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Director of Planning

## COUNTY OF PRINCE WILLIAM

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PLANNING  
OFFICE

October 5, 2018

**TO:** Planning Commission

**FROM:** Bryce Barrett  
Planning Office

**RE:** Zoning Text Amendment #DPA2018-00019, 2018 State Mandated Changes  
**Countywide**

**I. Background – is as follows:**

- A. Amendment of the Zoning Ordinance – Section 15.2-2285 and 15.2-2286 of the Code of Virginia, Ann., the Board of County Supervisors may amend the Zoning Ordinance whenever it determines that public necessity, health, safety, convenience, general welfare, and good zoning practice necessitate such change.
- B. 2017 State Legislation – General Acts of Assembly Chapter 665, approved during the 2017 legislative session of the Virginia General Assembly and signed into law by the Governor, amended § 15.2-2311 of the Code of Virginia to change the commencement of the appeal period to after written order has been sent, with the rebuttable presumption that the property owner's last known address is that shown on the current real estate tax records. (See Attachment C).
- C. 2018 State Legislation – General Acts of Assembly Chapters 399, 726, and 757, approved during the 2018 legislative session of the Virginia General Assembly and signed into law by the Governor (see Attachment C), amended the Code of Virginia as follows:
  - 1. General Acts of Assembly Chapter 399 – Amended § 15.2-961 of the Code of Virginia to require a minimum 10 percent tree canopy be provided on the site of any cemetery and amended the reference standard organizations for such tree canopy requirements.
  - 2. General Acts of Assembly Chapter 726 – Amended § 15.2-2286 of the Code of Virginia to remove the minimum penalty for a criminal violation of the Zoning Ordinance and to add a provision that any succeeding 10-day period after the second misdemeanor offense for not removing or abating a zoning violation shall be punishable by a maximum fine of \$2,000.00.
  - 3. General Acts of Assembly Chapter 757 – Amended § 15.2-2283 and § 15.2-2309 of the Code of Virginia to allow reasonable accommodations in accordance with the Americans with Disabilities Act (ADA) and state and federal fair housing laws, and to allow a variance to grant a reasonable

modification to a property or improvements requested by or on behalf of a person with a disability if it would alleviate a hardship.

- D. Purpose of the Amendment – The purpose of the amendment is to include the adopted changes to state code from the General Acts of Assembly 2017 session Chapter 665, and the General Acts of Assembly 2018 session Chapters 399, 726, and 757.

## II. Current Situation – is as follows:

- A. Zoning Text Amendment Initiated 2017 – The Board of County Supervisors initiated the text amendment on May 16, 2017 to address the requirements of Chapter 665 and 835 of the 2017 Acts of Assembly and Chapter 613 of the 2016 Acts of Assembly (see Attachment B). Chapters 613 and 835 are being addressed in ZTA #DPA2017-00024, Telecommunications and Small Cell Facilities.
- B. Zoning Text Amendment Initiated 2018 – The Board of County Supervisors initiated the text amendment on May 15, 2018 to address the requirements of Chapter 399, 726, 757, and 835 of the 2018 Acts of Assembly (see Attachment B). Chapter 835 is being addressed in the ZTA #DPA2017-00024, Telecommunications and Small Cell Facilities.
- C. Application of Current Language –
1. Appeals – The current Zoning Ordinance does not specify that the appeal period for zoning appeals shall not begin until written notice is given . In addition, the current language does not clarify that there shall be a “rebuttable presumption that the property owner’s last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission.”
  2. Tree Canopy Requirements – The current Zoning Ordinance states that all development shall be subject to the tree canopy cover requirements as set forth in section 800 of the Design and Construction Standards Manual. The current standard requires tree canopy replacement for cemeteries to be a minimum of 10% of the area of the site. In addition, the Zoning Ordinance does not include the updated referenced standard organizations for tree replacement.
  3. Zoning Violation Penalty – The current Zoning Ordinance has a minimum fine associated with the penalty for not complying with a zoning violation or the subsequent misdemeanor offenses related to the continued failure to remove or abate said violation after conviction. In addition, the current Zoning Ordinance has a maximum \$1,000.00 fine for failure to remove or abate a

zoning violation after conviction, and a maximum \$1,500.00 fine for any succeeding ten-day period.

