NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
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February 13, 2018

LETTER OPINION

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Re: *Board of Supervisors of Fairfax County, Virginia, et al. v. Board of Zoning Appeals of Fairfax County, Virginia, et al.*
Case No. *CL-2017-15190*

Dear Counsel:

This cause comprehends the question whether the Board of Supervisors and the Zoning Administrator of Fairfax County ("Plaintiffs") have standing to challenge the procedure used for decision-making by the Board of Zoning Appeals of Fairfax County

("BZA"), by means of a declaratory judgment action ancillary to the administrative appellate process of a merits decision. For the reasons as more fully stated herein, this Court holds alleged procedural transgressions in the decision-making process of the BZA may be challenged by declaratory judgment action by any aggrieved party as a justiciable claim when they underlie, but are not identical to, the merits decision separately appealed, for each adjudicative process addresses distinct claims for relief not directly overlapping in the resulting judgment thereof. Consequently, the BZA's Plea in Bar and Demurrer are denied.

BACKGROUND

The Board of Supervisors of Fairfax County ("Board") and the Zoning Administrator Fairfax County ("Zoning Administrator") brought this suit seeking a declaratory judgment overturning a decision the Board of Zoning Appeals of Fairfax County made on September 27, 2017, in favor of the landowners, Mr. Waters and Ms. Vasquez. Plaintiffs contend the BZA's initial determination from June 28, 2017, was never appealed and the BZA invalidly reheard and reconsidered the initial application. Plaintiffs challenge the BZA's authority to rehear and reconsider applications, which the BZA alleges to be permitted by Article VIII of its bylaws.

The BZA heard the landowners' application on June 28, 2017, and upheld the Zoning Administrator's determination that the landowners need obtain a special permit to construct a ropes course on their property. On July 6, 2017, the landowners submitted supplemental materials to the BZA and requested a rehearing via email. The rehearing request was submitted beyond the seven-day rehearing request deadline allotted by the bylaws. On July 10, 2017, the landowners requested the Clerk to the BZA

distribute their rehearing request to the BZA members. On July 12, 2017, the BZA granted the landowners' application for rehearing and the matter was reheard on September 27, 2017. After the rehearing, the BZA ruled in favor of the landowners. Plaintiffs filed suit in this Court based on the September 27 decision and simultaneously appealed the decision. The appealed case is pending consideration of a motion for stay dependent on whether the action in the instant case is allowed to proceed.

The BZA argues the County Plaintiffs have no standing to challenge the validity of the BZA's bylaws and the actions the BZA took pursuant to its bylaws. This is because of the contention that the rules of procedure confer no substantive rights for participants in proceedings before the body. (Def.'s Mot. 5) (Citing 59 Am. Jur. 2d *Parliamentary Law*, section 4 (1987)). The BZA cited *County of Prince William v. Rau*, to support its position. 239 Va. 616 (1990) (holding failure to conform to parliamentary usage will not invalidate the measure when the required number of members have agreed to the measure).

The BZA further asserts Virginia Code Section 15.2-2314 provides the sole remedy for the Board's grievance with the BZA's decision. The unavailability of another form of relief under the statute, it avers, does not allow Plaintiffs to seek relief by way of another cause of action. Furthermore, the BZA argues its determination on July 12, 2017, to grant a rehearing was a final decision according to Section 19-211 of the Fairfax County Zoning Ordinance. The Plaintiffs failed to appeal this final decision within thirty days. Therefore, the BZA maintains the Plaintiffs are barred from challenging its authority to rehear the initial application.

The Plaintiffs question whether the BZA had the power to hold three hearings. The BZA, they contend, has the power to make procedural rules, but such rules must be consistent with local ordinances and the general laws of the Commonwealth. The Board also asserts the Code does not allow the BZA to hold a public hearing to consider whether to grant a request for a rehearing without providing notice to the parties, as prescribed by Virginia Code Section 15.2-2204. The Plaintiffs emphasize the BZA does not have the power to hold multiple hearings on a single application, and therefore, may not grant itself such authority through its bylaws. Plaintiffs further aver parties, including the Zoning Administrator, which appear before the BZA, have an inherent interest to understand their rights before the BZA, both procedural and substantive.

The BZA also argues the County Plaintiffs failed to state a claim cognizable under Virginia Code Section 8.01-184. Further the BZA maintains, all of the matters are final as to the appealed application, no additional action is needed, and there is no need for any further BZA hearings. The BZA contends Plaintiffs' belief that the BZA should have reached a different conclusion is not enough to create an actionable assertion of rights.

