

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 15.2-2242, 15.2-2286, 15.2-2288.1 and 36-98 of the Code of*  
 3 *Virginia, relating to clustering of single-family dwellings so as to preserve open space.*

4 [H 346]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 15.2-2242, 15.2-2286, 15.2-2288.1 and 36-98 of the Code of Virginia are amended and**  
 8 **reenacted as follows:**

9 § 15.2-2242. Optional provisions of a subdivision ordinance.

10 A subdivision ordinance may include:

11 1. Provisions for variations in or exceptions to the general regulations of the subdivision ordinance  
 12 in cases of unusual situations or when strict adherence to the general regulations would result in  
 13 substantial injustice or hardship.

14 2. A requirement for the furnishing of a preliminary opinion from the applicable health official  
 15 regarding the suitability of a subdivision for installation of subsurface sewage disposal systems where  
 16 such method of sewage disposal is to be utilized in the development of a subdivision.

17 3. A requirement that, in the event streets in a subdivision will not be constructed to meet the  
 18 standards necessary for inclusion in the secondary system of state highways or for state street  
 19 maintenance moneys paid to municipalities, the subdivision plat and all approved deeds of  
 20 subdivision, or similar instruments, must contain a statement advising that the streets in the  
 21 subdivision do not meet state standards and will not be maintained by the Department of  
 22 Transportation or the localities enacting the ordinances. Grantors of any subdivision lots to which  
 23 such statement applies must include the statement on each deed of conveyance thereof. However,  
 24 localities in their ordinances may establish minimum standards for construction of streets that will not  
 25 be built to state standards.

26 For streets constructed or to be constructed, as provided for in this subsection, a subdivision  
 27 ordinance may require that the same procedure be followed as that set forth in provision 5 of  
 28 § 15.2-2241. Further, the subdivision ordinance may provide that the developer's financial commitment  
 29 shall continue until such time as the local government releases such financial commitment in  
 30 accordance with provision 11 of § 15.2-2241.

31 4. Reasonable provision for the voluntary funding of off-site road improvements and  
 32 reimbursements of advances by the governing body. If a subdivider or developer makes an advance of  
 33 payments for or construction of reasonable and necessary road improvements located outside the  
 34 property limits of the land owned or controlled by him, the need for which is substantially generated  
 35 and reasonably required by the construction or improvement of his subdivision or development, and  
 36 such advance is accepted, the governing body may agree to reimburse the subdivider or developer  
 37 from such funds as the governing body may make available for such purpose from time to time for  
 38 the cost of such advance together with interest, which shall be excludable from gross income for  
 39 federal income tax purposes, at a rate equal to the rate of interest on bonds most recently issued by  
 40 the governing body on the following terms and conditions:

41 a. The governing body shall determine or confirm that the road improvements were substantially  
 42 generated and reasonably required by the construction or improvement of the subdivision or  
 43 development and shall determine or confirm the cost thereof, on the basis of a study or studies  
 44 conducted by qualified traffic engineers and approved and accepted by the subdivider or developer.

45 b. The governing body shall prepare, or cause to be prepared, a report accepted and approved by  
 46 the subdivider or developer, indicating the governmental services required to be furnished to the  
 47 subdivision or development and an estimate of the annual cost thereof for the period during which the  
 48 reimbursement is to be made to the subdivider or developer.

49 c. The governing body may make annual reimbursements to the subdivider or developer from  
 50 funds made available for such purpose from time to time, including but not limited to real estate taxes  
 51 assessed and collected against the land and improvements on the property included in the subdivision

52 or development in amounts equal to the amount by which such real estate taxes exceed the annual  
53 cost of providing reasonable and necessary governmental services to such subdivision or development.

54 5. In a county having the urban county executive form of government, in any city located within  
55 or adjacent thereto, or any county adjacent thereto or a town located within such county, in any  
56 county with a population between 57,000 and 57,450, or in any county with a population between  
57 60,000 and 63,000, and in any city with a population between 140,000 and 160,000, provisions for  
58 payment by a subdivider or developer of land of a pro rata share of the cost of reasonable and  
59 necessary road improvements, located outside the property limits of the land owned or controlled by  
60 him but serving an area having related traffic needs to which his subdivision or development will  
61 contribute, to reimburse an initial subdivider or developer who has advanced such costs or constructed  
62 such road improvements. Such ordinance may apply to road improvements constructed after July 1,  
63 1988, in a county having the urban county executive form of government; in a city located within or  
64 adjacent to a county having the urban county executive form of government, or in a county adjacent  
65 to a county having the urban county executive form of government or town located within such  
66 county and in any county with a population between 57,000 and 57,450, or in any county with a  
67 population between 60,000 and 63,000, such ordinance may only apply to road improvements  
68 constructed after the effective date of such ordinance.