4. Reasonable Modifications for Americans with Disabilities (ADA) – The current Zoning Ordinance, while providing allowance for reasonable accommodations in Sec 32-300.06.7 regarding handicap-accessible ramps, does not provide for reasonable modifications through a variance in accordance with the Americans with Disabilities Act (ADA), or state and federal fair housing laws, when the provisions of 32-300.06 cannot be met.

D. Proposed Remedy –

1. Appeals – The proposed amendment will include the new language establishing the appeal period shall not commence until after written order has been sent to the property owner, with a rebuttable presumption that the property owner's last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission.
2. Tree Canopy Requirements – The current Zoning Ordinance for tree canopy coverage is grandfathered under §15.2-961(k), and does not need to be amended in regards to tree canopy replacement for cemeteries. However, the proposed amendment will update the referenced standard organizations for tree replacement.
3. Zoning Violation Penalty – The proposed amendment will remove the minimum fine associated with the penalty for not complying with a zoning violation or the subsequent misdemeanor offenses related to the continued failure to remove or abate said violation after conviction. In addition, the proposed amendment will add new language stating that any succeeding 10-day period after the second misdemeanor offense for not removing or abating a zoning violation shall be punishable by a maximum fine of \$2,000.00.
4. Reasonable Modifications for Americans with Disabilities Act (ADA) – The proposed amendment will include adding a new intent under Sec. 32-200.01 to provide reasonable modifications in accordance with the Americans with Disabilities Act (ADA), or the state and federal fair housing laws. In addition, the proposed amendment will amend the powers and duties of the Board of Zoning Appeals to grant a variance for reasonable modifications to a property to alleviate a hardship for or on behalf of a person with a disability.

E. Development Ordinance Review Advisory Committee (DORAC) – The committee reviewed the proposed Zoning Text Amendment on August 30, 2018 and their issues are addressed.

F. Planning Office Recommendation – The Planning Office recommends approval of DPA2018-00019, 2018 State Mandated Changes, as proposed in Attachment A, for the following reasons:

1. Prince William County is required to abide by the adopted changes to the Code of Virginia whether or not the Zoning Ordinance reflect such changes.
  2. The Prince William County Zoning Ordinance is intended implement state legislation. The proposed text amendments will further bring the Zoning Ordinance into compliance with the state legislation.
- G. Planning Commission Public Hearing – A public hearing before the Planning Commission has been properly advertised for October 17, 2018.

**III. Issues in the order of importance are:**

- A. Policy – Does the amendment further the purposes of the Zoning Ordinance?
- B. Community Input – Have members of the community raised any concerns?
- C. Legal – Are there any legal implications associated with this zoning text amendment?
- D. Timing – What are the timing considerations of the zoning text amendment?

**IV. Alternatives – beginning with the staff recommendation are as follows:**

- A. Recommend Adoption of Zoning Text Amendment #DPA2018-00019, 2018 State Mandated Changes to the Prince William County Zoning Ordinance.
  1. Policy – The proposed text sufficiently incorporates the changes to the Code of Virginia and will further enable the purpose and intent of the Zoning Ordinance by improving the health, safety, or general welfare of the public. If adopted the proposed language, will increase compliance with the Americans with Disabilities Act, and conform more with the Code of Virginia.
  2. Community Input – The proposed zoning text amendment was posted on the Planning Office website as a zoning text amendment under review. No comments have been received by members of the community.
  3. Legal – Legal issues, if any, are appropriately addressed through the County Attorney’s Office.
  4. Timing – The Planning Commission has until January 15, 2019, 90 days from the first public hearing, to take action on this proposal. A recommendation to adopt the Zoning Text Amendment would meet the 90-day requirement.
- B. Do Not Recommend Adoption of Zoning Text Amendment #DPA2018-00019, 2018 State Mandated Changes to the Prince William County Zoning Ordinance.

1. Policy – If the amendment is not adopted the proposed amendment, the zoning text shall remain unchanged. The County however will still be required to abide by the adopted changes to the Code of Virginia.
2. Community Input – The proposed zoning text amendment was posted on the Planning Office website as a zoning text amendment under review. No comments have been received by members of the community.
3. Legal – Legal issues, if any, are appropriately addressed through the County Attorney's Office.
4. Timing – The Planning Commission has until January 15, 2019, 90 days from the first public hearing, to take action on this proposal. A recommendation to adopt the Zoning Text Amendment would meet the 90-day requirement.

