

LD4859176

HOUSE BILL NO. 2103

Offered January 23, 1995

A BILL to amend and reenact §§ 15.1-491 and 15.1-491.2:1 of the Code of Virginia, relating to permitted provisions in a zoning ordinance and conditional zoning.

Patrons—Cranwell and Hall

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-491 and 15.1-491.2:1 of the Code of Virginia are amended and reenacted as follows:

§ 15.1-491. (Effective April 1, 1995) Permitted provisions in ordinances; amendments.

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

(a) For variances as defined in § 15.1-430 (p) or special exceptions as defined in § 15.1-430 (i) to the general regulations in any district in cases of unusual situations or to ease the transition from one district to another, or for buildings, structures or uses having special requirements, and for conditional zoning as defined in § 15.1-430 (q) and for the adoption, in counties, or towns, therein which have planning commissions, wherein the urban county executive form of government is in effect, or in a city adjacent to or completely surrounded by such a county, or in a county contiguous to any such county, or in a city adjacent to or completely surrounded by such a contiguous county, or in any town within such contiguous county, and in the counties east of the Chesapeake Bay as a part of an amendment to the zoning map of reasonable conditions, in addition to the regulations provided for the zoning district by the ordinance, when such conditions shall have been proffered in writing, in advance of the public hearing before the governing body required by § 15.1-493 by the owner of the property which is the subject of the proposed zoning map amendment. *A locality shall not presume that a proffer of cash, land dedication, or construction of offsite improvements in a predetermined amount is necessary or appropriate for the approval of every rezoning throughout the locality.* Once proffered and accepted as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by such conditions. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

(a1) In the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

(a2) Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subdivision shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subdivision (a1), unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subdivision shall acquire no rights pursuant to this section.

(a3) The provisions of subdivisions (a1) and (a2) of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any

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60 litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

61 Nothing in this section shall be construed to affect or impair the authority of a governing body to:

62 1. Accept proffered conditions which include provisions for timing or phasing of dedications,
63 payments, or improvements; or

64 2. Accept or impose valid conditions pursuant to subsection (c) of this section, subsection H of
65 § 15.1-466, or other provision of law.

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

69 (c) For the granting of special exceptions under suitable regulations and safeguards; notwithstanding
70 any other provisions of this article, the governing body of any city, county or town may reserve unto
71 itself the right to issue such special exceptions.

72 (d) For the administration and enforcement of the ordinance including the appointment or designation
73 of a zoning administrator who may also hold another office in the county or municipality. The zoning
74 administrator shall have all necessary authority on behalf of the governing body to administer and
75 enforce the zoning ordinance, including the authority to make conclusions of law and findings of fact,
76 with concurrence of the attorney for the governing body, in connection with the administration,
77 application and enforcement of the ordinance in specific cases, including determinations of rights
78 accruing under § 15.1-492, and further including the ordering in writing of the remedying of any
79 condition found in violation of the ordinance, and the bringing of legal action to insure compliance with
80 the ordinance, including injunction, abatement, or other appropriate action or proceeding subject to
81 appeal pursuant to § 15.1-496.1.

82 (e) For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any
83 such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000.

84 (f) For the collection of fees to cover the cost of making inspections, issuing permits, advertising of
85 notices and other expenses incident to the administration of a zoning ordinance or to the filing or
86 processing of any appeal or amendment thereto.

87 (g) For the amendment of the regulations or district maps from time to time, or for their repeal.
88 Whenever the public necessity, convenience, general welfare, or good zoning practice require, the
89 governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or
90 classifications of property. Any such amendment may be initiated (i) by resolution of the governing
91 body, (ii) by motion of the local commission, or (iii) by petition of the owner, contract purchaser with
92 the owner's written consent, or the owner's agent therefor, of the property which is the subject of the
93 proposed zoning map amendment, addressed to the governing body or the local commission, who shall
94 forward such petition to the governing body; however, the ordinance may provide for the consideration
95 of proposed amendments only at specified intervals of time, and may further provide that substantially
96 the same petition will not be reconsidered within a specific period, not exceeding one year. Any such
97 resolution or motion by such governing body or commission proposing the rezoning shall state the
98 above public purposes therefor.

