

Transfer of Special Exceptions

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Virginia Code § 15.2-2286(A)(3)

- A zoning ordinance may include reasonable regulations and provisions relating to 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.



Virginia Code § 15.2-2280

- Any locality may regulate, restrict, permit, prohibit, and determine the use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses.



Virginia Code § 15.2-2284

- Zoning ordinances and districts shall be drawn and applied with reasonable consideration for the existing use and character of the property.



Regulating the Property

- The Virginia Code contemplates zoning as regulating property and giving rights to use property in specified ways.
- Zoning does not give personal rights to particular property owners.



Virginia Code § 15.2-2307

- A landowner's right shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner is the beneficiary of a significant affirmative governmental act which includes the granting of a special exception.



Cole v. City Council (1978)

- The Virginia Supreme Court held it is fundamental that “zoning regulates the use of the property.”



Yokley's Zoning Law and Practice

- Volume 1, Section 2-2, pp. 2-8:
- “Zoning is concerned with the use of specific existing buildings and lot, not primarily with their ownership. The use of property, the height of buildings, and the density of population, not the ownership or title of the property involved, are at issue in zoning cases.”



Dillon Rule

- A local governing body may take action in connection with zoning matters only if it has been expressly granted the power or if the power can be implied necessarily from powers expressly granted.
- Any doubt as to the exercise of the authority must be resolved against the locality.



No Authority to Prohibit Transfer of

Special Exceptions

- There is no authority in the Virginia Code for localities to base land use decisions on who owns the property.
- The governing body can't limit a special exception to a particular owner.



Board of Zoning Appeals can Limit the Duration of Special Exceptions

- Virginia Code § 15.2-2309(6) states Board of Zoning Appeals may impose conditions on a special exception which include limiting the duration of the permit.
- Some localities believe the Board of Zoning Appeals has authority to limit a special exception to a particular owner.



General Assembly has Considered

the Issue

- In 1999, Henrico County attempted to add language to Virginia Code 15.2-2286(A)(3) to limit the duration of special exceptions which could allow the locality to limit the special exception to a particular owner.
- The bill failed because of opposition from property rights groups.



Language in Current Special

Exceptions

- “This Special Exception is granted for an Animal Boarding Place as an accessory use to Mark and Terri Perkinson on Tax Map 140(oA)00-059-A. It is not transferable and it does not run with the land.”
- Such condition was approved by Board of Supervisors on October 22, 2019.



Remedy for Current Special

Exceptions

- When there is a request for a special exception to be transferred to a new property owner/user, the transfer request should be placed on the regular Board of Supervisor's agenda without the need for public hearings at the Planning Commission and Board of Supervisors.
- The Board of Supervisors should remove the condition that states "it is not transferable and it does not run with the land."

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Remedy for Future Special

Exceptions

- For special exceptions that have not been approved by the Board of Supervisors, the Board should not add a condition to the special exception that states “it is not transferable and it does not run with the land.”