

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 705

An Act to amend and reenact § 15.1-497 of the Code of Virginia, relating to circuit court review of board of zoning appeals decision.

[H 538]

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-497 of the Code of Virginia is amended and reenacted as follows:

§ 15.1-497. Certiorari to review decision of board.

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any taxpayer or any officer, department, board or bureau of the county or municipality, may present to the circuit court of the county or city a petition specifying the grounds on which aggrieved within thirty days after the filing of the decision in the office of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the writ of certiorari. *If the petition is withdrawn subsequent to the filing of the return, the board may request that the court hear the matter on the question of whether the appeal was frivolous.*