

## Chapter 9

### Interpretation of Statutes and Ordinances

#### 9-1 Introduction

The purpose of this chapter is to provide some general guidance to County officers and employees regarding the interpretation of statutes and ordinances. It is by no means an exhaustive review of the rules of statutory interpretation. It does, however, provide a general framework for interpretation and addresses many misconceptions about this sometime difficult task.

At the staff level, the task of interpreting the Zoning Ordinance is assigned to the Zoning Administrator. *Virginia Code § 15.2-2286; Zoning Ordinance § 31.1.3*. The task of interpreting the Subdivision Ordinance is assigned to the Director of Planning and Community Development. *Virginia Code § 15-2241(9); Albemarle County Code § 14-200(C)*. The County Attorney's Office assists the Zoning Administrator and the Director.

The BZA is authorized to interpret the Zoning Ordinance. *Higgs v. Kirkbride*, 258 Va. 567 (1999). The Board of Supervisors is authorized to interpret the Subdivision Ordinance and the Comprehensive Plan. *Board of Supervisors of Loudoun County v. Lerner*, 221 Va. 30 (1980) (comprehensive plan); *Gasner v. Board of Supervisors of Fairfax County*, 1993 WL 945908 (Va. Cir. Ct. 1993) (comprehensive plan).

The rules of statutory interpretation are the same for statutes and ordinances. The focus of this chapter is on the interpretation of the County's Subdivision and Zoning Ordinances.

#### 9-2 If the ordinance is unambiguous, the plain meaning of the words must be applied

There is a mistaken tendency to jump to a *perceived intent* of an ordinance and construe it accordingly, and to ignore the language of the ordinance itself. If the language is clear and unambiguous, there is no need to construe it. *Taylor v. Shaw and Cannon Co.*, 236 Va. 15 (1988). Thus, resort to rules of construction, legislative history and extrinsic facts is not permitted because the words of the ordinance itself must be taken as written to determine their meaning. *Higgs v. Kirkbride*, 258 Va. 567 (1999); *Taylor, supra*. Moreover, if an ordinance is unambiguous, its prior construction by officials charged with its enforcement is irrelevant. *Higgs, supra*.

When the language is unambiguous, the key question is not what the Board of Supervisors intended to enact, but the meaning of the words of the ordinance the Board enacted. *Carter v. Nelms*, 204 Va. 338 (1963). The Board's *intent* is determined only from what the ordinance says, and not from what anyone thinks it should have said. *Carter v. Nelms, supra*.

##### 9-2.1 Determining whether an ordinance is unambiguous

The first step in the process is to determine whether the ordinance language is ambiguous. Language is ambiguous if it can be understood in more than one way. *Virginia-Am. Water Co. v. Prince William Service Authority*, 246 Va. 509 (1993). An ambiguity also exists when the language is difficult to comprehend, is of doubtful import, or lacks clearness and definiteness. *Brown v. Lukhard*, 229 Va. 316 (1985). The fact that parties may disagree as to the meaning of an ordinance does not necessarily mean that the ordinance is ambiguous or of doubtful, uncertain or obscure meaning. *Michie's Jurisprudence, Statutes*, p. 310.

##### 9-2.2 Giving the words their plain meaning

Once it is determined that an ordinance is unambiguous, the words must be given their plain meaning. *Fritts v. Carolinas Cement Company*, \_\_\_ Va. \_\_\_ (2001); *McClung v. County of Henrico*, 200 Va. 870 (1959). It must be assumed that the Board of Supervisors chose, with care, the words it used when it adopted the ordinance at issue, and those words are binding when the ordinance is interpreted, *Barr v. Town & Country Properties, Inc.*, 240 Va. 292 (1990), unless such a literal interpretation would involve a manifest absurdity. *Dominion Trust Co. v. Kenbridge Construction Co.*, 248 Va. 393 (1994). If the rule was otherwise, the legislative power of the Board would be usurped by those not holding that power. *Barr, supra*.

When ascertaining the plain meaning of an ordinance, each word's meaning must be considered in the context of the entire phrase from which it is taken. *Bell v. Commonwealth*, 22 Va.App. 93 (1996). An undefined term must be given its ordinary meaning, given the context in which it is used. *Sansom v. Board of Supervisors of Madison County*, 257 Va. 589 (1999). The context may be examined by considering the other language used in the ordinance. *Sansom, supra*. A word that is nontechnical is presumed to have been used in its ordinary sense. *Frere v. Commonwealth*, 19 Va. App. 460 (1995). Dictionaries may be used as aids in obtaining the plain and ordinary meaning of a word. *Fritts, supra*; *Brown-Forman Corp. v. Sims Wholesale Co.*, 20 Va.App. 423 (1995).