The Plaintiffs argue in turn, that they have a justiciable interest, and that they pled an actual controversy in their Complaint. Plaintiffs are seeking guidance on the impact a motion for reconsideration has on the 30-day appellate clock. This determination is important for this case because the parties disagree as to which of the three hearing dates constitute a final decision. Further, the Board avers this determination is important to help guide the parties' future conduct and appellate rights.

The Board further maintains this suit is proper because all parties involved need guidance from the Court. If the suit is not allowed to proceed, the Plaintiffs contend they

will be "left in the bizarre position of telling the Court it did not have active jurisdiction over the appeal that the County Plaintiffs filed." (Pl.'s Mot. 6). In addition, Mr. Waters and Ms. Vasquez will be left without a definite determination of the date the BZA decision became final. The Plaintiffs further argue the BZA is a not a party to the appeal, and therefore, Mr. Waters and Ms. Vasquez would have to defend the BZA's actions without knowing why the BZA acted as it did. In the instant case, however, Plaintiffs point out the BZA is a party and can offer a defense.

ANALYSIS

I. Whether the Court should sustain Defendant's Plea in Bar based on standing

In Virginia, a Plea in Bar is a defensive tool which shortens litigation by reducing it to a distinct issue of fact which, if proven, results in a bar to the plaintiff's recovery. *Tomlin v. McKenzie*, 251 Va. 478, 480 (1996). A plea in bar does not address the merits of the issues raised by the bill of complaint or the motion for judgment. Rather, it is used "to present a single issue [such as statute of limitations, res judicata, collateral estoppel, accord and satisfaction, or statute of frauds] which may result in ending the proceedings." Leigh B. Middleditch, Jr. & Kent Sinclair, Virginia Civil Procedure § 9.8 (2d ed., Michie 1992). The burden of proof rests on the moving party. *Tomlin,* 251 Va. at 480.

The issue the Court must determine in this cause is whether the Board of Supervisors of Fairfax County has standing to bring this declaratory judgment action against the Board of Zoning Appeals of Fairfax County. The Board of Supervisors is the governing body of the County of Fairfax, and it is empowered to make all of the legislative decisions pertaining to land use. Va. Code Ann. § 15.2-1400. The Zoning

Administrator is an officer appointed by the Board, who administers and enforces the zoning ordinance on behalf of the governing body of the County of Fairfax, i.e., the Board. Va. Code Ann. § 15.2-2286(A)(4). The BZA is a public body established pursuant to Virginia Code Section 15.2-2308. Therefore, the BZA is a creature of statute and it only possesses the powers expressly conferred by statute. *Board of Zoning Appeals of Fairfax County v. Board of Supervisors of Fairfax County*, 276 Va. 550, 552 (1993). The BZA may reverse or affirm, wholly or partly, or may modify, the decision of the Zoning Administrator. Va. Code Ann. § 15.2-2312. The BZA, however, is limited to deciding whether the Zoning Administrator's decision was correct. Va. Code Ann. § 15.2-2309(1).

According to Virginia Code Section 15.2-2314, a person aggrieved by a BZA decision may appeal the decision to the Circuit Court by filing a petition for writ of certiorari. The writ of certiorari must be filed within 30 days after the final decision of the BZA. A "final decision" is "the decision that resolves the merits of the action pending before that body or effects a dismissal of the case with prejudice." *W. Lewinsville Heights Citizens Ass'n v. Bd. of Supervisors*, 270 Va. 259, 267-268 (2005) (holding that Zoning Ordinance § 19-211 and Va. Code Ann. § 15.2-2314 may be harmonized and construed together). The BZA is not a party to the appellate proceeding and the Circuit Court's review is limited to the scope of the BZA proceeding. *Foster v. Geller*, 248 Va. 563, 567 (1994). Therefore, the Court is limited in appellate cases merely to deciding whether the decision appealed is correct. The Court may reverse or affirm, wholly or partly, or modify, the BZA's decision. Va. Code Ann. § 15.2-2314.

