

Bond Case Briefs

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ZONING & PLANNING - VIRGINIA

Calway v. City of Chesapeake

Court of Appeals of Virginia, Norfolk - November 28, 2023 - S.E.2d - 2023 WL 8192080

In zoning enforcement proceeding, the City of Chesapeake General District Court entered judgment in favor of property owner and dismissed action.

City appealed. The Circuit Court entered judgment in favor of city. Owner appealed.

The Court of Appeals held that:

- As a matter of first impression, notice of zoning violation was insufficient to comply with statutory requirement that such a notice, to be valid, include a statement informing recipient “that the decision shall be final and unappealable if not appealed within 30 days”;
- Failure to comply with statutory notice requirements renders a zoning enforcement action voidable; and
- Defective notice was not rendered harmless by city’s inclusion of a full notice of appeal rights in subsequent determination letter.

Notice of zoning violation sent to property owner arising from unpermitted car port was insufficient to comply with statutory requirement that such a notice, to be valid, include a statement informing recipient “that the decision shall be final and unappealable if not appealed within 30 days,” where notice stated that zoning decision could be appealed to zoning board of appeals within 30 days, that appeal would cost \$175, and that further information could be obtained on city’s website, but notice did not include any explicit language about the finality of a zoning determination if it was not appealed.

City’s defective notice to property owner of alleged zoning violation due to unpermitted car port, which notice failed to contain necessary information about the finality of a zoning determination if it was not appealed, was not rendered harmless by city’s inclusion of a full notice of appeal rights in subsequent determination letter, where determination letter did not include required next steps, such as correcting the violation by a specified date, or the impending risk of enforcement action if the carport was not removed, but rather simply pointed back to original defective notice.