Curious, narrow or strained interpretations are to be avoided. *Crews v. Commonwealth*, 3 Va.App. 531 (1987). Certainly, an ordinance should not be extended by interpretation beyond its intended purpose. *Higgs v. Kirkbride*, 258 Va. 567 (1999). It is perfectly reasonable to conclude that if the Board had intended to include a provision in the ordinance, it could, and would, have done so. *Board of Zoning Appeals ex rel. County of York v. 852 L.L.C.*, 257 Va. 485 (1999).

Generally, the function, rather than the form of the structure, is relevant to defining a use under the zoning ordinance. *Fritts, supra*.

### **9-3 If an ordinance is ambiguous, rules of construction are applied to give meaning**

When construction of an ordinance is required because it is ambiguous, the language must be construed to promote the end for which it was enacted, if such an interpretation can reasonably be made from the language used. *VEPCO v. Board of County Supervisors of Prince William County*, 226 Va. 382 (1983). An ordinance should be read to give reasonable effect to the words used and to promote the ability of the enactment to remedy the mischief at which it is directed. *Jones v. Conwell*, 227 Va. 176 (1984). With respect to zoning ordinances in particular, the Virginia Supreme Court has said that they "should be given a fair and reasonable construction in the light of the manifest intent of the legislative body enacting them, the object sought to be attained, the natural import of the words used in common and accepted usage, the setting in which such words are employed, and the general structure of the ordinance as a whole." *Mooreland v. Young*, 197 Va. 771 (1956).

#### **9-3.1 Ascertaining the intent of the Board of Supervisors**

Of necessity, the intent of the Board of Supervisors must be determined. This determination involves the appraisal of the subject matter, purposes, objects and effects of the ordinance, in addition to its express terms. *Vollin v. Arlington Co. Electoral Board*, 216 Va. 674 (1976).

The views of the meaning and application of an ordinance indicated by both the legislative and administrative departments of the County are material in determining the purpose and intent of the ordinance. *Belle-Haven Citizens Association v. Schumann*, 201 Va. 36 (1959). For example, in *Gasner v. Board of Supervisors of Fairfax County*, 1993 WL 945908 (Va. Cir. Ct. 1993), the circuit court found that a provision of Fairfax County's comprehensive plan calling for "environmentally responsible" development was ambiguous. As such, the court concluded that the board of supervisors could interpret

the term in a manner that, in its discretion, best implemented the objectives of the plan, provided that its construction was reasonable.

### **9-3.2 Relying on the consistent construction by officials charged with enforcement**

When an ordinance is ambiguous, the consistent construction of an ordinance by officials charged with its enforcement (such as the Zoning Administrator) is given great weight. *Cook v. Board of Zoning Appeals of City of Falls Church*, 244 Va. 107 (1992). Nevertheless, if the administrative interpretation is so at odds with the plain language used in the ordinance as a whole, the interpretation is plainly wrong and must be reversed. *Board of Zoning Appeals ex rel. County of York v. 852 L.L.C.*, 257 Va. 485 (1999).

### **9-3.3 Construing the ordinance as a whole**

An ordinance should not to be construed by singling out a particular phrase. *VEPCO v. Board of County Supervisors of Prince William County*, 226 Va. 382 (1983). Various provisions of an ordinance must be read as a consistent and harmonious whole, with effect given to each word. *Jones v. Conwell*, 227 Va. 176 (1984). All relative provisions and sections of an ordinance must be considered and read together in construing one provision or section. *National Maritime Union of America, AFL-CIO v. City of Norfolk*, 202 Va. 672 (1961). Ordinance provisions that relate to the same subject are not to be considered as isolated fragments of law, but as a whole, or as parts of a great connected, homogenous system, or a single and complete ordinance arrangement. *Prillaman v. Commonwealth*, 199 Va. 401 (1957).

### **9-3.4 Other rules of construction**

Following are other common rules of construction applied to determine the meaning of an ambiguous ordinance:

- Different terms: When the Board uses different terms in the same section, the different terms are presumed to have a different meaning. *Klarfeld v. Salisbury*, 233 Va. 277 (1987).
- Punctuation: The punctuation used in an ordinance provision is said to be the most fallible of all means to interpret an ordinance, and it should not be used in aid of interpretation except as a last resort. *See, e.g., Harris v. Commonwealth*, 142 Va. 620 (1925).
- Exceptions: Exceptions to a general ordinance provision are given a strict construction. *Commonwealth v. Edwards*, 235 Va. 499 (1988). This means that the entitlement to the exception must appear clearly from the language relied upon. *Westminster Canterbury of Hampton Roads v. City of Virginia Beach*, 238 Va. 493 (1989).
- General and specific words: When general and specific words are grouped, the general words are limited by the specific and will be construed to embrace only objects similar in nature to those things identified by the specific words. *Richardson v. City of Suffolk*, 252 Va. 336 (1996).

