NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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Re: ***In re: February 2, 2022, Decision of the Board of Zoning Appeals of Fairfax County, Virginia***
(Washington Gas Light Company v. Christine Chen Zinner, et. al.)
Case No. CL–2022–2942, -3061

Dear Counsel:

OPINION LETTER

May Washington Gas, without County approval under the current zoning ordinance, install under a residential street a 24-inch, high pressure gas line that does not directly connect to properties it passes? The Court holds Washington Gas may do so and will affirm in part and reverse in part the Board of Zoning Appeal's ruling affirming in part and reversing in part the Zoning Administrator's determination that the gas line at issue is exempt from regulation under the County's Zoning Ordinance.[1]

I. BACKGROUND.

The Washington Gas Light Company ("Washington Gas") seeks to install a high-pressure gas line under a secondary road through the Pimmit Hills neighborhood in Fairfax County near Tysons Corner. Many of the residents in the neighborhood oppose it, including those who initiated a Fairfax County Board of Zoning Appeals ("BZA") hearing on their objections: Christine Chen Zinner, Kurt Islet, Sarah Ellis, and Lillian Whitesell ("Landowners"). Each side offers good policy reasons supporting their respective positions. The Court does not recount their reasons here because it does not decide policy. Instead, it merely adjudicates whether Washington Gas may or may not install the gas line under laws promulgated by the Commonwealth and Fairfax County.

Washington Gas brought two actions to the Court, which the Court consolidated for a single hearing for convenience. First, Washington Gas filed a Writ of Certiorari from the BZA's February 2, 2022, ruling affirming in part and rejecting in part a July 23, 2021, determination by Fairfax County Zoning Administrator ("Zoning Administrator") Leslie Johnson[2]; and, second, Washington Gas filed a Complaint seeking declaratory and injunctive relief to find that the BZA misconstrued the relevant zoning ordinance.[3]

This background proceeds in five parts: (A) a review of the underlying facts of the pipeline project at issue; (B) an overview of the Zoning Administrator's initial determination; (C) a discussion of the BZA's appeal decision; (D) the procedural history of this case before this Court; and (E) an outline of the primary points of contention for trial. The underlying facts of this case are the same for both cases before the Court.

A. Washington Gas' Strip One Replacement Gas Pipeline Project.

Washington Gas provides natural gas distribution services in Northern Virginia, the District of Columbia, and parts of Maryland. The General Assembly obligates Washington Gas to provide such services. VA. CODE ANN. § 56–234. Washington Gas must anticipate future needs and growth. *Town of Culpeper v. Virginia Elec. & Power Co.*, 215 Va. 189, 196 (1974).

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[1] The Zoning Ordinance is Chapter 112.2 of the Code of the County of Fairfax, Virginia, which is designated 'The Zoning Ordinance of Fairfax County, Virginia.' Zoning Ordinance § 1.1100 and 1104.
[2] The case number for the BZA appeal is CL-2022-2942.
[3] The case number for the Complaint is CL-2022-3061.

Implicit in this is a duty to provide the gas safely. Recently, Washington Gas developed a "Tysons Strip One Replacement Gas Pipeline Project" to "construct, own and operate a 3,000-foot segment of pipe to be installed in rights-of-way . . . running from the intersection of Route 7 and Pimmit Drive to the intersection of Pimmit Drive and Griffith Way." (Sec. Am. Compl. ("SAC") at 2 ¶ 1.) The present case concerns "Phase 6" of this Project, in which Washington Gas aims to replace an existing 70-year-old pipe running below Route 7 with a new pipe constructed according to modern standards. (*Id.* at 3–4 ¶ 6.) (Tr. at 98-99.) Because Washington Gas' Project involves the installation of a 24-inch-high pressure pipe under roads controlled by the Virginia Department of Transportation ("VDOT"), Washington Gas obtained a permit from VDOT. (*Id.* at 9 ¶ 24; *see also id.*, Ex. 4.)

B. The Zoning Administrator's Determination.

At least four landowners who own homes in Pimmit Hills deeply oppose the construction and maintenance of the pipeline Washington Gas plans to build and operate under a neighborhood road through their community. On May 5, 2021, Landowners, by counsel, sent a letter to Zoning Administrator Leslie B. Johnson regarding the pipeline project. (R. at 38.)[4] Landowners sought confirmation of three separate issues: (1) whether the Phase 6 portion of the project is zoned in the R-4 District; (2) whether under the former Zoning Ordinance, the project is deemed a light public utility and requires special exception approval from the Board of Supervisors; and (3) whether under the updated Zoning Ordinance, effective on July 1, 2021, the project is considered a light utility facility, which requires a special exception from the BZA, or a heavy utility facility, which is prohibited in the R-4 District. (*Id.* at 38.)

Ms. Johnson determined that the area of the proposed pipeline extension is zoned R-4 and is exempt from the Zoning Ordinance and is not subject to special exception approval. (*Id.* at 74.) First, Ms. Johnson determined that the Phase 6 portion of the project is zoned R-4 since the Zoning Ordinance provides that "[a]ll . . . rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zoning district as the property immediately abutting upon same."[5] (*Id.* at 73.) Then, Ms. Johnson determined that pipeline is exempt from regulation under the former Zoning Ordinance § 2-104(1)(A),[6] since the proposed pipeline is only 24-inches wide. (*Id.* at 73.)

Under the updated Zoning Ordinance, Ms. Johnson determined that the proposed pipeline is "most similar to a light utility facility" and is exempt from regulation without need for special exception approval. (R. at 74.) Ms. Johnson first noted that § 4.4102.4.X(3) of the updated Zoning Ordinance defines a heavy utility as a "major component of an infrastructure system,"

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[4] The Court cites to the administrative record of the BZA hearing in this case as "R. at ___."
[5] Ms. Johnson noted that Phase 6 of the project runs through the right-of-way area of the Pimmit Hill Subdivision. This portion of Fairfax is not otherwise zoned, although the land immediately abutting this right-of-way is zoned as R-4. Hence, Ms. Johnson reasoned that the right-of-way is deemed to be zoned R-4 as well.
[6] The former Zoning Ordinance provided that certain structures, including pipes used for the distribution of gas, are exempt from regulation "but only when such facilities are located in a street right of way or in an easement less than 25 feet in width."

citing examples such as "water treatment plants, wastewater treatment plants, [etc.]" (*Id.* at 73–74.) Meanwhile, Ms. Johnson noted that a light utility is defined in the updated Ordinance as "a structure or facility generally related to the distribution or collection of utility products or services." (*Id.* at 74.) Ms. Johnson determined that the proposed pipeline was more in line with the definition of a light facility since it is used primarily for the distribution of products. (*Id.*) She further explained that certain "light utilities," are exempt from regulation, including "ordinary distribution facilities for delivery of utilities . . . in the public right of way" or "transmission lines approved by the State Corporation Commission." (*Id.*) Ms. Johnson reasoned that since the pipeline fits into both exemptions — since it is both for the ordinary distribution of gas in a public right-of-way and was previously authorized by the State Corporation Commission ("SCC") — the pipeline is exempt from regulation. (*Id.* at 74.)