V. **Recommendation** is that the Planning Commission concurs with Alternative A and recommends adoption of Zoning Text Amendment #DPA2018-00019, 2018 State Mandated Changes.

**Staff:** Bryce Barrett 703-792-8007

**Attachments:**

- A. Proposed Text Amendment
- B. BOCS Initiating Resolutions
- C. Virginia Acts of Assembly

**ARTICLE II. ADMINISTRATION, PUBLIC USES AND USES OF A PUBLIC NATURE,  
GENERAL STANDARDS FOR PLANNED DEVELOPMENT DISTRICTS**

**PART 200. – INTRODUCTION; ADMINISTRATION; PURPOSE**

**Sec. 32-200.01. – Purpose and intent of the chapter.**

This chapter, as adopted and amended, is for the general purpose of promoting the health, safety, and general welfare of the public; providing for development of new community centers with adequate highway, utility, health, educational and recreational facilities; recognizing and providing for the needs of agriculture, industry and business; providing that the growth of the community be consonant with the efficient and economical use of public funds; and implementing the intent, goals, policies and action strategies of the adopted Comprehensive Plan. To these ends, it is the intent of this chapter to:

- (1) Provide for adequate light, air, convenience of access, and safety from fire, flood and other dangers;
- (2) Reduce or prevent congestion in the public streets;
- (3) Facilitate the creation of a convenient, attractive and harmonious community;
- (4) Facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements;
- (5) Protect against destruction of or encroachment upon historic areas;
- (6) Protect against overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, and loss of life, health, or property from fire, flood, panic or other dangers;
- (7) Encourage economic development activities that provide desirable employment and enlarge the tax base;
- (8) Provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment;
- (9) Protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities;
- (10) Promote the creation and preservation of affordable housing suitable for meeting the current and future housing needs of the County;
- (11) Protect surface water and groundwater, as defined in Code of Virginia, § 62.1-255; and
- (12) Provide safety from crime.
- (13) Provide reasonable modifications in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), or state and federal fair housing laws, as applicable.

## Attachment A – Proposed Text Amendment

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**Editor's note: amended to incorporate General Acts of Assembly 2018 Chapter 757.**

### **Sec. 32-200.11. – Duties and responsibilities**

- (a) The Zoning Administrator shall be responsible for the interpretation and administration of this chapter, and for investigating all complaints of violations of this chapter, and shall have all necessary authority, on behalf of the Board of County Supervisors to enforce this chapter to insure compliance herewith, including the issuance of violation notices, injunction, abatement, or other appropriate legal proceeding.
- (b) Unless otherwise specified in this chapter, the Zoning Administrator shall issue all permits required to be issued by this chapter, and make and maintain records thereof, and shall perform such other duties as may be assigned by this chapter, the County Executive, or the Board of County Supervisors.
- (c) Unless otherwise provided in this chapter, the Zoning Administrator shall make all determinations and issue all rulings and orders authorized herein or otherwise necessary in the interpretation and enforcement of this chapter. This shall include any conclusions of law and findings of fact by the County Attorney in conjunction with the administration, application, and enforcement of this ordinance as well as determinations of accruing vested rights.
- (d) Any written notice of a zoning violation or a written order or determination of the Zoning Administrator shall inform the recipient of a right to appeal a notice, written order, or determination in accordance with section 32-900.20 of the Prince William County Code. It shall also state that the Zoning Administrator's decision shall be final and unappealable if not appealed within 30 days, and shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal.

**Editor's note: amended to incorporate General Acts of Assembly 2017 Chapter 665.**

### **Part 250. – GENERAL PERFORMANCE STANDARDS**

#### **Sec. 32-250.41. – Same—Applicability**

- 1. The provisions of sections 32-250.40 et seq., shall apply to all development where site plans or subdivision plans are required to be submitted for review and approval in accordance with Part 800 of this chapter. Landscaping plans depicting the replacement and/or preservation of trees in accordance with these sections shall be submitted in accordance with the requirements of the Design and Construction Standards Manual.
- 2. All trees to be planted shall meet the specifications of the ~~American Nursery and Landscapers Association~~ AmericanHort. The planting of trees shall be done in accordance with either the standardized landscape specifications jointly adopted by the ~~Virginia Nurserymen's~~ Virginia Nursery and Landscape Association, the Virginia Society of Landscape Designers and the

## Attachment A – Proposed Text Amendment

Virginia Chapter of the American Society of Landscape Architects, or the Guidelines for Plantings Along Virginia Roadways of the Virginia Department of Transportation.