### **9-4 The rules applied**

The following two cases provide classic situations in the land use context where the parties in a dispute can be tripped up because they fail to adhere to some of the fundamental principles discussed above. In the first example, the zoning administrator and the board of zoning appeals went astray when, in an effort to reach a conclusion they believed would be equitable to a landowner and the county, they ignored the plain meaning of a regulation and construed it in a manner they thought was fair. In the second example, citizens challenging an oral determination of the zoning administrator failed to timely appeal that determination on the mistaken belief that Virginia Code § 15.2-2311 required that the zoning administrator's decision be in writing to trigger the start of the thirty-day appeal period.

#### **9-4.1 Don't ignore the plain meaning of a regulation, even with the best intentions**

*Board of Zoning Appeals ex rel. County of York v. 852 L.L.C.*, 257 Va. 485 (1999) provides a classic example of the pitfalls in interpreting an ordinance. The issue was the proper interpretation of a regulation in the York County Zoning Ordinance pertaining to computing developable land area. The regulation provided density credits for certain bodies of water that could be included in calculating net developable density. Specifically, the regulation allowed: (1) a 0% density credit for existing ponds, lakes or other impounded water bodies; (2) a 50% density credit for certain nontidal wetlands; and (3) a 100% density credit for stormwater management ponds or basins.

The owner sought a determination of the density credit for an 11-acre body of water on a 30-acre parcel. The zoning administrator initially determined that the body of water was an existing lake and entitled to no density credit. When the owner complained, the zoning administrator agreed to consider a portion of the body of water to be a stormwater management facility, but only that portion that would be required to meet the stormwater management requirements of the drainage area. The zoning administrator arrived at a density credit of 18.6%, and the board of zoning appeals affirmed the decision on appeal. The trial court reversed the decision of the board.

On appeal, the board argued that the density credit regulation was ambiguous where a body of water served multiple purposes (lake, wetland, stormwater management facility), and that its decision offered “a fair interpretation of the ordinance which recognizes legitimate development expectations, while protecting the county from overdevelopment.”

The Virginia Supreme Court concluded that, however equitable this solution might be, it “extended beyond permissible ordinance interpretation and became prohibited legislative action taken by an administrator.” First, the court concluded that the ordinance was unambiguous because it provided that the computation of the density credit “shall” be determined by one of the three percentages set forth in the ordinance. Because it was undisputed that the body of water was used for stormwater management (though it may have had excess capacity for that purpose), the plain meaning of the regulation required that it be given a 100% density credit. The court concluded: “Nowhere does the ordinance permit the administrator to allocate a reduced density credit based on what the administrator and his staff determine is the appropriate percentage ‘necessary for a development site such as the subject property’ . . . Had the County Board of Supervisors intended the administrator to have such latitude, it would have so provided in the ordinance; such latitude may not properly be created by administrative interpretation.”

#### **9-4.2 Don't read language into a law that isn't there**

Virginia Code § 15.2-2311(A) provides that a person aggrieved by a decision of the zoning administrator or any other administrative officer may appeal that decision to the board of zoning appeals. Section 15.2-2311(A) then states: “Notwithstanding any charter provision to the contrary, any *written* notice of a zoning violation or a written order of the zoning administrator” must inform the aggrieved person of his or her right to appeal. Reading these two provisions together, many localities have probably assumed that decisions of the zoning administrator must be in writing in order to start the clock running on the time to file an appeal. However, there is no requirement in Virginia Code § 15.2-2311(A) that the zoning administrator’s decision be in writing. *Lilly v. Caroline County*, 259 Va. 291 (2000).

In *Lilly*, the plaintiffs owned land in the vicinity of a proposed radio station and tower, and sought to challenge a decision by the zoning administrator that a radio tower was a use allowed by right. The zoning administrator made his determination orally, at a public hearing on a zoning application before the board of supervisors at which the Lillys were present. In fact, the Lilly’s had been present at three prior public hearings at which the question had arose. At the fourth public hearing, the zoning administrator announced his determination that the construction of a radio tower was a by-right use, and that his ruling

could be appealed to the board of zoning appeals. No one, including the Lillys, appealed the zoning administrator's determination to the board of zoning appeals.

After concluding that Virginia Code § 15.2-2311(A) does not require that a zoning administrator's decision be in writing, the Virginia Supreme Court then concluded that the Lillys had actual notice of the decision because they were present at the public hearing, the zoning administrator made clear the basis for his decision, and the zoning administrator intended his determination to be final – based on his statement that it could be appealed to the board of zoning appeals.