C. The Landowners' Appeal to the Board of Zoning Appeals.

The Landowners appealed Ms. Johnson's determination to the BZA August 23, 2021. (R. at 2.) The BZA conducted two hearings: January 12, 2022, and February 2, 2022. (*Id.* at 2, 93, 95.) The Landowners argued that (1) the pipeline is a "heavy utility" rather than a "light utility" since it is a "major component of an infrastructure system," (2) even if the pipeline is a "light utility" it does not fall under one of the exemptions to regulation because (i) the SCC only determined that it lacked jurisdiction to review the project rather than authorizing it; and (ii) the pipeline is not an "ordinary distribution facility for delivery of utilities to customers."[7,8] (*Id.* at 17–36.)

Prior to rendering its decision, the BZA circulated an internal Staff Report which indicated that the BZA tended to agree with Ms. Johnson's original interpretation of the relevant ordinance provisions. (R. at 341.) The Staff Report detailed that the pipeline was a "light utility facility" since it is "not being used to deliver or accept natural gas to or from another gas company" and instead "is being used to distribute[] or convey[] a utility product for consumption." (*Id.* at 338.) The Staff Report, however, deviated from Ms. Johnson's view that the pipeline could be exempt from regulation as a transmission line with prior SCC approval, since the Commission only declined to exercise jurisdiction; thus, the pipeline does not qualify for that exemption. (*Id.*) Even so, the Staff Report determined that the pipeline is nonetheless exempt, and therefore does not need special exception approval, since it is proposed to be constructed in a VDOT right-of-way.[9] (*Id.* at 339.) Finally, the Staff Report concluded that

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[7] Landowners argued that the terms "distribution" and "transmission" are terms of art for the purposes of zoning and regulation of pipelines – a "distribution" facility is located near the area where the gas is meant to be delivered and is used for the purpose of delivering the gas with expediency. "Transmission" facilities contemplate the distribution of gas to distribution facilities throughout a region. The terms are mutually exclusive in their view — a pipeline cannot qualify for both the "distribution facility" and the "transmission facility" exemptions.

[8] Washington Gas intervened as an aggrieved person, pursuant to VA. CODE ANN. § 15.2–2314, on Dec. 3, 2021.

[9] In particular, the Staff Report noted that "[b]y statute, VDOT possesses authority over the uses in Pimmit Drive, to the exclusion of the County's zoning authority." Further, the Staff Report continued that "the County ceded control and jurisdiction it could have otherwise exercised over the pipeline when it offered, and VDOT accepted, Pimmit Drive into the secondary system of state highways at the request of the County." (R. at 339.)

Landowners lack standing to appeal this matter, since they cannot articulate legally enforceable rights over the VDOT right-of-way. (*Id.*)

The BZA ultimately upheld in part and overturned in part the Zoning Administrator's determination, effectively ruling that Washington Gas is subject to the Zoning Ordinance and must obtain a special exception from the Board of Supervisors before installing its pipeline. (R. at 555.)[10] As an initial matter, the BZA noted that under *Bd. of Sup'rs of Fairfax Cnty. v. Washington, D.C. SMSA L.P.*, 258 Va. 558 (1999), the County retains at least *some* authority to regulate rights-of-way. (*Id.* at 556.) Then the BZA noted that the Zoning Ordinance provides for an exemption for some, but not all, structures proposed in such rights-of-way: (1) transmission facilities approved by the SCC; and (2) ordinary distribution facilities. (*Id.*) The BZA then found as fact that Washington Gas' proposed gas line was one that would move gas through the neighborhood at high pressure while not serving the individual houses along the way. (*Id.* at 557.) Applying this fact to the law, the BZA held "[Phase 6] is a transmission line for gas." (*Id.*) "[T]his is not a natural gas distribution facility[;] this is a transmission facility." (*Id.* at 558). Given that the SCC had not exercised jurisdiction over this pipeline, and therefore had not approved the pipeline, the BZA found that the pipeline was not exempt under the Zoning Ordinance and required special exception approval. (*Id.* at 559.) Finally, the BZA held that the Landowners had standing to appeal this determination pursuant to the two-part test in *Friends of the Rappahannock v. Caroline Cnty. Bd. Of Sup'rs*, 286 Va. 38 (2013)—proximity and particularized harm. Regarding proximity, the BZA found as fact that "three of the four [Landowners] are very close [to the location of the proposed pipeline]. One isn't that far away and one of the four is right on the street with the pipeline right in front of that lot." From these facts, it held that the Landowners' properties are in close proximity to the proposed pipeline. Regarding particularized harm, the BZA found as fact that the Landowner who lives on the street under which the pipeline would run would suffer some temporary interference accessing her lot. Additionally, it found that the Pimmit Hills neighborhood is undergoing transition with infill construction. This uncoordinated construction potentially would conflict with the new pipeline. (R. at 560.) From these facts the BZA held the Landowners demonstrated a particularized harm not shared by the general public. (*Id.* at 559–60.)

D. Washington Gas Appeals to the Circuit Court.

On March 3, 2022, Washington Gas filed a Petition for Writ of Certiorari in case number CL-2022-2942 ("BZA Appeal"), which was granted for a hearing on March 17, 2022. Washington Gas' Writ alleges five assignments of error; namely, that the BZA erred in (1) defining Phase 6 as a transmission pipeline, (2) ruling that Phase 6 is subject to the Zoning Ordinance, (3) concluding that Phase 6 requires special exception approval to proceed in a VDOT right-of-way, (4) ruling that Phase 6 is subject to a 2232 Review because it was not before the BZA on appeal, and (5) ruling that the Landowners had standing to bring the Appeal.

[10] Vice Chairman James Hart offered the motion that the Board approved by a vote of six to one. The motion contains the Board's finding of facts and conclusions of law. (R. at 555.)

