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HOUSE BILL NO. 1275

Offered January 22, 1996

A BILL to amend and reenact § 15.1-491 of the Code of Virginia, relating to zoning.

Patrons—Fisher; Senator: Woods

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:**1. That § 15.1-491 of the Code of Virginia is amended and reenacted as follows:**

§ 15.1-491. 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 subdivision (p) of § 15.1-430 or special exceptions as defined in subdivision (i) of § 15.1-430 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 subdivision (q) of § 15.1-430 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.

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

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

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60 2. Accept or impose valid conditions pursuant to subsection (c) of this section, subsection H of
61 § 15.1-466, or other provision of law.

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

65 (c) For the granting of special exceptions under suitable regulations and safeguards; notwithstanding
66 any other provisions of this article, the governing body of any city, county or town may reserve unto
67 itself the right to issue such special exceptions. Conditions imposed in connection with residential
68 special use permits, wherein the applicant proposes affordable housing, shall be consistent with the
69 objective of providing affordable housing. When imposing conditions on residential projects specifying
70 materials and methods of construction or specific design features, the approving body shall consider the
71 impact of the conditions upon the affordability of housing.

72 The governing body or the board of zoning appeals of any city with a population between 260,000
73 and 264,000 according to the 1990 United States Census may impose a condition upon any special
74 exception relating to alcoholic beverage control licensees which provides that such special exception will
75 automatically expire upon a change of ownership of the property, a change in possession, a change in
76 the operation or management of a facility or upon the passage of a specific period of time.

77 (d) For the administration and enforcement of the ordinance including the appointment or designation
78 of a zoning administrator who may also hold another office in the county or municipality. The zoning
79 administrator shall have all necessary authority on behalf of the governing body to administer and
80 enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any
81 condition found in violation of the ordinance; (ii) to insure compliance with the ordinance, bringing
82 legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal
83 pursuant to § 15.1-496.1; and (iii) in specific cases, making findings of fact and, with concurrence of the
84 attorney for the governing body, conclusions of law regarding determinations of rights accruing under
85 § 15.1-492. Where provided by ordinance, the zoning administrator may be authorized to grant a
86 variance from any building setback requirement contained in the zoning ordinance if the administrator
87 finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such
88 hardship is not shared generally by other properties in the same zoning district and the same vicinity;
89 and (iii) the authorization of the variance will not be of substantial detriment to adjacent property and
90 the character of the zoning district will not be changed by the granting of the variance. Prior to the
91 granting of a variance, the zoning administrator shall give, or require the applicant to give, all adjoining
92 property owners written notice of the request for variance, and an opportunity to respond to the request
93 within twenty-one days of the date of the notice. If any adjoining property owner objects to said request
94 in writing within the time specified above, the request shall be transferred to the Board of Zoning
95 Appeals for decision.

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

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

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

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

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

122 (i) For areas and districts designated for mixed use developments as defined in subdivision (r) of
123 § 15.1-430 and planned unit developments as defined in subdivision (s) of § 15.1-430.

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

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

132 The ordinance shall not require that a special exception or special use permit be obtained for any
133 production agriculture or silviculture activity in an area that is zoned as an agricultural district or
134 classification. For the purposes of this section, production agriculture and silviculture is the bona fide
135 production or harvesting of agricultural or silviculture products but shall not include the processing of
136 agricultural or silviculture products or the above ground application or storage of sewage sludge.
137 However, localities may adopt setback requirements, minimum area requirements and other requirements
138 that apply to land used for agriculture or silviculture activity within the locality that is zoned as an
139 agricultural district or classification.

140 *Prior to the initiation of an application for a special exception, special use permit, variance,*
141 *rezoning or other land use permit, the applicant shall produce satisfactory evidence that any delinquent*
142 *real estate taxes owed to the county, city or town which have been properly assessed against the subject*
143 *property have been paid.*