

Bond Case Briefs

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ZONING & LAND USE - VIRGINIA

Board of Supervisors of Fairfax County v. Cohn

Supreme Court of Virginia - December 13, 2018 - S.E.2d - 2018 WL 6566782

Property owners appealed decision of county board of zoning appeals that upheld zoning administrator's decision concluding that property owners violated zoning ordinance because there were three separate dwellings on their residential property, which was in a zoning district that prohibited more than one dwelling unit per lot, and requiring property owners to remedy the zoning violation.

The Circuit Court reversed the board of zoning appeals' decision. County board of supervisors appealed.

The Supreme Court of Virginia held that:

- Property owners' use of garage and garden house as dwellings was not a nonconforming use, and
- Zoning statute prohibiting local governments from declaring an existing building or structure illegal after taxes had been paid for 15 years or more did not protect property owners' use of garage and garden house as dwelling units.

Property owners' use of garage and garden house on their residential property as dwellings, in violation of zoning ordinance that prohibited more than one dwelling unit on a lot in the zoning district, was not a nonconforming use, and thus property owners had no vested right to use the structures as dwellings under statute concerning nonconforming uses, where garage and garden house were built after effective date of zoning restriction, building permits noted that no kitchens or bathrooms were approved for the structures, and kitchens and bathrooms were added to the structures in violation of zoning ordinance.

Zoning statute prohibiting local governments from declaring an existing building or structure illegal after taxes had been paid for 15 years or more did not protect property owners' use of garage and garden house as dwelling units, in violation of zoning restriction requiring only one dwelling unit per lot, and thus did not prevent county from requiring property owners to cease their illegal use of the structures as dwelling units and to remove kitchens and other features that allowed the structures to be used as dwellings, even though property owners had paid taxes on the property for more than 15 years; statute protected the structures themselves from removal, but did not protect the uses of the structures.