Virginia Code Section 15.2-2314 states in part:

> Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer,

> department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Va. Code Ann. § 15.2-2314. The Supreme Court of Virginia has determined this Code section to be the applicable statute when determining whether the Board has standing to appeal a BZA decision to the Circuit Court. In *Board of Supervisors v. Board of Zoning Appeals*, the Court determined:

> Pursuant to Code § 15.2-2314, *any person* who is *aggrieved* by any decision of a BZA may file a petition with a circuit court challenging that BZA decision. The word "person" includes legal entities and, therefore, a local governing body qualifies as a "person" with authority to petition the circuit court to challenge a BZA decision. Code § 1-13.19.

Bd. of Supervisors v. Bd. of Zoning Appeals, 268 Va. 441, 445 (2004) (emphasis in original). The Court further reasoned,

> a board of supervisors has a strong interest in the proper and uniform application of its zoning ordinances. The United States Supreme Court has observed, and we agree, that a local government's exercise of its zoning authority is "one of the most essential powers of government, one that is the least limitable." *Hadacheck v. Sebastian*, 239 U.S. 394, 410, 60 L. Ed. 348, 36 S. Ct. 143 (1915). Without question, improper decisions of a board of zoning appeals can impede the uniform and proper application of zoning ordinances and the grant of improper variances can undermine and even destroy the very goals that the zoning classifications were enacted to achieve.
>
> Code § 15.2-1404 grants a local governing board the broad power to institute actions in its own name with regard to "all matters connected with its duties." One legislative purpose manifested in this statutory grant is to enable the local governing body to ensure compliance with its legislative enactments, including its zoning ordinance. If the local governing body does not have such authority, that body's legislative acts could be effectively nullified by a BZA, and the governing body would be powerless to take action to require compliance with its own ordinances. Moreover, a holding that would preclude a board of supervisors from seeking judicial review of a decision of a board of zoning appeals would enable a board of zoning appeals to exercise power arbitrarily. Certainly, the General Assembly did not contemplate such an untenable result.

Id. at 446.

In this case, the BZA correctly argues that Section 15.2-2314 provides the exclusive remedy for appealing BZA final decisions. However, the BZA also argues "section 15.2-2314 supplies the sole remedy for persons aggrieved by any decision of a board of zoning appeals. Unavailability of relief under section 15.2-2314 does not trigger the availability of relief by way of any other cause of action, including declaratory judgment pursuant to Va. Code section 8.01-184." (Def. Mot. 6). To the contrary, the Board avers the "County Plaintiffs' inherent interests gives them standing to bring this suit." (Pl.'s Mot. 4). Neither party, however, is correct. The question is not whether the Board has standing to file suit against the BZA challenging a decision outside of the Section 15.2-2314 appeal process. Instead, the question is much narrower: Does the Board have standing to file an action for declaratory judgment which supplements, rather than duplicates, the Circuit Court appeal?

Plaintiffs may appeal the BZA decision and simultaneously file an action for declaratory judgment, but standing does not automatically arise because of their "inherent interests." In *Lievan v. County of Fairfax Board of Zoning Appeals*, the Zoning Administrator filed a complaint for declaratory judgment and filed a writ of certiorari challenging the BZA's determination that overruled the Zoning Administrator's interpretation of Fairfax County Zoning Ordinance, Section 4-505(4). *Lievan v. County of Fairfax Bd. of Zoning Appeals*, No. 180317, 2000 Va. Cir. Ct. LEXIS 395 at *1 (Va. Cir. Ct. April 24, 2000). The cases were consolidated for purposes of trial, and the Court found in favor of the Zoning Administrator for declaratory judgment and injunctive relief. Similarly, in *Gwinn v. Herring*, the Zoning Administrator filed an action for declaratory judgment and the landowners simultaneously appealed the BZA determination. *Gwinn v.*

Herring, No. 181077, 2000 Va. Cir. Ct. LEXIS 392 at *1 (Va. Cir. Ct. August 16, 2000). The Court analyzed both cases together, ruled in favor of the Zoning Administrator for the declaratory judgment action, and granted in part the landowners' writ of certiorari.

Land use cases differ from other civil cases because of the unique review system in place which processes such cases outside the court system. If a case does make its way to the Circuit Court, the Court does not review the BZA decision *de novo.* "The BZA's decision is presumed to be correct and can be reversed or modified only if the trial court determines that the BZA applied erroneous principles of law or was plainly wrong and in violation of the purposes and intent of the zoning ordinance." *Foster v. Geller*, 248 Va. 563, 566 (1994). The Supreme Court of Virginia has found, however, that there are some instances in which the land use review system is not the appropriate forum. *Town of Jonesville v. Powell Valley Vill. Ltd. P'ship*, 254 Va. 70, 74 (1997).

