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SENATE BILL NO. 1559

Senate Amendments in [] — February 3, 2017

A BILL to amend and reenact §§ 15.2-2311 and 15.2-2312 of the Code of Virginia, relating to board of zoning appeals.

Patron Prior to Engrossment—Senator Petersen

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2311 and 15.2-2312 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 *and the [recipient receives actual notice of the zoning violation or of the] zoning administrator's written order [is sent by registered mail to, or posted at, the last known address or usual place of abode of the property owner or its registered agent, if any. There shall be a rebuttable presumption that the property owner's last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission]*. 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. A decision by the board on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the zoning administrator in accordance with this section. The owner's actual notice of such notice of zoning violation or written order or active participation in the appeal hearing shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order. For jurisdictions that impose civil penalties for violations of the zoning ordinance, any such civil penalty shall not be assessed by a court having jurisdiction 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 errors.

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60 D. In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a
61 tie vote, the matter may be carried over until the next scheduled meeting at the request of the person
62 filing the appeal.

63 **§ 15.2-2312. Procedure on appeal.**

64 The board shall fix a reasonable time for the hearing of an application or appeal, give public notice
65 thereof as well as due notice to the parties in interest and make its decision within ninety days of the
66 filing of the application or appeal. In exercising its powers the board may reverse or affirm, wholly or
67 partly, or may modify, an order, requirement, decision or determination appealed from. [~~However, in~~
68 ~~the case of a violation of a provision of this chapter, the board shall require a certification that the~~
69 ~~violation still exists prior to issuing any final order.~~] The concurring vote of a majority of the
70 membership of the board shall be necessary to reverse any order, requirement, decision or determination
71 of an administrative officer or to decide in favor of the applicant on any matter upon which it is
72 required to pass under the ordinance or to effect any variance from the ordinance. The board shall keep
73 minutes of its proceedings and other official actions which shall be filed in the office of the board and
74 shall be public records. The chairman of the board, or in his absence the acting chairman, may
75 administer oaths and compel the attendance of witnesses.