

SUPREME COURT OF VIRGINIA

Board of Supervisors of Fairfax County v. Robertson, 266 Va. 525

587 S.E.2d 570 (2003) · No. Record No. 030039 · Decided October 31, 2003

SUMMARY

The Supreme Court of Virginia reviewed the Fairfax County Board of Supervisors' denial of a landowner's application for a deviation from a 200-foot setback requirement near the Dulles Airport Access Road. The Court held that evidence concerning projected future noise levels made the denial fairly debatable and therefore not arbitrary, capricious, or unreasonable. It reversed the circuit court's judgment and entered final judgment for the defendants, also holding that the circuit court improperly decided issues not pleaded or claimed.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Cynthia D. Kinser; All the Justices
JURISDICTION	Virginia
DECIDED	October 31, 2003
DOCKET	Record No. 030039
DISPOSITION	reversed
PROCEDURAL POSTURE	The Board and Fairfax County appealed from a final decree of the circuit court holding that the Board's denial of Robertson's application for a deviation from a 200-foot setback requirement was arbitrary, capricious, and unreasonable, and remanding the application for further action.
STANDARD OF REVIEW	The Supreme Court reviewed the circuit court's judgment while giving the circuit court's finding the usual presumption of correctness and retaining the presumption of validity and reasonableness attached to the Board's legislative action. The denial had to be sustained if the evidence of reasonableness made the issue fairly debatable.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Virginia
PARTIES	Board of Supervisors of Fairfax County, Fairfax County v. Richard M. Robertson

TOPICS

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QUESTIONS PRESENTED

1. Whether the Board's denial of Robertson's application for a deviation from the 200-foot setback requirement was arbitrary, capricious, and unreasonable.
2. Whether the evidence of future noise levels and related traffic projections was sufficient to make the reasonableness of the Board's denial fairly debatable.
3. Whether the circuit court erred by deciding that the ordinance's lot exception did not apply to Robertson's property when that issue had not been pleaded or claimed.
4. Whether the circuit court erred by determining that the Board's application of the ordinance constituted impermissible piecemeal downzoning when Robertson had not asserted that claim.

HOLDINGS

1. The Board's denial was not arbitrary, capricious, or unreasonable because evidence supporting the denial made the issue of reasonableness fairly debatable.
2. The circuit court erred by deciding that the ordinance's lot exception did not apply to Robertson's property because Robertson had not pleaded or claimed that issue and had stipulated that he could build one single-family home by right.
3. The circuit court erred to the extent it decided that the Board's application of the ordinance constituted impermissible piecemeal downzoning because Robertson had not pleaded or claimed that theory.

KEY QUOTATIONS

"The relevant inquiry is 'whether there [was] any evidence in the record sufficiently probative to make a fairly debatable issue of the . . . decision to deny' Robertson's application for a deviation from the setback requirement." (266 Va. at 578)

"For these reasons, we conclude that the Board's denial of Robertson's proffered condition amendment application seeking a deviation from the 200-foot setback requirement was not arbitrary, capricious, and unreasonable." (266 Va. at 579)

FACTUAL BACKGROUND

Richard M. Robertson owned approximately 2.78 acres in Fairfax County zoned R-3. Because nearly all of the property lay within 200 feet of the Dulles Airport Access Road, a county ordinance restricted residential construction, although the parties stipulated that Robertson could build one single-family dwelling under an exception for certain recorded lots. Robertson sought a deviation to build four dwellings, offering conditions involving building materials and techniques to reduce interior noise. The Planning Commission and Board

denied the application based principally on concerns about traffic and future exterior noise levels, and the circuit court later found the denial unreasonable.

PROCEDURAL HISTORY

Robertson applied for a deviation from Fairfax County's 200-foot setback requirement so he could construct four single-family residences. The Planning Commission and Board denied the application. Robertson sought declaratory and injunctive relief in circuit court; after pleadings rulings, the court held that the setback exception did not apply and that the Board's denial was arbitrary, capricious, and unreasonable. The circuit court remanded the application, and the Supreme Court of Virginia reversed and entered final judgment for the defendants.

DISPOSITION

reversed

CASES CITED

- Board of Supervisors v. McDonald's Corp., 261 Va. 583, 589-90, 544 S.E.2d 334, 338-39 (2001)
- Cole v. City Council of Waynesboro, 218 Va. 827, 837, 241 S.E.2d 765, 771 (1978)
- County of Lancaster v. Cowardin, 239 Va. 522, 525-26, 391 S.E.2d 267, 269 (1990)
- City of Richmond v. Randall, 215 Va. 506, 511, 211 S.E.2d 56, 60 (1975)
- Board of Supervisors v. Lerner, 221 Va. 30, 34-35, 267 S.E.2d 100, 102-03 (1980)
- Board of Supervisors v. Snell Construction Corp., 214 Va. 655, 659, 202 S.E.2d 889, 893 (1974)
- Board of Supervisors v. Williams, 216 Va. 49, 58-59, 216 S.E.2d 33, 40 (1975)
- Board of Supervisors v. Stickley, 263 Va. 1, 6-11, 556 S.E.2d 748, 751-54 (2002)
- Ted Lansing Supply Co. v. Royal Aluminum & Construction Corp., 221 Va. 1139, 1141, 277 S.E.2d 228, 229 (1981)
- Potts v. Mathieson Alkali Works, 165 Va. 196, 207, 181 S.E. 521, 525 (1935)
- Jenkins v. Bay House Associates, 266 Va. 39, 43, 581 S.E.2d 510, 512 (2003)
- Masterson v. Board of Zoning Appeals, 233 Va. 37, 44, 353 S.E.2d 727, 733 (1987)
- Rountree Corp. v. City of Richmond, 188 Va. 701, 712, 51 S.E.2d 256, 261 (1949)
- City Council of Virginia Beach v. Harrell, 236 Va. 99, 102, 372 S.E.2d 139, 141 (1988)
- Board of Supervisors v. International Funeral Service, Inc., 221 Va. 840, 843, 275 S.E.2d 586, 588 (1981)
- Vienna Council v. Kohler, 218 Va. 966, 976, 244 S.E.2d 542, 548 (1978)