

LD6170625

SENATE BILL NO. 802

Offered January 18, 1995

A BILL to amend and reenact § 15.1-491 of the Code of Virginia, as it will become effective, relating to zoning ordinances.

Patrons—Calhoun and Woods; Delegates: Albo, Connally, Darner, Fisher, Ingram, Keating, Miller, Scott and Way

Referred to the Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-491 of the Code of Virginia, as it will become effective, is 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. 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 litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

120 The ordinance shall not require that a special exception or special use permit be obtained for any
121 production agriculture or silviculture activity in an area that is zoned as an agricultural district or

122 classification. For the purposes of this section, production agriculture and silviculture is the bona fide
123 production or harvesting of agricultural or silviculture products but shall not include the processing of
124 agricultural or silviculture products or the above ground application or storage of sewage sludge.
125 However, localities may adopt setback requirements, minimum area requirements and other requirements
126 that apply to land used for agriculture or silviculture activity within the locality that is zoned as an
127 agricultural district or classification.