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## HOUSE BILL NO. 2326

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact § 15.2-2309 of the Code of Virginia, relating to board of zoning appeals.

Patrons—Athey and Knight

Referred to Committee on Counties, Cities and Towns

**Be it enacted by the General Assembly of Virginia:****1. That § 15.2-2309 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision.

2. To authorize upon appeal or original application in specific cases such variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in ~~unnecessary~~ clearly demonstrable hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, *or due to other compelling reason*, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship ~~approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant~~, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

No such variance shall be authorized by the board unless it finds:

a. That the strict application of the ordinance would produce ~~undue~~ clearly demonstrable hardship relating to the property;

b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and

eb. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No variance shall be authorized except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property

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59 affected, the board may give such notice by first-class mail rather than by registered or certified mail.

60 4. To hear and decide applications for interpretation of the district map where there is any  
61 uncertainty as to the location of a district boundary. After notice to the owners of the property affected  
62 by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret  
63 the map in such way as to carry out the intent and purpose of the ordinance for the particular section or  
64 district in question. However, when giving any required notice to the owners, their agents or the  
65 occupants of abutting property and property immediately across the street or road from the property  
66 affected, the board may give such notice by first-class mail rather than by registered or certified mail.  
67 The board shall not have the power to change substantially the locations of district boundaries as  
68 established by ordinance.

69 5. No provision of this section shall be construed as granting any board the power to rezone property  
70 or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by  
71 the governing body.

72 6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The  
73 board may impose such conditions relating to the use for which a permit is granted as it may deem  
74 necessary in the public interest, including limiting the duration of a permit, and may require a guarantee  
75 or bond to ensure that the conditions imposed are being and will continue to be complied with.

76 No special exception may be granted except after notice and hearing as provided by § 15.2-2204.  
77 However, when giving any required notice to the owners, their agents or the occupants of abutting  
78 property and property immediately across the street or road from the property affected, the board may  
79 give such notice by first-class mail rather than by registered or certified mail.

80 7. To revoke a special exception previously granted by the board of zoning appeals if the board  
81 determines that there has not been compliance with the terms or conditions of the permit. No special  
82 exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when  
83 giving any required notice to the owners, their agents or the occupants of abutting property and property  
84 immediately across the street or road from the property affected, the board may give such notice by  
85 first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the  
86 right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that  
87 there has not been compliance with the terms and conditions of the permit, then it may also revoke  
88 special exceptions in the manner provided by this subdivision.

89 8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days  
90 to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to  
91 act, finds and declares that weather or other conditions are such that it is hazardous for members to  
92 attend the meeting. Such finding shall be communicated to the members and the press as promptly as  
93 possible. All hearings and other matters previously advertised for such meeting in accordance with  
94 § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.