3. ...

**Editor's note: amended to incorporate General Acts of Assembly 2018 Chapter 399.**

### ARTICLE IX. BOARD OF ZONING APPEALS

#### Sec. 32-900.10. – Powers and duties.

The Board 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 chapter. No such appeal shall be heard except after notice of hearing as provided by section 32-700.60.
2. To hear and decide appeals from the decision of the Zoning Administrator. No such appeal shall be heard except after notice of hearing as provided by section 32-700.60. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider the purpose and intent of any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer.
3. To hear and decide applications for interpretation of the official zoning map, where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearing with notice as provided in section 32-700.60, the Board of Zoning Appeals may interpret the map in such a way as to carry out the intent and purpose of this chapter for the particular section or district in question, provided that the Board of Zoning Appeals shall not have the power to substantially change the locations of district boundaries as established by ordinance.
4. To grant, upon application in specific cases, a variance provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 of the Code of Virginia and the criteria set out in this section. A variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and (i) the property interest for which the variance is being requested was acquired in good faith and where by reason of the exceptional and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property



## Attachment A – Proposed Text Amendment

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; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 of the Code of Virginia or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 of the Code of Virginia at the time of the filing of the variance application. Any variance granted to provide a reasonable modification to a property or improvements thereon requested by or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the county unless a variance from the board of zoning appeals under this section is required for such request to be granted.

5. ...

**Editor's note: amended to incorporate General Acts of Assembly 2018 Chapter 757.**

### **Sec. 32-900.20. – Appeals.**

The following provisions shall apply to appeals under this chapter:

1. The appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the County affected by any decision of the Zoning Administrator or other official charged with responsibility by this chapter for administering portions hereof. The appeal period shall not commence until the zoning administrator's written order is sent by registered mail to, or posted at, the last known address or usual place of abode of the property owner or its registered agent, if any. There shall be a rebuttable presumption that the property owner's last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission. A written notice of a zoning violation or a written order of the Zoning Administrator shall include a statement that the notice of violation or written order shall be final and unappealable if not appealed within 30 days. Such notice shall be sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records and shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section. An appeal shall be taken within 30 days after the decision appealed from, by filing with the Zoning Administrator and the board of appeals a notice of appeal specifying the grounds thereof, which shall be accompanied by a fee set by the Board of County Supervisors. The Zoning Administrator or other appropriate official

## Attachment A – Proposed Text Amendment

shall forthwith transmit to the Board of Zoning Appeals copies of the papers constituting the record upon which the action was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Zoning Appeals that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board of Zoning Appeals or by a court of record, on application and on notice to the Zoning Administrator and for due cause shown.

2. ...

**Editor's note: amended to incorporate General Acts of Assembly 2017 Chapter 665.**

### ARTICLE X. –VIOLATIONS, INFRACTIONS, AND PENALTIES

#### Sec. 32-1000.02. – Criminal violations and penalties.

1. In the event that the Zoning Administrator determines that there has been any violation of this chapter, the Administrator may, if necessary or appropriate, seek criminal process against the alleged violator. The issuance of a violation notice and correction order shall not be deemed a precondition to the issuance of a warrant or summons. The remedies provided by this chapter shall be cumulative, and nothing herein shall be construed to prevent the Zoning Administrator from issuing a violation notice and correction order under either section 32-1000.01 or section 32-700.31 of this chapter. In addition, the Administrator may seek immediate relief from the court regardless of other action that has been or will be taken.
2. Any violation of the provisions of this chapter, including failure to comply with a violation notice and correction order, shall be a misdemeanor and upon conviction thereof the penalty for such violation shall be a fine of not ~~less than \$10.00 nor~~ more than \$1,000.00. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not ~~less than \$100.00 nor~~ more than \$1,000.00, and any failure during ~~any a~~ succeeding ten-day period shall constitute a separate misdemeanor offense ~~for each ten-day period~~ punishable by a fine of not ~~less than \$100.00 nor~~ more than \$1,500.00; and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not more than \$2,000.00.

