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HOUSE BILL NO. 1506

Offered January 22, 1996

A BILL to amend and reenact §§ 3.1-22.28 and 15.1-491 of the Code of Virginia, relating to local authority to regulate agricultural land use.

Patrons—Armstrong, Abbitt, Orrock, Shuler, Van LANDINGHAM, Van Yahres and Watkins; Senators: Hawkins and Stolle

Referred to Committee on Agriculture

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-22.28 and 15.1-491 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-22.28. Right to farm; restrictive ordinances.

In order to limit the circumstances under which agricultural operations may be deemed to be a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations, no county shall adopt any ordinance that requires that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. For the purpose of this section, "production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but shall not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge construction of facilities for the storage of sewage sludge prior to land application. However, counties may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification. Where a setback or minimum area requirement has been established by state law or regulation, such setback or minimum area requirement shall apply. No county, city or town shall enact zoning ordinances which would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship are demonstrated as necessary to the health, safety and general welfare of its citizens. This section shall become effective on April 1, 1995, and from and after that date all land zoned to an agricultural district or classification shall be in conformity with this section.

§ 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

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60 substantial value, or substantial cash payments for or construction of substantial public improvements,
61 the need for which is not generated solely by the rezoning itself, but who has not substantially
62 implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail
63 prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice
64 shall identify the property to be developed, the zoning district, and the proffers applicable thereto.
65 Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement
66 such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good
67 faith shall diligently pursue the completion of the development of the property. Any landowner who
68 complies with the requirements of this subdivision shall be entitled to the protection against action
69 initiated by the governing body affecting use, floor area ratio, and density set out in subdivision (a1),
70 unless there has been mistake, fraud, or a change in circumstances substantially affecting the public
71 health, safety, or welfare, but any landowner failing to comply with the requirements of this subdivision
72 shall acquire no rights pursuant to this section.

73 (a3) The provisions of subdivisions (a1) and (a2) of this section shall be effective prospectively only,
74 and not retroactively, and shall not apply to any zoning ordinance text amendments which may have
75 been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any
76 litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

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

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

80 2. Accept or impose valid conditions pursuant to subsection (c) of this section, subsection H of
81 § 15.1-466, or other provision of law.

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

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

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

97 (d) For the administration and enforcement of the ordinance including the appointment or designation
98 of a zoning administrator who may also hold another office in the county or municipality. The zoning
99 administrator shall have all necessary authority on behalf of the governing body to administer and
100 enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any
101 condition found in violation of the ordinance; (ii) to insure compliance with the ordinance, bringing
102 legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal
103 pursuant to § 15.1-496.1; and (iii) in specific cases, making findings of fact and, with concurrence of the
104 attorney for the governing body, conclusions of law regarding determinations of rights accruing under
105 § 15.1-492. Where provided by ordinance, the zoning administrator may be authorized to grant a
106 variance from any building setback requirement contained in the zoning ordinance if the administrator
107 finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such
108 hardship is not shared generally by other properties in the same zoning district and the same vicinity;
109 and (iii) the authorization of the variance will not be of substantial detriment to adjacent property and
110 the character of the zoning district will not be changed by the granting of the variance. Prior to the
111 granting of a variance, the zoning administrator shall give, or require the applicant to give, all adjoining
112 property owners written notice of the request for variance, and an opportunity to respond to the request
113 within twenty-one days of the date of the notice. If any adjoining property owner objects to said request
114 in writing within the time specified above, the request shall be transferred to the Board of Zoning
115 Appeals for decision.

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

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

121 (g) For the amendment of the regulations or district maps from time to time, or for their repeal.

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

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

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

142 (i) For areas and districts designated for mixed use developments as defined in subdivision (r) of
 143 § 15.1-430 and planned unit developments as defined in subdivision (s) of § 15.1-430.

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

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

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