Similarly, on March 3, 2022, Washington Gas filed a Complaint in case number CL-2022-3061 ("Dec. Action"), seeking a declaratory judgment that (1) the BZA lacked authority to hear the Appeal pursuant to Dillon's Rule and the Byrd Road Act; (2) the BZA lacked authority to hear the Appeal because the Landowners lacked standing to bring the appeal; (3) Phase 6 is exempt from the Zoning Ordinance by the plain language of the ordinance; and (4) Washington Gas has standing to bring this action.

On April 29, 2022, the Landowners filed a Demurrer, Motion to Dismiss, and Plea in Bar to the Complaint on the grounds that Washington Gas lacks standing to appeal this matter, and that Washington Gas failed to join VDOT as a necessary party. Before this Motion was adjudicated, however, the Court granted Washington Gas' motion for leave to Amend its Complaint on January 20, 2023. It filed the Amended Complaint the same day, which dropped its fourth claim for a declaratory judgment that Washington Gas has standing to bring this action.[11] The Court denied the Landowners' Demurrer, Motion to Dismiss, and Plea in Bar February 10, 2023.[12]

On February 15, 2023, the Court entered a consent order consolidating the separate cases and designating the BZA Appeal, CL-2022-2942, as the lead case.

On March 20, 2023, the Landowners filed a Demurrer to the Amended Complaint in the Dec. Action on the ground that Washington Gas' claim is procedurally defunct. This Court overruled the Demurrer in part and sustained it in part on April 7, 2023.[13] It overruled the Landowners' contentions that Washington Gas lacked standing, or that Washington Gas failed to state a claim as to its first claim for relief. The Court sustained the Demurrer as to Washington Gas' second claim for relief (that the BZA misconstrued the zoning ordinance). However, the Order expressly kept the issue alive in the Writ of Certiorari proceeding in the BZA Appeal. Likewise, the Court also sustained the Demurrer to Washington Gas' third claim for relief (standing), although that claim remains in the BZA Appeal.

The Board of Supervisors filed an Answer to the Amended Complaint to the Dec. Action April 12, 2023, and the Landowners followed suit April 20, 2023. Although not a party to the BZA Appeal, the BZA filed an Answer in the Dec. Action April 11, 2023.

The Court dismissed VDOT as a party April 14, 2023, on its unopposed Motion to Dismiss.

On April 25, 2023, the Court commenced the trial. However, the Court and parties expressed concern about the effect of a then-recent invalidation of the updated Zoning

[11] The Amended Complaint also reordered Washington Gas' claims in the Complaint. Upon this amendment, Washington Gas sought a declaratory judgment that (1) the BZA lacked authority to hear the appeal pursuant to Dillon's Rule and the Byrd Road Act; (2) the BZA incorrectly interpreted the Ordinance; and (3) the Landowners lacked authority to appeal the Zoning Administrator's determination to the BZA.
[12] The Honorable Penney Azcarate adjudicated those motions.
[13] The Honorable Manuel Capsalis adjudicated the Demurrer.

Ordinance, zMod. *See Berry v. Bd. of Sup. of Fairfax Cty.*, 884 S.E.2d 515 (Va. 2023). The Court continued the trial to September 5, 2023, to see if the Board of Supervisors would reenact zMod, or if the Supreme Court of Virginia would reconsider *Berry*. The Board of Supervisors reenacted zMod May 9, 2023. The Supreme Court of Virginia refused the Petition for Rehearing October 2, 2023.

On July 14, 2023, this Court granted Washington Gas leave to amend the Amended Complaint, which was deemed filed the same day. The BZA filed an Answer to the Second Amended Complaint August 3, 2023; the Landowners and Board of Supervisors likewise filed Answers the next day.

The Court resumed the trial September 5–7, 2023, effectively starting anew with fresh opening statements considering that Washington Gas had amended its Complaint since the Court recessed the trial in April.

II. STANDARD OF REVIEW.

On a Writ of Certiorari from the BZA, this Court reviews questions of law *de novo*. VA. CODE ANN. § 15.2–2314. Following a 2007 amendment to the law, the BZA's or Zoning Administrator's interpretations of an ordinance are no longer entitled to deference. *Reynolds v. Bd. of Sup'rs of Fairfax*, Nos. CL-2020-18282, CL-2021-2840, 2021 WL 4028016, at *2 (Fairfax Cir. Aug. 31, 2021) ("[T]he General Assembly now directs circuit courts to apply ordinary statutory construction principles of Virginia law by dint of the *de novo* grant.") (citing VA. CODE ANN. § 15.2–2314 and *Trustees of Christ and St. Luke's Episcopal v. Board of Zoning Appeals*, 273 Va. 375, n.3 (2007)). The BZA's findings and conclusions on questions of fact are presumed to be correct, provided that the appealing party may rebut the presumption by proving the BZA erred by a preponderance of the evidence. VA. CODE ANN. § 15.2–2314. The Court may "reverse or affirm, wholly or partly, or may modify the decision brought up for review." *Id.* "The review of a decision of a BZA on a petition for writ of certiorari is limited to the scope of the BZA proceeding." *Foster v. Geller*, 248 Va. 563, 567 (1994).

In a proceeding for a declaratory judgment, "circuit courts within the scope of their respective jurisdictions shall have power to make binding adjudications of right[.]" VA. CODE ANN. § 8.01-184. The party praying for the declaratory judgment must present an actual controversy, including the controversy related to the interpretation of a statute. *Id.* A declaratory judgment may be sought to challenge a BZA decision where the BZA alleges that it has the power to regulate a party's property or proposed development plans. *See Cupp v. Bd. of Sup'rs of Fairfax Cnty.*, 227 Va. 580, 592 (1984) ("[The Board] claimed it had the power to [impose restrictions and conditions on the Plaintiffs] and this claim of power threatened the Cupps. Thus, a controversy, within the contemplation of the Declaratory Judgment Act, existed."). Issues of statutory interpretation are reviewed under a *de novo* standard of review. *Handberg v. the Morgan Center*, _____ Va. _____, 2022 WL 17491464, at *2 (Dec. 8, 2022).

III. THE BZA ERRED IN HOLDING THAT WASHINGTON GAS MUST OBTAIN A SPECIAL EXCEPTION FROM THE BOARD OF SUPERVISORS TO INSTALL THE PIPELINE.

While the Landowners had standing to bring the present action before the BZA, the BZA erred in holding that Washington Gas must obtain a special exception from the Board of Supervisors to install Phase 6 of its pipeline.

A. The Landowners had Standing to Bring the Case before the BZA.

Washington Gas argues that the Landowners lacked standing to appeal the Zoning Administrator's determination to the BZA. It contends that only one of the Landowners owns land along the subject property of Pimmit Drive, and that two others own property too far to be "in close proximity" for the purposes of the *Friends of the Rappahannock* test. It further contends that the Landowners failed to demonstrate particularized harm, and instead only have alleged harm shared by the general public as a result of Phase 6.

