

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219
(804) 786-2259

Granted Appeal Summary

Case

DAVID BERRY, ET AL. V. BOARD OF SUPERVISORS OF FAIRFAX COUNTY
(Record Number 211143)

From

The Circuit Court of Fairfax County; D.A. Oblon, Judge.

Counsel

Craig J. Blakeley (Alliance Law Group LLC) for appellant.

Elizabeth D. Teare, T. David Stoner, Cynthia A. Bailey, and Laura S. Gori (Office of the County Attorney) for appellee.

Assignments of Error

1. The Circuit Court erred in ruling that Plaintiffs' request for a declaratory ruling that the Fairfax County Board of Supervisors ("Board") lacked the authority to adopt a new zoning ordinance ("Z-Mod") in an electronic meeting during the pandemic was moot because the rights had already matured.
2. The Circuit Court erred in ruling that Plaintiffs' request for a declaratory ruling was a premature/parallel appeal under § 15.2-2285 (F) Va. Code.
3. The Circuit Court erred in ruling that the Board had the legal authority to replace the existing zoning ordinance with an entirely new ordinance known as " Z-Mod " by adopting the new zoning ordinance during the pandemic in an electronic meeting, without an in-person quorum or members of the public able to attend, in violation of the open meeting requirements of the Virginia Freedom of Information Act ("VFOIA"), because:
 - (a) The Circuit Court ignored the applicable language in Section 15.2-1413 Va. Code and the Budget Bill amendment, neither of which granted such authority to the Board. Instead, the Circuit Court erroneously relied on a finding that zoning is an essential function of local government, which is not the standard set forth in the applicable legislation passed by the General Assembly.

- (b) The Circuit Court failed to take into account the General Assembly's 2021 amendment to VFOIA Section 2.2-3708.(2)(A)(3), which was enacted after the Board had unlawfully met and adopted ZMod in March of 2021, and its relevance to the interpretation of Section 15.2-1413 Va. Code and the Budget Bill amendment that were applicable at the time the Board adopted Z-Mod.
- (c) The Circuit Court erred in deferring to the judgment of the Board as to its authority to adopt Z-Mod by electronic means, rather than exercising the Court's independent judgment concerning the authority granted by the applicable legislation enacted by the General Assembly, as required by the Dillon Rule.