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SENATE BILL NO. 972

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Local Government  
on February 6, 2018)

(Patron Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact § 15.2-2307 of the Code of Virginia, relating to vested rights; existing landscape cover materials.

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.

A. 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.

B. 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; (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; or (vii) the zoning administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of § 15.2-2311.

C. 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.). If a use does not conform to the zoning prescribed for the district in which such use is situated, and if (i) a business license was issued by the locality for such use and (ii) the holder of such business license has operated continuously in the same location for at least 15 years and has paid all local taxes related to such use, the locality shall permit the holder of such business license to apply for a rezoning or a special use permit without charge by the locality or any agency affiliated with the locality for fees associated with such filing. 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.

D. 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 of more than the previous 15 years, a zoning ordinance shall not provide that such building or structure is illegal and subject to removal solely due to such nonconformity. Such building or structure shall be nonconforming. A zoning ordinance may provide that such building or structure be brought in compliance with the Uniform Statewide Building Code, provided that to do so shall not affect the nonconforming status of such building or structure. If the local government has issued a permit, other than a building permit, that authorized construction of an improvement to real property and the improvement was thereafter constructed in accordance with such permit, the ordinance may provide that the improvements are nonconforming, but not illegal. If the structure is one that requires no permit, and an authorized local government official informs the property

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60 owner that the structure will comply with the zoning ordinance, and the improvement was thereafter  
61 constructed, a zoning ordinance may provide that the structure is nonconforming but shall not provide  
62 that such structure is illegal and subject to removal solely due to such nonconformity. In any proceeding  
63 when the authorized government official is deceased or is otherwise unavailable to testify,  
64 uncorroborated testimony of the oral statement of such official shall not be sufficient evidence to prove  
65 that the authorized government official made such statement.

66 E. A zoning ordinance shall permit the owner of any residential or commercial building damaged or  
67 destroyed by a natural disaster or other act of God to repair, rebuild, or replace such building to  
68 eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a  
69 variance as provided in § 15.2-2310. If such building is damaged greater than 50 percent and cannot be  
70 repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall  
71 have the right to do so. The owner shall apply for a building permit and any work done to repair,  
72 rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide  
73 Building Code (§ 36-97 et seq.) and any work done to repair, rebuild or replace such building shall be  
74 in compliance with the provisions of the local flood plain regulations adopted as a condition of  
75 participation in the National Flood Insurance Program. Unless such building is repaired, rebuilt or  
76 replaced within two years of the date of the natural disaster or other act of God, such building shall  
77 only be repaired, rebuilt or replaced in accordance with the provisions of the zoning ordinance of the  
78 locality. However, if the nonconforming building is in an area under a federal disaster declaration and  
79 the building has been damaged or destroyed as a direct result of conditions that gave rise to the  
80 declaration, then the zoning ordinance shall provide for an additional two years for the building to be  
81 repaired, rebuilt or replaced as otherwise provided in this paragraph. For purposes of this section, "act of  
82 God" shall include any natural disaster or phenomena including a hurricane, tornado, storm, flood, high  
83 water, wind-driven water, tidal wave, earthquake or fire caused by lightning or wildfire. For purposes of  
84 this section, owners of property damaged by an accidental fire have the same rights to rebuild such  
85 property as if it were damaged by an act of God. Nothing herein shall be construed to enable the  
86 property owner to commit an arson under § 18.2-77 or 18.2-80, and obtain vested rights under this  
87 section.

88 F. Notwithstanding any local ordinance to the contrary, an owner of real property shall be permitted  
89 to replace an existing on-site sewage system for any existing building in the same general location on  
90 the property even if a new on-site sewage system would not otherwise be permitted in that location,  
91 unless access to a public sanitary sewer is available to the property. If access to a sanitary sewer system  
92 is available, then the connection to such system shall be required. Any new on-site system shall be  
93 installed in compliance with applicable regulations of the Department of Health in effect at the time of  
94 the installation.

95 G. Nothing in this section shall be construed to prevent a locality, after making a reasonable attempt  
96 to notify such property owner, from ordering the removal of a nonconforming sign that has been  
97 abandoned. For purposes of this section, a sign shall be considered abandoned if the business for which  
98 the sign was erected has not been in operation for a period of at least two years. Any locality may, by  
99 ordinance, provide that following the expiration of the two-year period any abandoned nonconforming  
100 sign shall be removed by the owner of the property on which the sign is located, if notified by the  
101 locality to do so. If, following such two-year period, the locality has made a reasonable attempt to notify  
102 the property owner, the locality through its own agents or employees may enter the property upon which  
103 the sign is located and remove any such sign whenever the owner has refused to do so. The cost of such  
104 removal shall be chargeable to the owner of the property. Nothing herein shall prevent the locality from  
105 applying to a court of competent jurisdiction for an order requiring the removal of such abandoned  
106 nonconforming sign by the owner by means of injunction or other appropriate remedy.

107 H. Nothing in this section shall be construed to prevent the land owner or home owner from  
108 removing a valid nonconforming manufactured home from a mobile or manufactured home park and  
109 replacing that home with another comparable manufactured home that meets the current HUD  
110 manufactured housing code. In such mobile or manufactured home park, a single-section home may  
111 replace a single-section home and a multi-section home may replace a multi-section home. The owner of  
112 a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home  
113 park may replace that home with a newer manufactured home, either single- or multi-section, that meets  
114 the current HUD manufactured housing code. Any such replacement home shall retain the valid  
115 nonconforming status of the prior home.

116 I. *Notwithstanding any local ordinance to the contrary, an owner of real property who has an*  
117 *occupancy permit issued pursuant to § 36-98 as of January 1, 2018, shall not be required to retrofit*  
118 *existing landscape cover materials. Such owner shall not be prohibited from continuing to use,*  
119 *supplement, or refurbish existing landscape cover materials at such property. Nothing in this subsection*  
120 *shall be construed to affect (i) any proffered condition or zoning condition applicable to real property*  
121 *pursuant to Chapter 22 (§ 15.2-2200 et seq.), (ii) any subsequent building permit issued pursuant to*

- 122 § 36-98, or (iii) any project that requires a permit for land-disturbing activities under a local ordinance.
- 123 For purposes of this subsection, "landscape cover materials" means mulch, wood chips, rock, stone, or
- 124 similar materials placed on the ground to help maintain healthy plants and bushes.