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HOUSE BILL NO. 367

Offered January 13, 2016

Prefiled January 5, 2016

A BILL to amend and reenact § 15.2-2307 of the Code of Virginia, relating to nonconforming uses.

Patron—Davis

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-2307 of the Code of Virginia is amended and reenacted as follows:****§ 15.2-2307. Vested rights not impaired; nonconforming uses.**

Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

For purposes of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property; or (vii) the zoning administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of § 15.2-2311.

A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of such buildings or structures shall conform to such regulations whenever, with respect to the building or structure, the square footage of a building or structure is enlarged, or the building or structure is structurally altered as provided in the Uniform Statewide Building Code (§ 36-97 et seq.). Further, a zoning ordinance may provide that no nonconforming use may be expanded, or that no nonconforming building or structure may be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming use.

Notwithstanding any local ordinance to the contrary, if (i) the local government has issued a building permit, the building or structure was thereafter constructed in accordance with the building permit, and upon completion of construction, the local government issued a certificate of occupancy or a use permit therefor, or (ii) the owner of the building or structure has paid taxes to the locality for such building or structure for a period of more than the previous 15 years, a zoning ordinance shall not provide that such building or structure is illegal and subject to removal solely due to such nonconformity. Such building or structure shall be nonconforming. A zoning ordinance may provide that such building or structure be brought in compliance with the Uniform Statewide Building Code, provided that to do so shall not affect the nonconforming status of such building or structure. If the local government has issued a permit, other than a building permit, that authorized construction of an improvement to real property and the improvement was thereafter constructed in accordance with such permit, the ordinance may provide that the improvements are nonconforming, but not illegal.

A locality may by ordinance provide that an otherwise unlawful use of a subject property shall be a lawful nonconforming use if (i) the land use on a subject property has operated continuously for at least 15 years, (ii) there have been no building code or other local code violations or complaints arising out of the land use from neighboring property owners or other impacted parties, and (iii) all local taxes

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59 *related to the property and business have been paid in a timely manner.*

60 A zoning ordinance shall permit the owner of any residential or commercial building damaged or
61 destroyed by a natural disaster or other act of God to repair, rebuild, or replace such building to
62 eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a
63 variance as provided in § 15.2-2310. If such building is damaged greater than 50 percent and cannot be
64 repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall
65 have the right to do so. The owner shall apply for a building permit and any work done to repair,
66 rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide
67 Building Code (§ 36-97 et seq.) and any work done to repair, rebuild or replace such building shall be
68 in compliance with the provisions of the local flood plain regulations adopted as a condition of
69 participation in the National Flood Insurance Program. Unless such building is repaired, rebuilt or
70 replaced within two years of the date of the natural disaster or other act of God, such building shall
71 only be repaired, rebuilt or replaced in accordance with the provisions of the zoning ordinance of the
72 locality. However, if the nonconforming building is in an area under a federal disaster declaration and
73 the building has been damaged or destroyed as a direct result of conditions that gave rise to the
74 declaration, then the zoning ordinance shall provide for an additional two years for the building to be
75 repaired, rebuilt or replaced as otherwise provided in this paragraph. For purposes of this section, "act of
76 God" shall include any natural disaster or phenomena including a hurricane, tornado, storm, flood, high
77 water, wind-driven water, tidal wave, earthquake or fire caused by lightning or wildfire. For purposes of
78 this section, owners of property damaged by an accidental fire have the same rights to rebuild such
79 property as if it were damaged by an act of God. Nothing herein shall be construed to enable the
80 property owner to commit an arson under § 18.2-77 or 18.2-80, and obtain vested rights under this
81 section.

82 Notwithstanding any local ordinance to the contrary, an owner of real property shall be permitted to
83 replace an existing on-site sewage system for any existing building in the same general location on the
84 property even if a new on-site sewage system would not otherwise be permitted in that location, unless
85 access to a public sanitary sewer is available to the property. If access to a sanitary sewer system is
86 available, then the connection to such system shall be required. Any new on-site system shall be
87 installed in compliance with applicable regulations of the Department of Health in effect at the time of
88 the installation.

89 Nothing in this section shall be construed to prevent a locality, after making a reasonable attempt to
90 notify such property owner, from ordering the removal of a nonconforming sign that has been
91 abandoned. For purposes of this section, a sign shall be considered abandoned if the business for which
92 the sign was erected has not been in operation for a period of at least two years. Any locality may, by
93 ordinance, provide that following the expiration of the two-year period any abandoned nonconforming
94 sign shall be removed by the owner of the property on which the sign is located, if notified by the
95 locality to do so. If, following such two-year period, the locality has made a reasonable attempt to notify
96 the property owner, the locality through its own agents or employees may enter the property upon which
97 the sign is located and remove any such sign whenever the owner has refused to do so. The cost of such
98 removal shall be chargeable to the owner of the property. Nothing herein shall prevent the locality from
99 applying to a court of competent jurisdiction for an order requiring the removal of such abandoned
100 nonconforming sign by the owner by means of injunction or other appropriate remedy.

101 Nothing in this section shall be construed to prevent the land owner or home owner from removing a
102 valid nonconforming manufactured home from a mobile or manufactured home park and replacing that
103 home with another comparable manufactured home that meets the current HUD manufactured housing
104 code. In such mobile or manufactured home park, a single-section home may replace a single-section
105 home and a multi-section home may replace a multi-section home. The owner of a valid nonconforming
106 mobile or manufactured home not located in a mobile or manufactured home park may replace that
107 home with a newer manufactured home, either single- or multi-section, that meets the current HUD
108 manufactured housing code. Any such replacement home shall retain the valid nonconforming status of
109 the prior home.