3. ...

**Editor's note: amended to incorporate General Acts of Assembly 2018 Chapter 726.**

## Attachment B – BOCS Initiating Resolutions

**MOTION: LAWSON**

**May 16, 2017  
Regular Meeting  
Res. No. 17-239**

**SECOND: CADDIGAN**

**RE: AUTHORIZE PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE COUNTY CODE TO BE EFFECTIVE JULY 1, 2017, MANDATED BY CHANGES TO STATE LAW MADE BY THE GOVERNOR AND THE 2017 GENERAL ASSEMBLY: PROPOSED AMENDMENTS TO CHAPTERS 2 (ADMINISTRATION), 4 (ANIMAL AND FOWL), 4.5 (BAD CHECKS), 5 (BUILDINGS AND BUILDING REGULATIONS), 13 (MOTOR VEHICLES AND TRAFFIC), 16 (MISCELLANEOUS OFFENSES), 22 (REFUSE), 26 (TAXATION), 27 (TAXICABS), AND 31 (WEAPONS); AND INITIATE ZONING TEXT AMENDMENT**

**ACTION: APPROVED**

**WHEREAS**, the Board of County Supervisors of Prince William County, Virginia, pursuant to both general and specific authority granted by the Code of Virginia, has enacted certain provisions of Chapters 2 (Administration), 4 (Animal And Fowl), 4.5 (Bad Checks), 5 (Buildings And Building Regulations), 13 (Motor Vehicles And Traffic), 16 (Miscellaneous Offenses), 22 (Refuse), 26 (Taxation), 27 (Taxicabs), and 31 (Weapons) of the Prince William County Code to parallel certain provisions of the Code of Virginia; and

**WHEREAS**, the parallel provisions of the Code of Virginia have been previously amended or amended by the 2017 General Assembly and the Governor of Virginia; and

**WHEREAS**, it is the Board's desire to conduct a public hearing for the purpose of considering adoption of corresponding amendments to the Prince William County Code; and

**WHEREAS**, the Board has enacted Chapter 32 of the Prince William Code, Zoning, and the Governor and General Assembly have enacted Chapters 665 and 835 of the 2017 Acts of Assembly and Chapter 613 of the 2016 Acts of Assembly, mandating changes to local zoning ordinances including provisions that deem proposed telecommunication towers or facilities constructed pursuant to Chapter 9.1, Title 56 of the Code of Virginia to be substantially in accord with the comprehensive plan and waiving the need for approval by the planning commission, changing when the appeal period commences for a zoning appeal, establishing a rebuttable presumption in a zoning appeal that the property owner's last known address is the address shown on current real estate assessments, and zoning for wireless communications infrastructure; and

**WHEREAS**, the Prince William County Board of Supervises finds that public necessity, convenience, general welfare, and good zoning practices require the initiation of this zoning text amendment;

## Attachment B – BOCS Initiating Resolutions

May 16, 2017  
Regular Meeting  
Res. No. 17-239  
Page Two

**NOW, THEREFORE, BE IT RESOLVED** that the Prince William Board of County Supervisors does hereby determine that it shall conduct a public hearing to be scheduled on June 20, 2017, by the Clerk to the Board to consider the adoption of the amendments to Chapters 2, 4, 4.5, 5, 13, 16, 22, 26, 27, and 31 of the County Code, shown on the attachment to this Resolution, all to be effective July 1, 2017. The Clerk is further directed to make copies of all proposed amendments available to the public upon request;

**BE IT FURTHER RESOLVED** that the Clerk to the Board properly advertise notice of the public hearing for the stated purpose in a newspaper of general circulation in Prince William County;

**BE IT FURTHER RESOLVED** that the Prince William Board of County Supervisors does hereby direct the Planning Commission and County Staff to initiate appropriate amendments to Chapter 32 of the Prince William Code, which is the Zoning Ordinance to address the Requirements of Chapters 665 and 835 of the 2017 Acts of Assembly and Chapter 613 of the 2016 Acts of Assembly.