In a challenge to a land use decision where a party claims no ownership interest in the subject property, the challenging party has standing only if the party satisfies a two-prong test. *Friends of the Rappahannock v. Caroline Cnty. Bd. of Sup'rs*, 286 Va. 38, 48–49 (2013). First, the challenging party must "own or occupy 'real property within or in close proximity to the property that is the subject of' the land use determination, thus establishing that it has 'a direct, immediate, pecuniary, and substantial interest in the decision.'" *Id.* at 48 (citations omitted). Second, the challenging party "must allege facts demonstrating a particularized harm to 'some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally." *Id.* at 49 (citations omitted). A court decides whether a party established standing as a question of law reviewed *de novo*. *Platt v. Griffith*, 299 Va. 690, 692 (2021).

1. The Landowners meet the proximity test.

Washington Gas relies on *Anders Larsen Tr. v. Bd. of Sup'rs of Fairfax Cnty.*, 301 Va. 116 (2022), for the proposition that Landowners cannot meet the first prong of the *Friends* test, since the Landowners here do not all live immediately adjacent to the proposed pipeline. This is objectively incorrect. Landowner Lillian Whitesell's property directly abuts the road under which Washington Gas would lay its pipeline. As to the other Landowners, the BZA below found they are in close proximity to the proposed pipeline. (R. at 560.) The Court must presume this fact-finding to be correct. VA. CODE ANN. § 15.2–2314. Washington Gas failed to rebut this presumption. Unlike the situation in *Friends of the Rappahannock*, Washington Gas' proposed pipeline would run through the center of the Landowners' residential community. *See* 286 Va. at 49–50. Even assuming some landowners do not directly abut the proposed site of Phase 6, they all live in this residential community, and by virtue of that will necessarily be "in close proximity" thereto for the purposes of being aggrieved.

2. The Landowners meet the particularized harm test.

The BZA found the Landowners could suffer particularized harm. The Court must presume this fact-finding to be correct. VA. CODE ANN. § 15.2–2314. Washington Gas failed to rebut this presumption.

Washington Gas and the Landowners focus on the construction of Phase 6 and argue without authority that temporary harms do not or do support standing. The Court need not resolve this legal distinction, however.[14] In the present case the BZA found potential harm post-construction. The Court heard the same and makes the same finding. The Pimmit Hills neighborhood is one in "transition." (R. at 560). This means that property owners are replacing existing homes in the neighborhood with new construction. This could cause "conflicts" with laterals from each property to other utilities. (*Id.*) While not clear from the BZA record, this Court heard testimony of a lot of utility work under the neighborhood roads. Some neighbors expressed credible concern that it will be more difficult or expensive to make and improve lateral connections to those utilities once the Phase 6 pipeline is in the way. (Tr. at 254–55, 281).

3. The Landowners have standing.

Because the Landowners are in close proximity to the Phase 6 pipeline project and because they could suffer potential harms not shared by the general public, they had standing to present their objection to the Zoning Administrator's determination to the BZA.

B. Washington Gas May Construct its Pipeline Without Obtaining a Special Exception Zoning Permit from the Board of Supervisors.

Washington Gas argues, generally, that it may construct its Phase 6 pipeline without obtaining a special exception from the Board of Supervisors. Specifically, it assigns error to the BZA's determination that (1) Phase 6 is a "transmission line," (2) Phase 6 is subject to the Zoning Ordinance, (3) Phase 6 requires special exception approval to proceed in a VDOT right-of-way, and (4) Phase 6 is subject to a special exception review.

The Court's primary objective in interpreting a statute or ordinance is to "ascertain and give effect to legislative intent, as expressed by the language used in the statute." *Berry*, 884 S.E.2d at 520 (internal quotation marks omitted) (quoting *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425 (2012)). Legislative intent is determined from "the words contained in the statute" or ordinance. *Id.* (quoting *Williams v. Commonwealth*, 265 Va. 268, 271 (2003)). Words in a statute or ordinance "are to be construed according to their ordinary

[14] Assuming without deciding that temporary construction-related harms support standing, the Court finds as fact that the Landowners could reasonably suffer such harms. There will be times—perhaps only minutes long—when Landowner Whitesell will be unable to access her property by car as Washington Gas contractors dig up the road in front of her driveway. Other Landowners will suffer slowed traffic due to the construction (Tr. at 250-51), noise (Tr. at 280), and dust. (Tr. at 277).

meaning, given the context in which they are used." *Id.* (quoting *City of Va. Beach v. Bd. of Sup'rs*, 246 Va. 233, 236 (1993)). Multiple legislative enactments dealing with the same subject matter should not be viewed "as isolated fragments of law, but as a whole, or as parts of a great connected, homogeneous system, or a single and complete statutory arrangement." *Id.* (quoting *Thorsen v. Richmond Soc'y for the Prevention of Cruelty to Animals*, 292 Va. 257, 266 (2016)); *see also Prillaman v. Commonwealth*, 199 Va. 401, 406 (1957) (standing for the proposition that this canon of interpretation should be followed even if the relevant provisions "contain no reference to one another and were passed at different times"). Under the presumption of meaningful variation, where a legislature uses one term in one place, and a "materially different term" in another, the terms should be construed as denoting different ideas. *Southwest Airlines Co. v. Saxon*, 142 S. Ct. 1783, 1789 (2022) (citing A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 170 (2012)). Likewise, under the presumption against redundancy, provisions in a statutory scheme or text should be interpreted to give effect to each provision. *See Maracich v. Spears*, 570 U.S. 48, 60 (2013) (citing A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 180 (2012)).

The BZA overturned the Zoning Administrator's determination that Washington Gas' Phase 6 pipeline is exempt from the zoning ordinance. It held that the Board of Supervisors must make a special exception for Washington Gas to construct its pipeline through Pimmit Hills. (R. at 558.) The Court disagrees with the BZA and agrees with the Zoning Administrator.

1. An Overview of the Zoning Ordinance.

Fairfax County exempts gas pipes in a street right-of-way from the Zoning Ordinance. The Zoning Ordinance reads, in relevant part:

> (3) If located in a street right-of-way or in an easement less than 25 feet in width, ***the following light facility utility uses and structures are exempt from the Ordinance regulations***:
>
> (a) Wires, cables, conduits, vaults, laterals, ***pipes***, mains, valves, or other similar equipment ***for the distribution to consumers of*** electricity, ***gas***, or water, or the collection of sewage or surface water operated or maintained by a government entity or a public utility including customary meter pedestals, distribution transformers and temporary utility facilities required during building construction, whether any such facility is located underground or aboveground.

