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HOUSE BILL NO. 650

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns
on February 2, 2024)

(Patron Prior to Substitute—Delegate Coyner)

A *BILL to amend and reenact §§ 15.2-2209.1:2 and 15.2-2286 of the Code of Virginia, relating to zoning; solar photovoltaic and energy storage projects; period of validity for certain projects.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2209.1:2 and 15.2-2286 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2209.1:2. Extension of land use approvals for solar photovoltaic projects.

A. *An initial approval of a special exception, special use permit, or conditional use permit for a solar photovoltaic or energy storage project shall provide the landowner or developer a minimum of three years to commence the project.*

For so long as the special exception, special use permit, or conditional use permit remains valid, no change or amendment to any local ordinance, map, resolution, rule, regulation, policy, or plan adopted subsequent to the date of approval of the special exception, special use permit, or conditional use permit shall adversely affect the right of the developer or his successor in interest to commence and complete an approved development in accordance with the lawful terms of the special exception, special use permit, or conditional use permit unless the change or amendment is required to comply with state law or there has been a mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

Application for minor modifications to special exceptions, special use permits, or conditional use permits made during the period of validity shall not constitute a waiver of the provisions hereof nor shall the approval of minor modifications extend the period of validity of such plats or plans.

B. Notwithstanding any other provision of this chapter, for any valid special exception, special use permit, or conditional use permit, or any modifications thereto, for a solar photovoltaic or energy storage project outstanding as of July 1, 2023, any deadline in the exception permit, or in the local zoning ordinance that requires the landowner or developer to commence the project within a certain time, may be extended by a resolution of the governing body until July 1, 2026, or such longer period as may be agreed to by the locality.

§ 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. *Conditions may include the period of validity for a special exception or special use permit; however, in the case of a special exception or special use permit for residential projects, the period of validity shall be no less than three years.*

The governing body or the board of zoning appeals of the Cities of Hampton and Norfolk may impose a condition upon any special exception or use permit relating to retail alcoholic beverage control licensees which provides that such special exception or use permit 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 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

60 public hearing as required by § 15.2-2206.

61 4. For the administration and enforcement of the ordinance including the appointment or designation
62 of a zoning administrator who may also hold another office in the locality. The zoning administrator
63 shall have all necessary authority on behalf of the governing body to administer and enforce the zoning
64 ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in
65 violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including
66 injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to
67 § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for
68 the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307 or
69 subsection C of § 15.2-2311.

70 Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or
71 is engaging in any violation of a zoning ordinance that limits occupancy in a residential dwelling unit,
72 which is subject to a civil penalty that may be imposed in accordance with the provisions of
73 § 15.2-2209, and the zoning administrator, after a good faith effort to obtain the data or information
74 necessary to determine whether a violation has occurred, has been unable to obtain such information, he
75 may request that the attorney for the locality petition the judge of the general district court for his
76 jurisdiction for a subpoena duces tecum against any such person refusing to produce such data or
77 information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any
78 person failing to comply with such subpoena shall be subject to punishment for contempt by the court
79 issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to
80 quash it.

81 Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of
82 less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal
83 commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy
84 limitations of a residential dwelling unit, or similar short-term, recurring violations.

85 Where provided by ordinance, the zoning administrator may be authorized to grant a modification
86 from any provision contained in the zoning ordinance with respect to physical requirements on a lot or
87 parcel of land, including but not limited to size, height, location or features of or related to any building,
88 structure, or improvements, if the administrator finds in writing that: (i) the strict application of the
89 ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties
90 in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not
91 be of substantial detriment to adjacent property and the character of the zoning district will not be
92 changed by the granting of the modification. Prior to the granting of a modification, the zoning
93 administrator shall give, or require the applicant to give, all adjoining property owners written notice of
94 the request for modification, and an opportunity to respond to the request within 21 days of the date of
95 the notice. The zoning administrator shall make a decision on the application for modification and issue
96 a written decision with a copy provided to the applicant and any adjoining landowner who responded in
97 writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall
98 constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning
99 appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the
100 circuit court as provided by § 15.2-2314.

101 The zoning administrator shall respond within 90 days of a request for a decision or determination
102 on zoning matters within the scope of his authority unless the requester has agreed to a longer period. If
103 the decision or determination by the zoning administrator could impair the ability of an adjacent
104 property owner to satisfy the minimum storage capacity and yield requirements for a residential drinking
105 well pursuant to § 32.1-176.4 or any regulation adopted thereunder, the zoning administrator shall
106 provide a copy of such decision or determination to such adjacent property owner so affected.

107 5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any
108 such violation shall be a misdemeanor punishable by a fine of not more than \$1,000. If the violation is
109 uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the
110 violation in compliance with the zoning ordinance, within a time period established by the court. Failure
111 to remove or abate a zoning violation within the specified time period shall constitute a separate
112 misdemeanor offense punishable by a fine of not more than \$1,000; any such failure during a
113 succeeding 10-day period shall constitute a separate misdemeanor offense punishable by a fine of not
114 more than \$1,500; and any such failure during any succeeding 10-day period shall constitute a separate
115 misdemeanor offense for each 10-day period punishable by a fine of not more than \$2,000.

116 However, any conviction resulting from a violation of provisions regulating the number of unrelated
117 persons in single-family residential dwellings shall be punishable by a fine of up to \$2,000. Failure to
118 abate the violation within the specified time period shall be punishable by a fine of up to \$5,000, and
119 any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense
120 for each 10-day period punishable by a fine of up to \$7,500. However, no such fine shall accrue against
121 an owner or managing agent of a single-family residential dwelling unit during the pendency of any

122 legal action commenced by such owner or managing agent of such dwelling unit against a tenant to
123 eliminate an overcrowding condition in accordance with the Virginia Residential Landlord and Tenant
124 Act (§ 55.1-1200 et seq.). A conviction resulting from a violation of provisions regulating the number of
125 unrelated persons in single-family residential dwellings shall not be punishable by a jail term.

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

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

141 In any county having adopted such zoning ordinance, all motions, resolutions or petitions for
142 amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such
143 reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or
144 consents to action beyond such period or unless the applicant withdraws his motion, resolution or
145 petition for amendment to the zoning ordinance or map, or both. In the event of and upon such
146 withdrawal, processing of the motion, resolution or petition shall cease without further action as
147 otherwise would be required by this subdivision.

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

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

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

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

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

170 13. Provisions to incorporate generally accepted national environmental protection and product safety
171 standards for the use of solar panels and battery technologies for solar photovoltaic (electric energy)
172 projects, such as those developed for existing product certifications and standards including the National
173 Sanitation Foundation/American National Standards Institute No. 457, International Electrotechnical
174 Commission No. 61215-2, Institute of Electrical and Electronics Engineers Standard 1547, and
175 Underwriters Laboratories No. 61730-2.

176 14. Provisions for requiring disclosure and remediation of contamination and other adverse
177 environmental conditions of the property prior to approval of subdivision and development plans.

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

181 16. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The
182 zoning administrator or his agent may make an affidavit under oath before a magistrate or court of

183 competent jurisdiction and, if such affidavit establishes probable cause that a zoning ordinance violation
184 has occurred, request that the magistrate or court grant the zoning administrator or his agent an
185 inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the
186 purpose of determining whether violations of the zoning ordinance exist. After issuing a warrant under
187 this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After
188 executing the warrant, the zoning administrator or his agents shall return the warrant to the clerk of the
189 circuit court of the city or county wherein the inspection was made. The zoning administrator or his
190 agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling
191 prior to seeking the issuance of an inspection warrant under this section.

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