**Votes:**

**Ayes:** Anderson, Caddigan, Jenkins, Lawson, Nohe, Principi, Stewart

**Nays:** None

**Absent from Vote:** Candland

**Absent from Meeting:** None

**For Information:**

County Executive

Police Chief

Finance Director

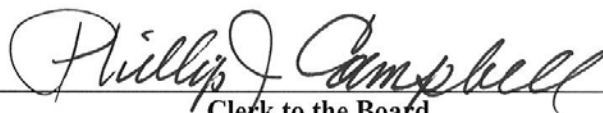
Planning Director

Development Services Director

Public Works Director

Commonwealth's Attorney

ATTEST: \_\_\_\_\_

  
Clerk to the Board

## Attachment B – BOCS Initiating Resolutions

**MOTION: CADDIGAN**

**May 15, 2018  
Regular Meeting  
Res. No. 18-338**

**SECOND: PRINCIPI**

**RE: AUTHORIZE PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE COUNTY CODE TO BE EFFECTIVE JULY 1, 2018, MANDATED BY CHANGES TO STATE LAW MADE BY THE GOVERNOR AND THE 2018 GENERAL ASSEMBLY: PROPOSED AMENDMENTS TO CHAPTERS 4 (ANIMAL AND FOWL), 13 (MOTOR VEHICLES AND TRAFFIC), 16 (MISCELLANEOUS OFFENSES), 20.4 (SECONDHAND MERCHANTS/ PAWNBROKERS), AND 26 (TAXATION); INITIATE ZONING TEXT AMENDMENTS**

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**ACTION: APPROVED**

**WHEREAS**, the Board of County Supervisors of Prince William County, Virginia, pursuant to both general and specific authority granted by the Code of Virginia, has enacted certain provisions of Chapters 4 (Animal And Fowl), 13 (Motor Vehicles And Traffic), 16 (Miscellaneous Offenses), 20.4 (Secondhand Merchants/ Pawnbrokers), and 26 (Taxation) of the Prince William County Code to parallel certain provisions of the Code of Virginia; and

**WHEREAS**, the parallel provisions of the Code of Virginia have been amended by the 2018 General Assembly and the Governor of Virginia; and

**WHEREAS**, it is the Board's desire to conduct a public hearing for the purpose of considering adoption of corresponding amendments to the Prince William County Code.

**WHEREAS**, the Board has enacted Chapter 32 of the Prince William Code, Zoning, and the Governor and General Assembly have enacted Chapters 399, 726, 757, and 835 of the 2018 Acts of Assembly, mandating changes to local zoning ordinances including provisions that expand the powers of the zoning ordinance, require a minimum tree canopy in cemeteries, remove the minimum penalty of a criminal violation of the zoning ordinance, expand variances to include reasonable modification for persons with disabilities; and zoning for wireless communication infrastructure.

**WHEREAS**, the Prince William County Board of Supervises finds that public necessity, convenience, general welfare, and good zoning practices require the initiation of this zoning text amendment;

**NOW, THEREFORE, BE IT RESOLVED** that the Board of County Supervisors of Prince William County, Virginia, does hereby determine that it shall conduct a public hearing to be scheduled on June 19, 2018, by the Clerk to the Board to consider the adoption of the amendments to Chapters 4, 13, 16, 20.4, and 26 of the County Code, shown on the attachment to this Resolution, all to be effective July 1, 2018. The Clerk is further directed to make copies of all proposed amendments available to the public upon request;

## Attachment B – BOCS Initiating Resolutions

May 15, 2018  
Regular Meeting  
Res. No. 18-338  
Page Two

**BE IT FURTHER RESOLVED** that the Clerk to the Board properly advertise notice of the public hearing for the stated purpose in a newspaper of general circulation in Prince William County.

**BE IT FURTHER RESOLVED** that the Board does hereby direct the Planning Commission and County Staff to initiate appropriate amendments to Chapter 32 of the Prince William Code, which is the Zoning Ordinance to address the Requirements of Chapters 399, 726, 757, and 835 of the 2018 Acts of Assembly.