The Supreme Court has consistently held in declaratory judgment actions in connection with land use cases the analysis to determine standing is the same as in any other civil case. In *Charlottesville Area Fitness Club v. Albemarle County Board of Supervisors*, the Court stated:

> To institute a declaratory judgment proceeding, a plaintiff must have standing, i.e., "a 'justiciable interest' in the subject matter of the proceeding, either in its own right or in a representative capacity." *W.S. Carnes, Inc. v. Board of Supervisors*, 252 Va. 377, 383, 478 S.E.2d 295, 299 (1996); *accord Deerfield v. City of Hampton*, 283 Va. 759, 764, 724 S.E.2d 724, 726 (2012). "The point of standing is to ensure that the person who asserts a position has a *substantial legal right to do so* and that [the person's] rights will be affected by the disposition of the case." *Westlake Props., Inc. v. Westlake Pointe Prop. Owners Ass'n, Inc.*, 273 Va. 107, 120, 639 S.E.2d 257, 265 (2007) (emphasis added); *accord Livingston v. Virginia Dep't of Transp.*, 284 Va. 140, 154, 726 S.E.2d 264, 272 (2012); *see also* Black's Law Dictionary 1536 (9th ed. 2009) (defining the term

> "standing" as "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right"). To have the requisite "justiciable interest," a plaintiff "must demonstrate an actual controversy between the plaintiff and the defendant, such that [the plaintiff's] rights will be affected by the outcome of the case." *W.S. Carnes*, 252 Va. at 383, 478 S.E.2d at 299; *accord Deerfield*, 283 Va. at 764, 724 S.E.2d at 726; *Cupp v. Board of Supervisors*, 227 Va. 580, 591, 318 S.E.2d 407, 412 (1984). Pursuant to Code § 8.01-184, the declaratory judgment statute, there must be "an 'actual controversy' existing between the parties, based upon an, 'actual antagonistic assertion and denial of right,' before the [declaratory judgment petition] can be entertained and an adjudication made." *City of Fairfax v. Shanklin*, 205 Va. 227, 229, 135 S.E.2d 773, 775 (1964) (quoting Code § 8.01-184).

Charlottesville Area Fitness Club Operators Ass'n v. Albemarle County Bd. of Supervisors, 285 Va. 87, 107 (2013).

Likewise, in *Board of Supervisors v. Town of Purcellville*, the Court reasoned:

> "The intent of the [Declaratory Judgment Act] is to have courts render declaratory judgments which may guide parties in their future conduct in relation to each other, thereby relieving them from the risk of taking undirected action incident to their rights, which action, without direction, would jeopardize their interests." *Liberty Mut. Ins. Co. v. Bishop*, 211 Va. 414, 421, 177 S.E.2d 519, 524 (1970). The Act "is to be liberally interpreted and administered with a view to making the courts more serviceable to the people," Code § 8.01-191, but courts may only issue declaratory judgments "in cases of actual controversy when there is antagonistic assertion and denial of right." *Treacy v. Smithfield Foods, Inc.*, 256 Va. 97, 103, 50 S.E.2d 503, 506 (1998) (quotation marks and citations omitted). "Thus, the Declaratory Judgment Act does not give trial courts the authority to render advisory opinions, decide moot questions, or answer inquiries that are merely speculative." Id. at 104, 506 (citations omitted).

Bd. of Supervisors v. Town of Purcellville, 276 Va. 419, 434 (2008); *see also Deefield v. City of Hampton*, 283 Va. 759, 764 (2012) ("Under well-settled principles, '[a] plaintiff has standing to institute a declaratory judgment proceeding if it has a 'justiciable interest' in the subject matter of the proceeding, either in its own right or in a representative capacity.'").