69 Such provisions shall provide for the adoption of a pro rata reimbursement plan which shall  
70 include reasonable standards to identify the area having related traffic needs, to determine the total  
71 estimated or actual cost of road improvements required to adequately serve the area when fully  
72 developed in accordance with the comprehensive plan or as required by proffered conditions, and to  
73 determine the proportionate share of such costs to be reimbursed by each subsequent subdivider or  
74 developer within the area, with interest (i) at the legal rate or (ii) at an inflation rate prescribed by a  
75 generally accepted index of road construction costs, whichever is less.

76 For any subdivision ordinance adopted pursuant to provision 5 of this section after February 1,  
77 1993, no such payment shall be assessed or imposed upon a subsequent developer or subdivider if (i)  
78 prior to the adoption of a pro rata reimbursement plan the subsequent subdivider or developer has  
79 proffered conditions pursuant to § 15.2-2303 for offsite road improvements and such proffered  
80 conditions have been accepted by the locality, (ii) the locality has assessed or imposed an impact fee  
81 on the subsequent development or subdivision pursuant to Article 8 (§ 15.2-2317 et seq.) of Chapter  
82 22, or (iii) the subsequent subdivider or developer has received final site plan, subdivision plan, or  
83 plan of development approval from the locality prior to the adoption of a pro rata reimbursement plan  
84 for the area having related traffic needs.

85 The amount of the costs to be reimbursed by a subsequent developer or subdivider shall be  
86 determined before or at the time the site plan or subdivision is approved. The ordinance shall specify  
87 that such costs are to be collected at the time of the issuance of a temporary or final certificate of  
88 occupancy or functional use and occupancy within the development, whichever shall come first. The  
89 ordinance also may provide that the required reimbursement may be paid (i) in lump sum, (ii) by  
90 agreement of the parties on installment at a reasonable rate of interest or rate of inflation, whichever  
91 is less, for a fixed number of years, or (iii) on such terms as otherwise agreed to by the initial and  
92 subsequent subdividers and developers.

93 Such ordinance provisions may provide that no certificate of occupancy shall be issued to a  
94 subsequent developer or subdivider until (i) the initial developer certifies to the locality that the  
95 subsequent developer has made the required reimbursement directly to him as provided above or (ii)  
96 the subsequent developer has deposited the reimbursement amount with the locality for transfer  
97 forthwith to the initial developer.

98 6. Provisions for establishing and maintaining access to solar energy to encourage the use of solar  
99 heating and cooling devices in new subdivisions. The provisions shall be applicable to a new  
100 subdivision only when so requested by the subdivider.

101 7. Provisions, in any town with a population between 14,500 and 15,000, granting authority to the  
102 governing body, in its discretion, to use funds escrowed pursuant to provision 5 of § 15.2-2241 for  
103 improvements similar to but other than those for which the funds were escrowed, if the governing  
104 body (i) obtains the written consent of the owner or developer who submitted the escrowed funds; (ii)  
105 finds that the facilities for which funds are escrowed are not immediately required; (iii) releases the

106 owner or developer from liability for the construction or for the future cost of constructing those  
 107 improvements for which the funds were escrowed; and (iv) accepts liability for future construction of  
 108 these improvements. If such town fails to locate such owner or developer after making a reasonable  
 109 attempt to do so, the town may proceed as if such consent had been granted. In addition, the  
 110 escrowed funds to be used for such other improvement may only come from an escrow that does not  
 111 exceed a principal amount of \$30,000 plus any accrued interest and shall have been escrowed for at  
 112 least five years.

113 8. *Provisions for clustering of single-family dwellings and preservation of open space*  
 114 *developments, which provisions shall comply with the requirements and procedures set forth in*  
 115 *subdivision A 12 of § 15.2-2286.*

116 § 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent  
 117 taxes.

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

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

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

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

132 The governing body or the board of zoning appeals of any city with a population between 260,000  
 133 and 264,000 may impose a condition upon any special exception relating to retail alcoholic beverage  
 134 control licensees which provides that such special exception will automatically expire upon a change  
 135 of ownership of the property, a change in possession, a change in the operation or management of a  
 136 facility or upon the passage of a specific period of time.