FCZO § 4102.4.X(3) (emphasis supplied). That subsection of the Zoning Ordinance could not be clearer. Pipes used for the distribution to consumers of gas in a street right-of-way are exempt from the Zoning Ordinance.

The Fairfax County Zoning Ordinance is organized in nine Articles. Article II defines the zoning districts, and Article IX provides definitions applicable to the entire Zoning Ordinance. Article V is titled "Development Standards," and lays out the regulations applicable to the *form-*

based zoning context. Meanwhile, Article IV lays out the regulations applicable to the *use-based zoning* context. This appeal relates entirely to the BZA's determinations that Phase 6 is subject to regulation under Article IV's *use*-based zoning regulations. Thus, only the Zoning Ordinance's provisions bearing on use-based zoning are material to this analysis.

Of note, Article IX is subdivided into four sections, two of which are relevant to this analysis. Section 9102 of the Zoning Ordinance, titled "General Terms," features definitions applicable to the entire Zoning Ordinance, including both the form-based and use-based zoning context. There, a "use" is defined as "[a]ny purpose for which a structure or a tract of land may be designed, arranged, intended, maintained, or occupied[.]" FCZO § 9102. Section 9103 then defines various uses as regulated in Article IV.

The *use* at issue in this case is a "light utility facility."

In contrast, the Zoning Ordinance at § 9103.4(E) defines the *types* of structures that qualify as a "Utility Facility, Light." The definition reads:

> A structure or facility generally related to the distribution or collection of utility products or services, rather than the production of those products or services, that needs to be in or near the neighborhood or near utility consumers . . . . This use does not include (1) ordinary distribution facilities for delivery of utilities to customers that are in the public right-of-way or in easements or strips of property owned in fee simple not more than 25 feet in width; or (2) transmission lines approved by the State Corporation Commission.

Read together, neither gas distribution facilities nor transmission lines approved by the SCC are a *type* of "light utility" because the Zoning Ordinance reads "[t]his *use* does not include . . . ordinary distribution facilities for delivery of utilities to customers that are in the public right-of-way . . . or . . . transmission lines approved by the State Corporation Commission." FCZO § 9103.4(E) (emphasis supplied). However, the distribution facilities squarely qualify as light utility *uses* because the Zoning Ordinance reads: "If located in a street right-of-way . . . the following light facility utility *uses* and structures are exempt from the Ordinance regulations: . . . pipes . . . for the distribution to consumers of . . . gas." FCZO § 4102.4.X(3) (emphasis supplied).

Stated differently, a gas utility might have structures or facilities such as pump stations, storage facilities, and substations. It might also have pipes to distribute gas to customers. The former are properly classified as "Utility Facilities, Light." FCZO § 9103.4(E). The latter are properly classified as "light utility uses." The Zoning Ordinance clearly excludes those pipes from the definition of light utilities, in § 9103.4(E) and exempts them from zoning regulation as a "light facility utility use" in § 4102.4.X(3).

In this way the Court harmonizes FCZO §§ 4102.4.X(3) and 9103.4(E) through the term "use" in both subsections. An alternative statutory interpretation leads to the same result. If

FCZO § 4102.4.X(3) defines certain gas pipes as light facility utilities, and § 9103.4(E) excludes gas pipes from the definition of light utility facilities, the subsections are in conflict. To resolve the ambiguity, common rules of statutory construction state that when statutes conflict the more specific statute controls over the more general one. *Seaton v. Commonwealth*, 42 Va. App. 739, 759 (2004) (Kelsey, J.). Zoning Ordinance § 4102.4.X(3) is the more specific ordinance because it simultaneously defines pipes used for distribution of gas to consumers as one of the "following light facility utility uses," and exempts them from the Zoning Ordinance regulations. However, to be clear, the Court reads the subsections in equipoise.

Practically speaking, the Board of Supervisors made a policy decision to subject certain kinds of light utilities, like pump stations and storage facilities, to regulation but not others. Logically, pump stations and storage facilities are substantially more disruptive to place in a residential neighborhood. Underground pipes in a public right-of-way, like Phase 6, are almost invisible after installation. However, pump stations and storage facilities are visible and ugly. Underground pipes simply pose less of a policy concern to policymakers for zoning purposes.

Ironically, the parties do not fully dispute the BZA's determination that Washington Gas' Phase 6 is a type of light utility facility use. The Zoning Administrator found (R. at 14), and the BZA affirmed (R. at 557), that the Phase 6 pipeline is most like light utility facilities. The Court agrees. Instead, the parties principally dispute whether Phase 6 is better defined as a "distribution" use or a "transmission" use. If the Phase 6 line is, as this Court concludes, for distribution, it is exempt from regulation as discussed above. Conversely, if Phase 6 is for transmission, it may be subject to special exception approval under FCZO § 4102.4.X(7). The Court will, therefore, explain why Phase 6 is for distribution.

2. Phase 6 is a distribution pipe exempt from the Zoning Ordinance; it is not a transmission line.

The BZA held that the Phase 6 pipeline was subject to the Zoning Ordinance. It decided that (1) the pipeline was "closer to light than heavy [utility facilities]" (R. at 557.); and (2) the pipeline "is a transmission line for gas, natural gas at high pressure that goes through the neighborhood. It's not serving the individual houses. There's not laterals connecting to the houses. This is just from point A to point B." (*Id.*). This holding is a mix of fact findings and conclusions of law. The fact findings are (1) the pipeline is like a light utility use; and (2) the pipeline does not directly serve the individual houses it passes. From this, the BZA made a legal conclusion: that the pipeline is, therefore, a "transmission" line.

The Court presumes correct the BZA's fact finding as to what the Phase 6 pipeline does. VA. CODE ANN. § 15.2–2314. It reviews the legal conclusions *de novo*. *Id.* The Court disagrees with the BZA's legal conclusion resulting from its fact finding. When asked by Vice Chairman Hart whether Phase 6 is "connecting to individual houses on that street," Washington Gas responded that "it's correct that it's not a direct connection." (R. at 504.) Washington Gas continued by stating that "you take the gas from the transmission source," "you can't just *directly* bring it to somebody's home," and "[y]ou've got to take it through a series of pressure reductions

to get it to that household service." *Id.* However, nothing in the Zoning Ordinance requires a gas pipeline to service the properties it passes to be deemed to perform "distribution to consumers." The BZA would amend the ordinance to read "distribution *directly* to consumers." Of course, only the Board of Supervisors may amend the ordinance; a court or the BZA may not add language it thinks is missing. *Berry*, 884 S.E.2d at 523 (reversing a trial court for interpreting the phrase "within thirty days of the decision" to mean "within thirty days *after* the decision").