Most prominently, in *Friends of the Rappahannock v. Caroline County Board of Supervisors*, the Supreme Court of Virginia reconciled the perceived difference between the "aggrieved person" standing standard used in Virginia Code Section 15.2-2314 and the "justiciable interest" standard used for declaratory judgments. The Court held:

> We affirmed in a recent case that the "aggrieved person" standard is appropriate in the context of a challenge to a land use decision by means of a declaratory judgment action. *See Deerfield*, 283 Va. at 762, 767, 724 S.E.2d at 725, 728. In *Deerfield*, appellants, members of the Committee of Petitioners of the Buckroe Beach Bayfront Park Petition, initiated a declaratory judgment action challenging the City's decision to allow the development of a residential subdivision on a portion of Buckroe Beach. *Id.* at 761-62, 724 S.E.2d at 725. In reaching our conclusion, we employed *both* the declaratory judgment "justiciable interest" language and the "aggrieved person" standard. We held that the Committee lacked standing because it did not maintain an "ongoing *justiciable right* or *interest that could be aggrieved* by the development of the Buckroe Beach Property such as would give rise to legal standing by the Committee to challenge the development in a declaratory judgment action." *Id.* at 767, 724 S.E.2d at 728 (emphasis added.)
>
> As evidenced by our analysis herein, any distinction between an "aggrieved party" and "justiciable interest" is a distinction without a difference in declaratory judgment actions challenging land use decisions. Accordingly, the circuit court did not err in applying the "aggrieved person" standard to determine standing in Friends and the individual complainants' declaratory judgment action challenging the Board's land use decision.

F*riends of the Rappahannock v. Caroline County Bd. of Supervisors*, 286 Va. 38, 47-48 (2013). As such, the Supreme Court made it clear neither standard is broader nor narrower than the other. Thus the Board can qualify as an "aggrieved person," and therefore, may have standing in a declaratory judgment action. However, it is important to note that although the Board *may* have standing, it does not *automatically* have standing.

The test to be applied to whether the Board of Supervisors has standing to pray for declaratory relief against the BZA is fact-dependent. First, there must be an actual

controversy to which the Board is a party. This Court is not empowered, as already noted, to render merely advisory opinions. Here, the Board has "aggrieved party" status by virtue of the action decided against it by the BZA.

Second, declaratory relief in this case, can only be exercised if it will relieve the Board "from the risk of [the BZA] taking undirected action" which "would jeopardize" the lawful and legitimate interests of the Board. *Liberty Mut. Ins. Co. v. Bishop,* 211 Va. at 421. But even in such case, the Court must still determine whether declaratory relief, being a matter of discretionary grant, is appropriate under the circumstances prevalent in this cause.

The Supreme Court of Virginia has guided when such exercise of discretion might be appropriate. Initially, this Court must determine whether under the facts pled "the various claims and rights asserted had all accrued and matured, and [whether] the wrongs had been suffered, when [Plaintiffs'] petition for a declaratory judgment was filed." *Id.,* at 421. Then this Court must restrict the application of discretion to effect the intent of the statutory right to declaratory relief:

> The intent of the declaratory judgment statutes is not to give parties greater rights than those which they previously possessed, but to permit the declaration of those rights before they mature. In other words, *the intent of the act is to have courts render declaratory judgments which may guide parties in their future conduct in relation to each other, thereby relieving them from the risk of taking undirected action incident to their rights, which action, without direction, would jeopardize their interests.* This is with a view rather to avoid litigation than in aid of it.

Liberty Mut. Ins. Co. v. Bishop, 211 Va. at 421 (emphasis added).

Applying such standards, it is clear declaratory relief will determine the lawfulness of the process used by the BZA. Such relief does not directly address the

merits of the decision of the BZA rendered in favor of the landowners. In this declaratory judgment action the Board is questioning the BZA's authority to adopt bylaws that permit requests for reconsideration. (Compl. ¶19(C)). The Board's chief concern is that the "BZA acted *ultra vires* in adopting By-Laws permitting requests for rehearing and reconsideration[.]" The Board addressed such concern in detail:

> As a result of the BZA's illegal action on September 27, the Zoning Administrator is left without an appellate remedy: the deadline for filing an appeal of the June 28 decision expired 30 days after that decision. The Zoning Administrator had no cause to appeal a decision in her favor when that clock expired. Though she has, in an abundance of caution, filed an appeal of the September 27 decision, she maintains that this Court does not have jurisdiction to hear the appeal of a BZA action that was void *ab initio*.

(Compl. ¶17). The Board identifies the actual controversy between the parties being "whether the BZA acted within the scope of its authority in deciding to rehear and reconsider the Appeal, and in adopting its By-Laws permitting rehearing and reconsideration." (Compl. ¶18).

