for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes owed to the locality which have been properly assessed against the subject property have been paid.

§ 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 *and notice is given to the governing body in accordance with subdivision A 4 § 15.2-2286*. 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

182 the current real estate tax assessment books or current real estate tax assessment records shall be deemed
183 sufficient notice to the property owner and shall satisfy the notice requirements of this section. The
184 appeal shall be taken within 30 days after the decision appealed from by filing with the zoning
185 administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning
186 administrator shall forthwith transmit to the board all the papers constituting the record upon which the
187 action appealed from was taken. The fee for filing an appeal shall not exceed the costs of advertising
188 the appeal for public hearing and reasonable costs. For jurisdictions that impose civil penalties for
189 violations of the zoning ordinance, any such civil penalty shall not accrue or be assessed during the
190 pendency of the 30-day appeal period.

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

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