137 The governing body of any city with a population between 200,000 and 210,000 may impose a  
 138 condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage  
 139 licensees which provides that such special use permit shall be subject to an automatic review by the  
 140 governing body upon a change in possession, a change in the owner of the business, or a transfer of  
 141 majority control of the business entity. Upon review by the governing body, it may either amend or  
 142 revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

143 4. For the administration and enforcement of the ordinance including the appointment or  
 144 designation of a zoning administrator who may also hold another office in the locality. The zoning  
 145 administrator shall have all necessary authority on behalf of the governing body to administer and  
 146 enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any  
 147 condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing  
 148 legal action, including injunction, abatement, or other appropriate action or proceeding subject to  
 149 appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with  
 150 concurrence of the attorney for the governing body, conclusions of law regarding determinations of  
 151 rights accruing under § 15.2-2307. Notwithstanding the provisions of § 15.2-2311, a zoning ordinance  
 152 may prescribe an appeal period of less than thirty days, but not less than ten days, for a notice of  
 153 violation involving temporary or seasonal commercial uses, parking of commercial trucks in  
 154 residential zoning districts, or similar short-term, recurring violations.

155 Where provided by ordinance, the zoning administrator may be authorized to grant a variance from  
 156 any building setback requirement contained in the zoning ordinance if the administrator finds in  
 157 writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such  
 158 hardship is not shared generally by other properties in the same zoning district and the same vicinity;  
 159 and (iii) the authorization of the variance will not be of substantial detriment to adjacent property and

160 the character of the zoning district will not be changed by the granting of the variance. Prior to the  
161 granting of a variance, the zoning administrator shall give, or require the applicant to give, all  
162 adjoining property owners written notice of the request for variance, and an opportunity to respond to  
163 the request within twenty-one days of the date of the notice. If any adjoining property owner objects  
164 to said request in writing within the time specified above, the request shall be transferred to the Board  
165 of Zoning Appeals for decision.

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

169 5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any  
170 such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than  
171 \$1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator  
172 to abate or remedy the violation in compliance with the zoning ordinance, within a time period  
173 established by the court. Failure to remove or abate a zoning violation within the specified time  
174 period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor  
175 more than \$1,000, and any such failure during any succeeding ten-day period shall constitute a  
176 separate misdemeanor offense for each ten-day period punishable by a fine of not less than \$100 nor  
177 more than \$1,500.

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

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

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

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

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

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

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

212 12. *Provisions for the clustering of single-family dwellings so as to preserve open space.*

213 a. *A locality may, at its option, provide in its zoning or subdivision ordinance standards,*

214 conditions and criteria for clustering of single-family dwellings and the preservation of open space  
 215 developments. In establishing such standards, conditions and criteria, the governing body may, in its  
 216 discretion, include any provisions it determines appropriate to ensure quality development,  
 217 preservation of open space and compliance with its comprehensive plan and land use ordinances. The  
 218 density calculation of the cluster development shall be based upon the same criteria for the property  
 219 as would otherwise be permitted by applicable land use ordinances. As a locality determines, at its  
 220 option, to provide for clustering of single-family dwellings and the preservation of open space  
 221 developments, it may vary provisions for such developments for each different zoning area within the  
 222 locality.

223 If proposals for clustering of single-family dwellings and the preservation of open space  
 224 developments comply with the locality's adopted standards, conditions and criteria, the development  
 225 and open space preservation shall be permitted by right under the local subdivision ordinance. The  
 226 implementation and approval of the cluster development and open space preservation shall be done  
 227 administratively by the locality's staff and without a public hearing. No local ordinance shall require  
 228 that a special exception, special use, or conditional use permit be obtained for such developments.  
 229 However, any such ordinance may exempt developments of two acres or less from the provisions of  
 230 this subdivision.

231 b. Additionally, in any zoning or subdivision ordinance adopted pursuant to subdivision A 12, a  
 232 locality may, at its option, provide for the clustering of single-family dwellings and the preservation  
 233 of open space at a density calculation greater than the density permitted in the applicable land use  
 234 ordinance. To implement and approve such increased density development, the locality may, at its  
 235 option, (i) establish and provide in its zoning or subdivision ordinance standards, conditions, and  
 236 criteria for such development, and if the proposed development complies with those standards,  
 237 conditions and criteria, it shall be permitted by right and approved administratively by the locality  
 238 staff in the same manner provided in subdivision A 12 a, or (ii) approve the increased density  
 239 development upon approval of a special exception, special use permit, conditional use permit or  
 240 rezoning.

