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HOUSE BILL NO. 1429

Offered January 9, 2013

Prefiled December 20, 2012

A BILL to amend and reenact § 15.2-2286 of the Code of Virginia, relating to zoning; attorney fees.

Patron—Morris

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-2286 of the Code of Virginia is amended and reenacted as follows:****§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties.**

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

1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any district.

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

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

The governing body or the board of zoning appeals of the City of Norfolk may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time.

The governing body of the City of Richmond may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307 or subsection C of § 15.2-2311.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of a zoning ordinance that limits occupancy in a residential dwelling unit, which is subject to a civil penalty that may be imposed in accordance with the provisions of § 15.2-2209, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the attorney for the locality petition the judge of the general district court for his jurisdiction for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of

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HB1429

59 less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal
60 commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy
61 limitations of a residential dwelling unit, or similar short-term, recurring violations.

62 Where provided by ordinance, the zoning administrator may be authorized to grant a modification
63 from any provision contained in the zoning ordinance with respect to physical requirements on a lot or
64 parcel of land, including but not limited to size, height, location or features of or related to any building,
65 structure, or improvements, if the administrator finds in writing that: (i) the strict application of the
66 ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties
67 in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not
68 be of substantial detriment to adjacent property and the character of the zoning district will not be
69 changed by the granting of the modification. Prior to the granting of a modification, the zoning
70 administrator shall give, or require the applicant to give, all adjoining property owners written notice of
71 the request for modification, and an opportunity to respond to the request within 21 days of the date of
72 the notice. The zoning administrator shall make a decision on the application for modification and issue
73 a written decision with a copy provided to the applicant and any adjoining landowner who responded in
74 writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall
75 constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning
76 appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the
77 circuit court as provided by § 15.2-2314.

78 The zoning administrator shall respond within 90 days of a request for a decision or determination
79 on zoning matters within the scope of his authority unless the requester has agreed to a longer period.

80 5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any
81 such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000.
82 If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or
83 remedy the violation in compliance with the zoning ordinance, within a time period established by the
84 court. Failure to remove or abate a zoning violation within the specified time period shall constitute a
85 separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, and any
86 such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for
87 each 10-day period punishable by a fine of not less than \$100 nor more than \$1,500.

88 However, any conviction resulting from a violation of provisions regulating the number of unrelated
89 persons in single-family residential dwellings shall be punishable by a fine of up to \$2,000. Failure to
90 abate the violation within the specified time period shall be punishable by a fine of up to \$5,000, and
91 any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense
92 for each 10-day period punishable by a fine of up to \$7,500. However, no such fine shall accrue against
93 an owner or managing agent of a single-family residential dwelling unit during the pendency of any
94 legal action commenced by such owner or managing agent of such dwelling unit against a tenant to
95 eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55, as
96 applicable. A conviction resulting from a violation of provisions regulating the number of unrelated
97 persons in single-family residential dwellings shall not be punishable by a jail term.

98 *The court may award reasonable attorney fees, expenses, and court costs to any person, group, or*
99 *entity that prevails in an action brought against it under this section or that successfully challenges the*
100 *validity of a zoning ordinance.*

101 6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of
102 notices and other expenses incident to the administration of a zoning ordinance or to the filing or
103 processing of any appeal or amendment thereto.

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

116 In any county having adopted such zoning ordinance, all motions, resolutions or petitions for
117 amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such
118 reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or
119 consents to action beyond such period or unless the applicant withdraws his motion, resolution or
120 petition for amendment to the zoning ordinance or map, or both. In the event of and upon such

121 withdrawal, processing of the motion, resolution or petition shall cease without further action as
122 otherwise would be required by this subdivision.

123 8. For the submission and approval of a plan of development prior to the issuance of building
124 permits to assure compliance with regulations contained in such zoning ordinance.

125 9. For areas and districts designated for mixed use developments or planned unit developments as
126 defined in § 15.2-2201.

127 10. For the administration of incentive zoning as defined in § 15.2-2201.

128 11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that
129 would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange
130 for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the
131 higher zoning classification. The locality may establish reasonable guidelines for determining the amount
132 of excess real estate tax collected and the method and duration for applying the tax credit. For purposes
133 of this section, "downzoning" means a zoning action by a locality that results in a reduction in a
134 formerly permitted land use intensity or density.

135 12. Provisions for requiring and considering Phase I environmental site assessments based on the
136 anticipated use of the property proposed for the subdivision or development that meet generally accepted
137 national standards for such assessments, such as those developed by the American Society for Testing
138 and Materials, and Phase II environmental site assessments, that also meet accepted national standards,
139 such as, but not limited to, those developed by the American Society for Testing and Materials, if the
140 locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in
141 accordance with regulations of the United States Environmental Protection Agency and the American
142 Society for Testing and Materials. A reasonable fee may be charged for the review of such
143 environmental assessments. Such fees shall not exceed an amount commensurate with the services
144 rendered, taking into consideration the time, skill, and administrative expense involved in such review.

145 13. Provisions for requiring disclosure and remediation of contamination and other adverse
146 environmental conditions of the property prior to approval of subdivision and development plans.

147 14. For the enforcement of provisions of the zoning ordinance that regulate the number of persons
148 permitted to occupy a single-family residential dwelling unit, provided such enforcement is in
149 compliance with applicable local, state and federal fair housing laws.

150 15. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The
151 zoning administrator or his agent may present sworn testimony to a magistrate or court of competent
152 jurisdiction and if such sworn testimony establishes probable cause that a zoning ordinance violation has
153 occurred, request that the magistrate or court grant the zoning administrator or his agent an inspection
154 warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purpose of
155 determining whether violations of the zoning ordinance exist. The zoning administrator or his agent shall
156 make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to
157 seeking the issuance of an inspection warrant under this section.

158 B. Prior to the initiation of an application by the owner of the subject property, the owner's agent, or
159 any entity in which the owner holds an ownership interest greater than 50 percent, for a special
160 exception, special use permit, variance, rezoning or other land disturbing permit, including building
161 permits and erosion and sediment control permits, or prior to the issuance of final approval, the
162 authorizing body may require the applicant to produce satisfactory evidence that any delinquent real
163 estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute
164 a lien on the subject property, that are owed to the locality and have been properly assessed against the
165 subject property, have been paid.