The Landowners invited, and the BZA accepted, the interpretation that a gas pipe is a "transmission" line if it lacks lateral links and direct connection to the properties it passes and is a "distribution" pipeline if it does directly service those properties. They further distinguish between the two classes of pipe by the gas pressure within each. They reason that high pressure pipelines, such as the one to be used for Phase 6, which never directly service a property it passes, are always "transmission" lines. Consistently, pipelines delivering gas at lower pressure to a property owner's own gas meter are always "distribution" lines under their theory.

To be sure, this distinction between "transmission" and "distribution" is relevant and considered by the Zoning Ordinance. When defining a "light facility utility" use, § 9103.4(E) of the Zoning Ordinance creates definitional exemptions from regulation by specifying kinds of "distribution" uses and "transmission" uses. Zoning Ordinance § 9103.4(E) specifically carves "transmission lines" with prior approval by the State Corporation Commission out from regulation under the use-based zoning provisions of Article IV. In § 4102.4.X(3), the ordinance references uses and structures for "distribution to consumers." The Zoning Ordinance does not define "transmission line" or "distribution." Therefore, the Court imputes this term with its ordinary meaning. "Distribution" is "the action of sharing something out among a number of recipients; the action or process of supplying goods to stores and other businesses that sell to consumers." NEW OXFORD AM. DICTIONARY, 506 (3d ed. 2010). "Transmission" is "the action or process of transmitting something," and "transmit" means "to cause (something) to pass on from one place or person to another." *Id.* at 1840. Thus, under the presumption of meaningful variation, the Court presumes that the Board of Supervisors intended for these two terms to denote different "uses" within the context of "light facility utility" uses.

Washington Gas argues that all it does is distribute gas to customers. Its entire pipe system is distribution. The Court heard credible evidence demonstrating that Washington Gas' entire pipe system is used for the purpose of distribution. (Tr. at 208.) To the extent this evidence conflicts with the BZA's fact finding, the Court finds Washington Gas' evidence before the Court rebuts those findings.

The Landowners argue that Phase 6 falls within the definition of a transmission line simply because Phase 6 itself does not deliver gas directly to consumers. Thus, they necessarily break down Washington Gas' system into its component parts—some gas pipes lead directly to property owners at low pressure; others do not.

In essence, the parties' dispute whether the Zoning Ordinance regulates systems or their component parts. The Zoning Ordinance does not speak to this issue directly, at least not in the

context of light facility utility uses. Given the fact that § 4102.4.X(3) broadly exempts any "pipes . . . for the distribution to consumers of . . . gas," this Court determines that the Zoning Ordinance regulates systems vis-à-vis their intended uses. As a result, Phase 6 is a component part of a system for the distribution to consumers of gas and is therefore not a transmission line.

An analogy clarifies the Landowners' and BZA's argument. Assume an online retailer sells widgets. It does not manufacture the widgets and, instead, receives them from factory suppliers at its main distribution facility to distribute to its customers. The factories deliver the widgets to the retailer's main distribution facility. The retailer repackages the widgets from the bulk packaging from the factories to smaller packaging for its regional distribution centers. It then drives the smaller packages to its regional distribution centers on its tractor trailers. At each regional distribution center, the retailer repackages the widgets into even smaller packaging for its individual customers. It then fulfills its customer orders by driving the widgets to its customers' front doors in minivans. The retailer sells and distributes all widgets it gets from its suppliers to its consumers; the retailer does not resell the widgets to other retailers, deliver them to another company as raw product for another good, or return them to its suppliers.

In this analogy, the Landowners and BZA would break down the retailer's distribution process into at least two component parts: first, the retailer's transportation of the widgets from the main distribution center in its tractor trailers to its regional distribution centers; second, the retailer's transportation of the widgets in its minivans from the regional distribution centers to the customers. The Landowners and BZA would then highlight how different tractor trailers are from minivans. However, the County must subdivide the distribution process, if desired. *See, e.g., Reynolds v. Board of Supervisors of Fairfax*, 2021 WL 4028016 at *5 (Fairfax Aug. 31, 2021) (the Board of Supervisors may by ordinance regulate heavy trucks, but it must explicitly do so). The Court may not do this without legislating. In the Zoning Ordinance, Fairfax did not make the distribution subdivision the Landowners desire.

Courts interpret statutes and ordinances based on their plain meaning. "When the language of a statute is unambiguous, we are bound by the plain meaning of that language." *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104 (2007). Since "distribution" is "the action of sharing something out among a number of recipients," NEW OXFORD AM. DICTIONARY, 506 (3d ed. 2010), the Court's analogy squarely describes the distribution of widgets to consumers under this common definition.[15] The fact that the tractor trailers carry the widgets from the main distribution center to regional distribution centers, without stopping at customer locations on the way, does not transmute the truck's role from distribution to transmission or something else. However, the Landowners treat Washington Gas' high-pressure pipelines like the tractor trailers of the Court's analogy, and low-pressure pipelines that have

[15] A specialty definition also defines "distribution" to mean "the action or process of supplying goods to stores and other businesses that sell to consumers." *Id.* The Board of Supervisors clearly intended the general definition and not this specialized one because its ordinance expressly contemplates "distribution to consumers" and not to "businesses." FCZO § 4102.4.X(3)(a).

laterals to individual properties like the minivans to perform this transmutation.[16] However, this is a subjective distinction without support in the ordinance. Washington Gas' entire series of pipelines engage in the distribution of gas. They are all exempt from the Zoning Ordinance § 4102.4.X(3) exactly as the Zoning Administrator originally stated. The BZA erred by holding she was incorrect.

The Court reaches this conclusion based on the BZA having made a conclusion of law and not a finding of fact that the Phase 6 pipeline was a "transmission" line instead of a "distribution" line. However, even if the BZA made this a finding of fact, the Court's ruling is unchanged because the Court has a different factual record than the BZA had. The Court took evidence and finds that Washington Gas rebutted any BZA's factual determination that the Phase 6 pipeline is not a distribution line. The Court found Washington Gas' witness, Aaron Stuber, particularly credible. He testified that Washington Gas only delivers gas to ultimate consumers of gas. (Tr. at 208.) It does not resell gas. (Tr. at 67, 80.) It does not produce gas. (Tr. at 78.) It does not transport gas from a storage facility. (*Id.*) Washington Gas obtains the gas it distributes from supplier pipelines at a "city gate." (Tr. at 73.) It uses different types of pipes to bring gas to consumers—some are larger, high pressure that do not immediately connect to customers; others are lower pressure and lead up to customer's individual gas meters for their use. (Tr. at 72.) Washington Gas classifies its pipelines as "low," "medium," and "high" pressure. Only low-pressure pipelines link to the meters of individual landowners who use gas. However, all three are used for distribution. (Tr. at 171.) Washington Gas receives its gas at the city gate and distributes all of it, making its entire system a distribution system.