241 c. Any locality that provides for clustering of single-family dwellings and preservation of open  
 242 space upon approval of a special exception, special use permit, conditional use permit or rezoning  
 243 shall no later than July 1, 2004, amend its applicable land use ordinance to comply with the  
 244 provisions of subdivision A 12. Any land use provisions for clustering of single-family dwellings and  
 245 preservation of open space adopted after the effective date of this act shall comply with subdivision A  
 246 12. Notwithstanding any of the requirements of subdivision A 12 to the contrary, any local  
 247 government land use ordinance in effect as of January 1, 2002, that provides for the clustering of  
 248 single-family dwellings and preservation of open space development by right without requiring either  
 249 a special exception, special use permit, conditional use permit or other discretionary approval may  
 250 remain in effect at the option of the locality.

251 B. Prior to the initiation of an application for a special exception, special use permit, variance,  
 252 rezoning or other land use permit, or prior to the issuance of final approval, the authorizing body may  
 253 require the applicant to produce satisfactory evidence that any delinquent real estate taxes owed to the  
 254 locality which have been properly assessed against the subject property have been paid.

255 § 15.2-2288.1. Localities may not require a special use permit for certain residential uses.

256 No local ordinance shall require as a condition of approval of a subdivision plat, site plan, or plan  
 257 of development, or issuance of a building permit, that a special exception, special use, or conditional  
 258 use permit be obtained for the development and construction of residential dwellings at the use, height  
 259 and density permitted by right under the local zoning ordinance. Nothing herein shall restrict the use  
 260 of the special exception, special use, or conditional use permit process on application of a property  
 261 owner for (i) a cluster or town center as an optional form of residential development at the a density  
 262 greater than that permitted by right, or otherwise permitted by local ordinance; (ii) use in an area  
 263 designated for steep slope mountain development; (iii) use as a utility facility to serve a residential  
 264 development; or (iv) nonresidential uses including but not limited to home businesses, home  
 265 occupations, day care centers, bed and breakfast inns, lodging houses, private boarding schools, and  
 266 shelters established for the purpose of providing human services to the occupants thereof.

267 § 36-98. Board to promulgate Statewide Code; other codes and regulations superseded; exceptions.

268 The Board is hereby directed and empowered to adopt and promulgate a Uniform Statewide  
269 Building Code. Such building code shall supersede the building codes and regulations of the counties,  
270 municipalities and other political subdivisions and state agencies.

271 However, such Code shall not supersede the regulations of other state agencies which require and  
272 govern the functional design and operation of building related activities not covered by the Uniform  
273 Statewide Building Code including but not limited to (i) public water supply systems, (ii) waste water  
274 treatment and disposal systems, and (iii) solid waste facilities. Nor shall state agencies be prevented  
275 from requiring, pursuant to other state law, that buildings and equipment be maintained in accordance  
276 with provisions of the Uniform Statewide Building Code.

277 Such Code also shall supersede the provisions of local ordinances applicable to ~~single~~  
278 *single-family* residential construction that (a) regulate dwelling foundations or crawl spaces, (b)  
279 require the use of specific building materials or finishes in construction, or (c) require minimum  
280 surface area or numbers of windows; however, such Code shall not supersede proffered conditions  
281 accepted as a part of a rezoning application, conditions imposed upon the grant of special exceptions,  
282 special or conditional use permits or variances, *conditions imposed upon a clustering of single-family*  
283 *homes and preservation of open space development through standards, conditions, and criteria*  
284 *established by a locality pursuant to subdivision 8 of § 15.2-2242 or subdivision A 12 of § 15.2-2286,*  
285 or land use requirements in airport or highway overlay districts, or historic districts created pursuant  
286 to § 15.2-2306, or local flood plain regulations adopted as a condition of participation in the National  
287 Flood Insurance Program.

288 **2. That the provisions of this act shall not affect any final site plan or subdivision plat approved**  
289 **pursuant to existing law by a locality prior to the adoption by that locality of provisions enacted**  
290 **pursuant to subdivision A 12 of § 15.2-2286 of this act but not later than July 1, 2004.**