**Votes:**

**Ayes:** Anderson, Caddigan, Candland, Jenkins, Lawson, Nohe, Principi,

**Nays:** None

**Absent from Vote:** Stewart

**Absent from Meeting:** None

**For Information:**

County Executive

Chief of Police

Finance Director

Planning Director

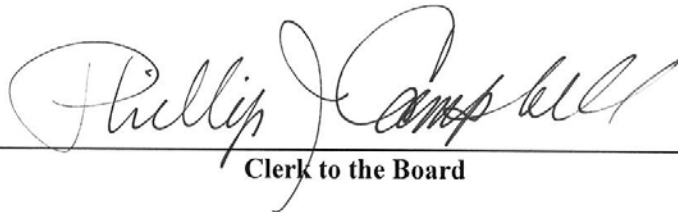
Development Services Director

Public Works Director

Commonwealth's Attorney

ATTACHMENT: Proposed Amendments  
Chapter 399 of the 2018 Acts of Assembly  
Chapter 726 of the 2018 Acts of Assembly  
Chapter 757 of the 2018 Acts of Assembly  
Chapter 835 of the 2018 Acts of Assembly

ATTEST: \_\_\_\_\_



Clerk to the Board

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 665

*An Act to amend and reenact § 15.2-2311 of the Code of Virginia, relating to board of zoning appeals.*

[S 1559]

Approved March 20, 2017

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2311 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2311. Appeals to board.

A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to § 15.2-2286. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given *and the zoning administrator's written order is sent by registered mail to, or posted at, the last known address or usual place of abode of the property owner or its registered agent, if any. There shall be a rebuttable presumption that the property owner's last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission. A written notice of a zoning violation or a written order of the zoning administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section.* The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs. A decision by the board on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the zoning administrator in accordance with this section. The owner's actual notice of such notice of zoning violation or written order or active participation in the appeal hearing shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order. For jurisdictions that impose civil penalties for violations of the zoning ordinance, any such civil penalty shall not be assessed by a court having jurisdiction during the pendency of the 30-day appeal period.

B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical errors.

D. In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.



VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 399

*An Act to amend and reenact § 15.2-961 of the Code of Virginia, relating to development projects; replacement of trees.*

[H 494]

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-961 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-961. Replacement of trees during development process in certain localities.

A. Any locality with a population density of at least 75 persons per square mile or any locality within the Chesapeake Bay watershed may adopt an ordinance providing for the planting and replacement of trees during the development process pursuant to the provisions of this section. Population density shall be based upon the latest population estimates of the Cooper Center for Public Service of the University of Virginia.

B. The ordinance shall require that the site plan for any subdivision or development include the planting or replacement of trees on the site to the extent that, at 20 years, minimum tree canopies or covers will be provided in areas to be designated in the ordinance, as follows:

1. Ten percent tree canopy for a site zoned business, commercial, or industrial;
2. Ten percent tree canopy for a residential site zoned 20 or more units per acre;
3. Fifteen percent tree canopy for a residential site zoned more than 10 but less than 20 units per acre; and
4. Twenty percent tree canopy for a residential site zoned 10 units or less per acre; and
5. ~~Ten percent tree canopy for a cemetery as defined in § 54.1-2310, notwithstanding any other provision of this subsection.~~

However, the City of Williamsburg may require at 10 years the minimum tree canopies or covers set out above.

C. ~~The ordinance shall require that the site plan for any subdivision or development include, at 20 years, that a minimum 10 percent tree canopy will be provided on the site of any cemetery as defined in § 54.1-2310, notwithstanding any other provision of this section. In no event shall any local tree replacement or planting ordinance adopted pursuant to this section exceed the requirements of this subsection.~~

D. The ordinance shall provide for reasonable provisions for reducing the tree canopy requirements or granting tree cover credit in consideration of the preservation of existing tree cover or for preservation of trees of outstanding age, size or physical characteristics.

~~E.~~ E. The ordinance shall provide for reasonable exceptions to or deviations from these requirements to allow for the reasonable development of farm land or other areas devoid of healthy or suitable woody materials, for the preservation of wetlands, or otherwise when the strict application of the requirements would result in unnecessary or unreasonable hardship to the developer. In such instances, the ordinance may provide for a tree canopy bank whereby a portion of a development's tree canopy requirement may be met from off-site planting or replacement of trees at the direction of the locality. The following shall be exempt from the requirements of any tree replacement or planting ordinance promulgated under this section: dedicated school sites, playing fields and other nonwooded recreation areas, and other facilities and uses of a similar nature.