Alternatively, Washington Gas offered credible evidence that its Phase 6 pipeline may directly service at least one customer laterally.[17] (Tr. at 101.) This evidence was not before the BZA and rebuts its fact finding. This fact alone damages the Landowners' position because, even under their interpretation of the ordinance, the pipeline must be deemed a distribution pipeline where it directly connects with a lateral to a customer. It also highlights the weakness of the Landowners' thesis. What does one call a gas pipeline that runs under a street and connects laterally to some properties along the way but not all? The Landowners would logically have to say that the pipeline is a "distribution" line when it connects to a property but becomes a "transmission" line when it skips a couple of properties between properties with laterals. This interpretation yields absurd results.

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[16] Landowners argue that pipes between gate stations and regulator stations are not part of the distribution process, citing to Washington Gas' own website calling the former pipes "transmission pipelines." (Def. Ex. 16.) However, concerning "distribution," the Court sees no principled difference between transportation of widgets by tractor trailer to regional distribution centers and transportation of gas by high pressure lines to regulator stations. Each is a macro component of distribution, but each is part of the distribution to consumers for the reasons discussed in this section.

[17] However, it remains clear that the pipeline will not directly service Pimmit Hills property owners laterally. (Tr. at 188-89.)

3. "Transmission lines" are different than "transmission pipelines."

The Landowners and Washington Gas argue that Phase 6 is or is not a "transmission line" since it falls or fails to fall under the definition of a "transmission pipeline" and is regulated or not through Zoning Ordinance § 5100.2.Q(1). The Court need not resort to this definition; the Zoning Ordinance *only* uses the term "transmission *pipeline*" in the context of Article V's provisions on *form*-based zoning. It is irrelevant to any determination that Phase 6 is a "transmission *line*" for the purpose of Article IV's provisions on *use*-based zoning. FCZO § 9103.4(E). Even so, in the spirit of comprehensiveness, a transmission "pipeline" is a "transmission line that transports gas as defined in the [CFR], Title 49, [§] 192.3." FCZO § 9102. Title 49 of the CFR, section 192.3, in turn, defines a transmission pipeline as a

> pipeline . . . that: (1) transports gas from a gathering pipeline or storage facility to a distribution center, storage facility, or large volume customer that is not downstream from a distribution center; (2) has an [maximum allowable operating pressure] of 20 percent or more of [specified minimum yield strength]; (3) transports gas within a storage field; or (4) is voluntarily designated by the operator as a transmission pipeline.

The Court finds as fact that the Phase 6 pipeline fails to meet this definition. The BZA never made any fact-findings vis-à-vis whether Phase 6 qualifies as a "transmission pipeline" precisely because the determination has no bearing on whether Phase 6 is exempt or not from regulation under Article IV of the Zoning Ordinance. The BZA never found that the pipeline transports gas from a gathering pipeline or storage facility to a distribution center, storage facility, or large volume customer that is not downstream from a distribution center. It only found that the pipeline passed through Pimmit Hills without laterals to the properties in the neighborhood. (R. at 557.) If it did find that Phase 6 met this prong of the definition, the Court finds that Washington Gas rebutted that finding. (Tr. at 76–80, 113.) Washington Gas distributes all gas it acquires from suppliers through the city gate to consumers or customers. Other than by "repackaging" the gas into lower pressure pipes, it distributes all its gas for them to burn. (Tr. at 130–33, 171, 208–09.)

The BZA never found that the Phase 6 pipeline has a maximum allowable operating pressure of 20 percent or more of specified minimum yield strength. It only found that it uses "high pressure" pipes passing through the neighborhood as opposed to "low pressure" pipes directly leading to property owners. If it did find that Phase 6 met this prong of the definition, the Court finds on its record that Washington Gas rebutted that finding. (Tr. at 91.) Washington Gas will operate below 20 percent to avoid any "transmission" pipeline classification. (Tr. at 82–91.) The Court recognizes that the pipes Washington Gas intends to install can carry gas at transmission-level pressure. Nonetheless, Washington Gas' Aaron Stuber testified that this capability is intended for safety purposes and that the company will not exceed that pressure[18]; thus, the Court holds based on this fact that a pipe capable of "transmission" can nonetheless be

[18] (Tr. at 205.)

used for the purpose of "distribution." *Fritts v. Carolinas Cement*, 262 Va. 401, 405 (2001) ("We agree with the trial court's analysis that, generally, the function, rather than the form of a structure, is relevant to defining the use under the zoning ordinance."). The Court can understand the Landowners' skepticism that Washington Gas will truly keep its gas pressure below 20 percent in a pipe built to handle higher pressure. However, if Washington Gas exceeds the pressure threshold it would subject itself to County regulation under the Zoning Ordinance, something it clearly does not want.

The BZA never found that Phase 6 would transport gas within a storage field. The Court on its record finds that it will not. (Tr. at 81.)

Finally, the BZA never found that Washington Gas voluntarily designated Phase 6 as a transmission pipeline. If the BZA had made this finding the Court on its record finds that Washington Gas rebutted the finding. Washington Gas does not officially refer to its pipelines as "transmission" lines, nor will it refer to the pipeline in Phase 6 as a "transmission" line. (Tr. at 82.) Washington Gas colloquially has referred to such lines as "transmission" lines at times. (Tr. at 123–24, 136–39, 141–153.) (Pl. Ex. 12, 29.) (Def. Ex. 1, 7, 15.) (R. at 86.) However, the Court accepts Mr. Stuber's testimony that those references are shorthand and not terms of art. (Tr. at 159.) This use of language is very common. The Court often distinguishes colloquialisms from intended terms of art. For example, one might refer to a temporary heavy equipment repair as a "Band-aid approach," meaning that it is a temporary repair. No one using this colloquialism literally intends to use a small adhesive bandage typically used for a small skin cut for a heavy equipment repair. Mr. Stuber testified that some employees at Washington Gas will refer to "the high-pressure distribution" line as a "transmission" line because the former is a "mouthful." (Tr. at 156–57.) In any event, the Phase 6 pipeline is not even installed. Even if Washington Gas voluntarily designated similar installed lines as transmission pipelines it does not automatically follow that it will gratuitously do the same for Phase 6. As of this Opinion Letter, the Court finds Washington Gas has not voluntarily done so for Phase 6.

