

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 16th day of March, 2017.*

Gary Pisner, Appellant,

against Record No. 151793  
Circuit Court No. CL-2012-17764

Fairfax County Board of Supervisors, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Fairfax County.

Upon consideration of the record, briefs, and argument of the appellant in proper person and counsel for the appellee, the Court is of the opinion that there is no error in the judgment of the Circuit Court of Fairfax County.

The Circuit Court of Fairfax County dismissed with prejudice Gary Pisner's petition for a writ of certiorari, which appealed an adverse decision of the Board of Zoning Appeals. Relying on *Frace v. Johnson*, 289 Va. 198, 200, 768 S.E.2d 427, 429 (2015), the court below concluded that Pisner's failure to name a necessary party, the County Board of Supervisors, in his petition constituted a fatal defect that required dismissal. Pisner appeals that decision to this Court. For the reasons set forth in *Boasso America Corp. v. Zoning Administrator*, \_\_\_ Va. \_\_\_, \_\_\_ S.E.2d \_\_\_ (2017) (Record No. 160202), we affirm the decision of the circuit court.

Code § 15.2-2314 makes the Board of Supervisors a necessary party when a litigant appeals a decision of a board of zoning appeals to the circuit court. Reviewing our precedent, we concluded in *Boasso* and *Frace* that a petitioner who wishes to initiate a proceeding under Code § 15.2-2314 must identify the local governing body as a necessary party in a separate caption of the petition or in the body of the petition, and the petitioner must do so within the 30-day period provided by Code § 15.2-2314. Pisner did not do either of those things. Accordingly, the circuit court committed no error in dismissing his petition. *Boasso*, \_\_\_ Va. at \_\_\_, \_\_\_ S.E.2d at \_\_\_.

Pisner's principal argument in support of reversal is that he mentioned the Board of Supervisors a number of times in his petition for a writ of certiorari. Each of those instances, however, constituted no more than a descriptive or passive reference to the Board of Supervisors. As we stated in *Boasso*, however, a petitioner must make it clear to "a reasonable reader . . . from the petition's text or context or both that the [necessary party] is being mentioned not as a mere historical reference within the larger background of the case, but as the party against whom the appeal is being taken." \_\_\_ Va. at \_\_, \_\_ S.E.2d at \_\_. Pisner did not do so. Consequently, we affirm the judgment below. The appellant shall pay to the appellee two hundred and fifty dollars damages.

This order shall be certified to the said circuit court.

A Copy,

Teste:

A handwritten signature in black ink, appearing to read "John L. Haringer". The signature is written in a cursive style with some flourishes.

Clerk