

LD5145176

HOUSE BILL NO. 2103

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns
on February 3, 1995)

(Patron Prior to Substitute—Delegate Cranwell)

A BILL to amend and reenact § 15.1-491.2:1 of the Code of Virginia, relating to conditional zoning.

Be it enacted by the General Assembly of Virginia:

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

§ 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,

60 unless there has been mistake, fraud, or a change in circumstances substantially affecting the public
61 health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection
62 shall acquire no rights pursuant to this section.

63 D. The provisions of subsections B and C of this section shall be effective prospectively only, and
64 not retroactively, and shall not apply to any zoning ordinance text amendments which may have been
65 enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation
66 pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

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

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

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