The Court concludes that the Phase 6 pipe is a distribution pipe. It is not a transmission line. It is not a transmission pipeline.

4. The Zoning Ordinance Exempts Washington Gas' pipes from zoning regulation.

Whether the Zoning Ordinance summarily, exempts Washington Gas' pipes from regulation, as discussed in section III(B)(1) of this Opinion Letter, or exempts the pipes through a distribution/transmission analysis discussed in section III(B)(2)-(3), it exempts the pipes from County zoning regulation. The BZA erred in ruling that Washington Gas requires a special exception to proceed with Phase 6.

C. The BZA Erred in Considering Virginia Code § 15.2-2232.

Washington Gas assigns error to the BZA's ruling that Phase 6 is subject to a § 2232 review since this issue was not before the BZA on appeal. However, this Court cannot affirm or reverse a decision that was never made. Here, the BZA only briefly discussed the issue of a review pursuant to VA. CODE ANN. § 15.2–2232, and expressly excised its musings from its overall decision:

> [I]f this isn't for distribution, then a 2232 would be required. Now *we're not being asked that question today*, necessarily, and I don't think the applicants have taken that position, but looking at 15.2-2232, my conclusion *would* be, this is . . . not a natural gas distribution facility. This is a transmission facility . . . . Because it's a transmission line . . . it needs a 2232.

(R. at 558–59) (emphasis added). The Board has authority on appeal to hear and decide appeals from determinations like the one made by Zoning Administrator Johnson here, provided that any decision is "based on the board's judgment of whether the administrative officer was correct." VA. CODE ANN. § 15.2–2309(1). The Landowners never asked the Zoning Administrator to determine whether Phase 6 would be subject to a § 2232 review. (R. at 72–75.) Thus, there was no zoning determination for the Landowners to appeal on this basis. Stated differently, the issue of whether Phase 6 is subject to a § 2232 review was beyond the scope of the BZA's authority on this appeal. To the extent that Vice Chairman Hart's musings as to the potential need for such a review could be seen as subjecting Phase 6 to the review — which would be a blatant mischaracterization of the Zoning Administrator's decision below — the BZA erred.

III. THE DECLARATORY JUDGMENT CASE SEEKS AN ADVISORY OPINION.

Washington Gas' only remaining argument, contained in the Dec. Action, is that the Byrd Road Act, the Dillon Rule, and VA. CODE ANN. §§ 56–256, 56–458 preempt the BZA from zoning in a VDOT right-of-way. An action is moot when the issues presented are no longer live, or the parties lack a legally cognizable interest in the outcome. *Berry*, 884 S.E.2d at 521. Further, an action is moot when a claim that is "potentially viable at some point in the future" has yet "to mature into a justiciable controversy." *Id.* at 522.

Since the Court holds the Phase 6 pipeline is exempt from Fairfax County regulation because the Zoning Ordinance exempts it, the Court need not reach the question of whether the County could regulate the pipeline if it wanted to do so. In other words, the arguments presented by Washington Gas are rendered moot by the Court's holdings because Washington's Gas' claims are not live. *See Berry*, 884 S.E.2d at 521 ("[The Virginia Constitution] does not authorize Virginia's courts to issue advisory opinions on moot questions." (internal quotation marks omitted)) (noting that an action is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome). Likewise, unless and until Washington Gas' Phase 6 pipeline is subject to regulation under the Zoning Ordinance, the issue of whether the Zoning Ordinance would be preempted is not ripe for adjudication.

IV. CONCLUSION.

Washington Gas brings these consolidated actions to overturn the BZA's ruling subjecting their Phase 6 pipeline to the Fairfax County Zoning Ordinance. This Court holds that Phase 6 is a pipe for the distribution of gas to consumers and is exempt from regulation under the Zoning Ordinance. Therefore, it is not subject to special exception approval. The Court further holds that the issue of whether Phase 6 is subject to a § 2232 review was beyond the scope of the BZA proceedings below, and therefore any determination on this point was *ultra vires*. Regarding the Dec. Action, this Court declines to consider the question presented by Washington Gas in that action because it is unripe considering the Court's forgoing holdings.

This Court will affirm the BZA's conclusion that the Landowners had standing to appeal the Zoning Administrator's underlying determination. This Court will reverse the BZA's decision as to (1) determining that Phase 6 is a "transmission line," (2) concluding that Phase 6 is subject to regulation under the Zoning Ordinance, (3) ruling that Phase 6 requires special exception approval, and (4) ruling that Phase 6 is subject to a § 2232 review.

An appropriate Order is attached.

Kind regards,

[redacted]

David A. Oblon
Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia

Enclosure

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

IN RE: FEBRUARY 2, 2022, DECISION OF THE BOARD OF ZONING APPEALS OF FAIRFAX COUNTY, VIRGINIA,	)	
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WASHINGTON GAS LIGHT COMPANY Plaintiff,	)	CL–2022–2942, -3061
v.	)	
CHRISTINE CHEN ZINNER, *et. al.* Defendants.	)	

ORDER

THIS MATTER came before the Court September 5-7, 2023, on Plaintiff's Writ of Certiorari and Amended Complaint. For the reasons set forth in the Opinion Letter of October 12, 2023, incorporated by reference, it is

ORDERED the Board of Zoning Appeals' ruling is AFFIRMED IN PART AND REVERSED IN PART. Its ruling that Defendants had standing is AFFIRMED. Its ruling that Washington Gas is subject to zoning regulations under the current Fairfax County Zoning Ordinance is REVERSED, to wit: (1) that Phase 6 is a "transmission line," (2) that Phase 6 is subject to regulation under the Zoning Ordinance, (3) that Phase 6 requires special exception approval, and (4) that Phase 6 is subject to a § 2232 review. It is further

ORDERED Plaintiff's Amended Complaint seeking a declaratory judgment is DISMISSED AS MOOT.

THIS MATTER IS ENDED [redacted]

Judge David A. Oblon

OCT 12 2023

Entered

PURSUANT TO RULE 1:13 OF THE RULES OF THE SUPREME COURT OF VIRGINIA, ENDORSEMENT OF THIS ORDER IS WAIVED BY DISCRETION OF THE COURT. ANY DESIRED ENDORSEMENT OBJECTIONS MAY BE FILED WITHIN TEN DAYS.