~~F.~~ F. The ordinance may designate tree species that cannot be planted to meet minimum tree canopy requirements due to tendencies of such species to (i) negatively impact native plant communities, (ii) cause damage to nearby structures and infrastructure, or (iii) possess inherent physiological traits that cause such trees to structurally fail. All trees to be planted shall meet the specifications of the ~~American Association of Nurserymen~~ AmericanHort. The planting of trees shall be done in accordance with either the standardized landscape specifications jointly adopted by the ~~Virginia Nurserymen's~~ Virginia Nursery and Landscape Association, the Virginia Society of Landscape Designers and the Virginia Chapter of the American Society of Landscape Architects, or the road and bridge specifications of the Virginia Department of Transportation.

~~G.~~ G. Existing trees which are to be preserved may be included to meet all or part of the canopy requirements, and may include wooded preserves, if the site plan identifies such trees and the trees meet standards of desirability and life-year expectancy which the locality may establish.

~~H.~~ H. For purposes of this section:

"Tree canopy" or "tree cover" includes all areas of coverage by plant material exceeding five feet in height, and the extent of planted tree canopy at 10 or 20 years maturity. Planted canopy at 10 or 20 years maturity shall be based on published reference texts generally accepted by landscape architects,



## Attachment C – Virginia Acts of Assembly

2 of 2

nurserymen, and arborists in the community, and the texts shall be specified in the ordinance.

~~H~~ *I*. Penalties for violations of ordinances adopted pursuant to this section shall be the same as those applicable to violations of zoning ordinances of the locality.

~~I~~ *J*. In no event shall any local tree replacement or planting ordinance adopted pursuant to this section exceed the requirements set forth herein.

~~J~~ *K*. Nothing in this section shall invalidate any local ordinance adopted pursuant to the provisions of this section prior to July 1, 1990, which imposes standards for tree replacement or planting during the development process.

~~K~~ *L*. Nothing in this section shall invalidate any local ordinance adopted by the City of Williamsburg that imposes standards for 10-year-minimum tree cover replacement or planting during the development process.

~~L~~ *M*. Nothing in this section shall invalidate any local ordinance adopted pursuant to the provisions of this section after July 1, 1990, which imposes standards for 20-year-minimum tree cover replacement or planting during the development process.

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 726

*An Act to amend and reenact § 15.2-2286 of the Code of Virginia, relating to zoning; penalties.*

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

[H 709]

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

Where provided by ordinance, the zoning administrator may be authorized to grant a modification

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

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

5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000; and, any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not less than \$100 nor more than \$1,500; and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not more than \$2,000.

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

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

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

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

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

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

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

## Attachment C – Virginia Acts of Assembly

3 of 3

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

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

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

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

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

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

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 757

*An Act to amend and reenact §§ 15.2-2283 and 15.2-2309 of the Code of Virginia, relating to zoning; disabilities.*

[H 796]

Approved April 4, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2283 and 15.2-2309 of the Code of Virginia are amended and reenacted as follows:  
§ 15.2-2283. Purpose of zoning ordinances.

Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.2-2200. To these ends, such ordinances shall be designed to give reasonable consideration to each of the following purposes, where applicable: (i) to provide for adequate light, air, convenience of access, and safety from fire, flood, impounding structure failure, crime and other dangers; (ii) to reduce or prevent congestion in the public streets; (iii) to facilitate the creation of a convenient, attractive and harmonious community; (iv) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; (v) to protect against destruction of or encroachment upon historic areas and working waterfront development areas; (vi) to protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, impounding structure failure, panic or other dangers; (vii) to encourage economic development activities that provide desirable employment and enlarge the tax base; (viii) to provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment; (ix) to protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities; (x) to promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated; ~~and~~ (xi) to provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard; *and (xii) to provide reasonable modifications in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.) or state and federal fair housing laws, as applicable.* Such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water as defined in § 62.1-255.

§ 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 determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, *or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability,* and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not



created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application. *Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted.*

No variance shall be considered 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.

In granting 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, general or special, 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 affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. 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. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

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

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

No special exception may be granted except 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 affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except 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 affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

## Attachment C – Virginia Acts of Assembly

3 of 3

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