99 In any county having adopted such zoning ordinance, all motions, resolutions or petitions for
100 amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such
101 reasonable time as may be necessary which shall not exceed twelve months unless the applicant requests
102 or consents to action beyond such period or unless the applicant withdraws his motion, resolution or
103 petition for amendment to the zoning ordinance or map, or both. In the event of and upon such
104 withdrawal, processing of the motion, resolution or petition shall cease without further action as
105 otherwise would be required by this subdivision.

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

108 (i) For areas and districts designated for mixed use developments as defined in § 15.1-430 (r) and
109 planned unit developments as defined in § 15.1-430 (s).

110 (j) For the administration of incentive zoning as defined in § 15.1-430 (t).

111 The ordinance may also provide that petitions brought by property owners, contract purchasers or the
112 agents thereof, shall be sworn to under oath before a notary public or other official before whom oaths
113 may be taken, stating whether or not any member of the local planning commission or governing body
114 has any interest in such property, either individually, by ownership of stock in a corporation owning
115 such land, partnership, as the beneficiary of a trust, or the settlor of a revocable trust or whether a
116 member of the immediate household of any member of the planning commission or governing body has
117 any such interest.

118 The ordinance shall not require that a special exception or special use permit be obtained for any
119 production agriculture or silviculture activity in an area that is zoned as an agricultural district or
120 classification. For the purposes of this section, production agriculture and silviculture is the bona fide
121 production or harvesting of agricultural or silviculture products but shall not include the processing of

agricultural or silviculture products or the above ground application or storage of sewage sludge. However, localities may adopt setback requirements, minimum area requirements and other requirements that apply to land used for agriculture or silviculture activity within the locality that is zoned as an agricultural district or classification.

§ 15.1-491.2:1. Same; conditions as a part of rezoning or zoning map amendment in certain localities.

A. Except for those localities to which § 15.1-491(a) is applicable, this section shall apply to (i) any county, city, or town which has had population growth of ten percent or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census, provided that until the 1990 census is reported, any county, city, or town instead may qualify only if it has had an estimated population growth of ten percent or more from 1980 to the most recent year for which population estimates are available from the Center for Public Service of the University of Virginia; (ii) any city adjoining such city or county; (iii) any towns located within such county; and (iv) any county contiguous with at least three such counties, and any town located in that county.

In any such county, city, or town, notwithstanding any contrary provisions of § 15.1-491.2, a zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map, provided that (i) the rezoning itself gives rise to the need for the conditions; (ii) such conditions have a reasonable relation to the rezoning; and (iii) all such conditions are in conformity with the comprehensive plan as defined in § 15.1-446.1. *A locality shall not presume that a proffer of cash, land dedication, or construction of offsite improvements in a predetermined amount is necessary or appropriate for the approval of every rezoning throughout the locality.* Once proffered and accepted as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by such conditions; however, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

No proffer shall be accepted by a county, city, or town unless it has adopted a capital improvement program pursuant to § 15.1-464 or local charter. In the event proffered conditions include the dedication of real property or payment of cash, such property shall not transfer and such payment of cash shall not be made until the facilities for which such property is dedicated or cash is tendered are included in the capital improvement program, provided that nothing herein shall prevent a county, city, or town from accepting proffered conditions which are not normally included in such capital improvement program. If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of such property or cash payment in the event the property or cash payment is not used for the purpose for which proffered.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B above, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no rights pursuant to this section.

D. The provisions of subsections B and C of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation

183 pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

184 Nothing in this section shall be construed to affect or impair the authority of a governing body to:

185 1. Accept proffered conditions which include provisions for timing or phasing of dedications,
186 payments, or improvements; or

187 2. Accept or impose valid conditions pursuant to subsection (c) of § 15.1-491 or other provision of
188 law.