

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
100 NORTH NINTH STREET
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Granted Appeal Summary

Case

MELINDA NORTON, ET AL. v. BOARD OF SUPERVISORS OF FAIRFAX COUNTY
(Record Number 201028)

From

The Circuit Court of Fairfax County; M. Devine, Judge.

Counsel

Nicholas V. Albu, Brittany M. Davidson, Louise Zwicker, and Alan D. Bart (Reed Smith LLP)
for appellant.

Elizabeth D. Teare, T. David Stoner, and Cherie L. Halyard (Office of the County Attorney) for
appellee.

Assignments of Error

1. The trial court erred in dismissing Count VIII of the Second Amended Complaint because the Airbnb Hosts produced probative evidence that the Board's adoption of the STL Zoning Ordinance was unreasonable, arbitrary and capricious where the Board failed to give reasonable consideration for the existing use of property as required by Virginia Code § 15.2-2284 and where the Board offered no evidence (and there was no evidence) of reasonableness to make the issue fairly debatable.
2. The trial court erred in dismissing Counts IV and V of the Second Amended Complaint because the Board's STL Zoning Ordinance is unconstitutionally vague and violates the Airbnb Hosts' procedural and substantive due process rights under the Due Process Clause of the United States Constitution, as incorporated by the Fourteenth Amendment, by allowing short-term residential occupancy as a by-right use without a permit but also characterizing short-term residential occupancy as an accessory use subject to mandatory permitting requirements.
3. The trial court erred in dismissing Count III of the Second Amended Complaint because the Board's adoption of the Transient Occupancy Tax Amendment violates Dillon's Rule because Virginia Code § 58.1-3819 does not authorize the Board to tax the short-term residential occupancy of a dwelling.