

April 18, 2023

The Honorable Glenn Youngkin  
Governor, Commonwealth of Virginia  
P.O. Box 1475  
Richmond, VA 23218

Dear Governor Youngkin,

On behalf of the undersigned Chambers of Commerce and business associations, we strongly urge the passage of an amendment to the FY 2023-24 biennial budget, or similar legislation, including language overturning or mitigating the effects of the recent Virginia Supreme Court decision, Berry v. Board Of Supervisors of Fairfax County, No. 211143 (Va. March 23, 2023).

In the Berry decision, the Supreme Court struck down a Fairfax County Zoning Ordinance Amendment, familiarly known as zMod, that had been in effect since July 1, 2021. The Supreme Court found that the approval of zMod at a virtual public hearing violated the open meeting provisions of the Virginia Freedom of Information Act as well as the state enabling legislation that permitted localities to hold certain public meetings through virtual means in response to the pandemic. The Supreme Court determined that, under these circumstances, the action taken by the County in approving zMod was unlawful and, therefore, zMod is now deemed void.

The implications of this decision are potentially far-reaching. First, the status of Fairfax County zoning entitlements (i.e. rezonings, special exceptions, special permits, etc.) approved pursuant to zMod within the last two years is uncertain. Second, the decision may equally impact downstream permitting stemming from those zoning approvals, as well as financing and contract conditions that either relied upon or warranted compliance with the approved zoning. Third, there is concern for spillover effect in other jurisdictions that granted zoning and development approvals through virtual public hearings during the pandemic. Fourth, there is concern that the ruling could undermine other local government actions undertaken at virtual public hearings, which creates uncertainty for the larger business community beyond the development industry.

As business organizations across the Commonwealth, we work to create an economy that promotes growth and prosperity for all Virginians. Development projects are essential to our economic growth, and many of these projects may now be in jeopardy because of the Berry ruling. The high risk to projects that were passed by governing bodies meeting online during the pandemic makes Virginia a much less attractive place for businesses and developments of all sizes.

Collectively, we urge the General Assembly to take action, through a budget amendment or similar legislation, to ameliorate the situation caused by the Berry ruling, reversing it and/or containing it to the legislation in Fairfax County that the decision explicitly concerns. Thank you and we look forward to working with you in this endeavor.

Sincerely,