While the wrongs of which the Board complains have accrued, they have not yet matured in the sense that the merits decision affecting the landowners is under challenge and on appeal before this Court. Such appeal is the object of a request for a stay pending adjudication of the declaratory relief sought in this case. The Board is challenging the merits decision by administrative appeal, but under the applicable deferential standard for court review of administrative actions. The Board may not in such process reach directly the circumscription of the BZA's procedural authority going forward, as it can under the appropriate standard available in declaratory judgment actions. The alleged use of an unlawful process might be asserted as a means of defeating the resulting merits ruling on appeal, but it does not directly restrain the use of

such process in the future. It could further be envisioned that the Circuit Court sitting on appeal, absent the grant of a stay, might quibble with the process used but never reach its legality, instead finding the ultimate decision on the merits otherwise justified.

Declaratory relief in this cause is available as it is entirely within the purpose envisioned and authorized by the Declaratory Judgment Act. This is not to say that if the Board were challenging only the merits decision rendered by the BZA, rather than the underlying process which led to the decisional phase, that in such case, it could retroactively do an end run around the appellate process by, in essence though not in form, seeking a less deferential ancillary second bite at the appellate apple. The right to assert declaratory relief is restrained by the requirement that the grievance be more than a mere loss on the merits in an administrative proceeding, not implicating a determination of the current *and future* rights of the parties.

> While [the Supreme Court of Virginia] and lower courts have . . . given a liberal interpretation to the Declaratory Judgment Act, they have nevertheless recognized that the power to make a declaratory judgment is a discretionary one and must be exercised with care and caution. It will not as a rule be exercised where some other mode of proceeding is provided.

Liberty Mut. Ins. Co. v. Bishop, 211 Va. at 421. In the instant case, no other mode of procedure is available to the Board to challenge *directly* and reach the course of the BZA procedure employed and the question of its claimed authority to reconsider its decisions, including those resulting from motions filed late under its own bylaws. Thus, the Court having found the Board has standing to challenge the actions of the BZA via declaratory relief, also finds this is a cause where the exercise of the Court's discretion to consider such remedy is appropriate.

II. Whether the Court should sustain Defendant's demurrer based on standing

A demurrer admits the truth of the facts contained in the pleading to which it is addressed, as well as any facts that may be reasonably and fairly implied and inferred from those allegations. See *McDermott v. Reynolds*, 260 Va. 98, 100 (2000). A demurrer does not, however, admit the correctness of the pleader's conclusions of law. *Yuzefovsky v. St. John's Wood Apts.*, 261 Va. 97, 102 (2001). To survive a challenge by demurrer, a pleading must be made with sufficient specificity to enable the Court to find the existence of a legal basis for its judgment. While it is "unnecessary for the pleader to descend into statements giving details of proof in order to withstand demurrer," the Complaint must state a cause of action. *CaterCorp, Inc. v. Catering Concepts, Inc.*, 246 Va. 22 (1993) (citing *Hunger v. Burroughs*, 123 Va. 113 (1918)).

In this case, Plaintiffs have stated a claim under Virginia Code Section 8.01-184. Plaintiffs have pled an actual controversy sufficient enough to survive demurrer. As discussed herein-above, the Court is persuaded that Plaintiffs have standing and have adequately identified a "justiciable interest." As such, the BZA's Demurrer is overruled without the Court implying thereby the ultimate resolution of this cause, for this Court has before it only the question of the Board's right to be heard, not whether it will prevail in the exercise thereof.

CONCLUSION

The Court has considered the question whether the Board of Supervisors and the Zoning Administrator of Fairfax County have standing to challenge the procedure used for decision-making by the Board of Zoning Appeals of Fairfax County, by means of a declaratory judgment action ancillary to the administrative appellate process of a merits

decision. For the reasons as more fully stated herein, this Court holds an alleged procedural transgression in the decision-making process of the BZA may be challenged by declaratory judgment action by any aggrieved party as a justiciable claim when it underlies but is not identical to the merits decision separately appealed, for each adjudicative process addresses distinct claims for relief not directly overlapping in the resulting judgment thereof. The Court further finds the Plaintiffs are properly named aggrieved parties to bring such claim. Consequently, the BZA's Plea in Bar and Demurrer are denied.

Counsel for the Plaintiffs is directed to prepare, circulate and file with the Court an order incorporating the ruling in this Letter Opinion.

AND THIS CAUSE CONTINUES.

Sincerely,

[redacted]

David Bernhard
Judge, Fairfax Circuit Court

OPINION LETTER