

# **Bond Case Briefs**

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## **ZONING & PLANNING - VIRGINIA**

### **Norton v. Board of Supervisors of Fairfax County**

**Supreme Court of Virginia - May 27, 2021 - S.E.2d - 2021 WL 2149384**

Short-term lodging providers brought action against county board challenging amendments to the county zoning ordinance and imposition of transient occupancy tax.

The Fairfax Circuit Court ruled in favor of the board and dismissed. Providers appealed.

The Supreme Court held that:

- County board correctly interpreted the zoning ordinance's original definition of a dwelling as permitting only non-transient residential occupancy;
- County zoning ordinance amendment to definition of dwelling was not internally contradictory; and
- Short-term lodging providers used their properties in the same manner as commercial facilities offering short-term guest rooms.

County board correctly interpreted the zoning ordinance's original definition of a dwelling as permitting only non-transient residential occupancy, and thus short-term lodging providers failed to meet burden of establishing that the board's actions in amending the ordinance to impose requirements on short-term lodging providers were unreasonable, arbitrary, or capricious; even though first sentence of original definition broadly defined a dwelling, the second sentence modified the residential occupancy requirement, such that only non-transient residential occupancy was permitted in a dwelling, and a necessary corollary to modification was that transient residential occupancy was prohibited in a dwelling.

County zoning ordinance amendment to definition of dwelling was not internally contradictory, and thus amendment was not unconstitutionally vague in violation of due process; original definition of a dwelling did not permit by-right short-term lodging, and amendment did not permit anything more than short-term lodging subject to permitting and other restrictions.

Short-term lodging providers used their properties in the same manner as commercial facilities offering short-term guest rooms, and thus distinction between providers' properties and commercial facilities were irrelevant in determining whether county code allowed a locality to levy a transient occupancy tax on those properties, where, while the level of ancillary services provided, such as maid service, food service, and other amenities varied greatly for commercial facilities, they all provided a place for people to stay where they could live and sleep, and providers' residences were likewise offered as an accommodation to people requiring a place to conduct those same activities of daily living.