VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday, the 30th day of December 2025.

Present: All the Justices

HISTORIC FREDERICKSBURG FOUNDATION, INC., APPELLANT,

against Record No. 250020
Court of Appeals No. 0822-23-2

THE CITY COUNCIL FOR THE
CITY OF FREDERICKSBURG, ET AL., APPELLEES.

UPON AN APPEAL FROM A
JUDGMENT RENDERED BY THE
COURT OF APPEALS OF VIRGINIA.

The Historic Fredericksburg Foundation, Inc. ("HFFI") appeals the judgment of the Court of Appeals affirming the circuit court's dismissal of HFFI's Petition for Appeal and Motion for Declaratory Judgment. HFFI's appeal to the circuit court challenged the Fredericksburg City Council's determination that HFFI lacked standing as an aggrieved person to appeal the Fredericksburg Architectural Review Board's ("ARB") decision to issue a certificate of appropriateness ("COA") for the demolition of a structure in the City's historic district. The Court of Appeals concluded that the circuit court did not err because HFFI's declaratory judgment claims were untimely and moot and because the circuit court had properly applied the "fairly debatable" standard in reviewing the City Council's standing determination. Finding error only in the application of the "fairly debatable" standard of review, we affirm in part, reverse in part, and remand.

I.

HFFI, a nonprofit, historical-preservation organization, is headquartered in the historic Lewis Store building in the Fredericksburg historic district. The Lewis Store was built in 1749, and HFFI purchased the property in 1996 in order to restore the Lewis Store building. HFFI's property is located approximately 46 feet from the structure that the ARB approved for demolition ("Subject Structure"). The Subject Structure was built in the early 1900s and had

been used as a detached dwelling and garage for the historic Charles Dick House, which was built in the mid-1700s.

The McDermotts, the owners of the land in the historic district on which the Charles Dick House and the Subject Structure stand, applied to the ARB for a COA to demolish the Subject Structure after the structure and its attached retaining wall fell into a state of disrepair. Along with the demolition request, the McDermotts submitted a report prepared by an engineering firm, which stated that the retaining wall supporting both the Charles Dick House and the Subject Structure had a "major failure" in 2019. 2 J.A. at 533. The McDermotts had subsequently repaired the portion of the retaining wall supporting the Charles Dick House, but they did not repair the portion supporting the Subject Structure.

After the failure of the retaining wall, the Subject Structure now has "cracks in the foundation wall, slab and the racking of the structure" and "is a potential danger to life and safety." R. at 661. The City hired its own structural engineer, who agreed that the "overall stability" of the Subject Structure had deteriorated and outlined a six-step process for repairing it, including the first step of repairing the retaining wall. 2 J.A. at 539-40. The McDermotts in turn submitted two more reports from an engineer and a contractor, who both opined that "the degree of danger involved in salvaging this building is, by far, outweighed by the cost of repairs." *Id.* at 541, 543. The ARB ultimately approved the demolition of the Subject Structure "due to its poor structural condition." *Id.* at 565.

HFFI appealed the ARB's decision to the City Council pursuant to Fredericksburg City Code § 72-23.1(F)(1), which states that "[a]ny person aggrieved by a decision of the ARB may appeal such decision to the City Council." HFFI asserted to the City Council that it was "aggrieved" by the ARB's decision because it has "a direct, substantial, immediate, and pecuniary interest" in preserving the Subject Structure "that is 'different from that suffered by the public generally.'" 1 J.A. at 59-60 (quoting Fredericksburg City Code § 72-84). The demolition of the Subject Structure, HFFI contends, would "have a direct and substantial negative impact on the value of the HFFI Property located approximately 46-feet away," would "cause particularized harm . . . by eliminating this historical landmark from within the viewshed of the Lewis Store building" where it advocates for historical preservation, and "would have a detrimental effect on the 'overall historic character and feeling of this portion'" of the historic district. *Id.* at 60 (citation omitted). HFFI argued that it had satisfied the definition of

"aggrieved party" in Fredericksburg City Code § 72-84, which incorporates the standing test set forth by this Court in *Friends of the Rappahannock v. Caroline County Board of Supervisors*, 286 Va. 38, 48-49 (2013).

Prior to the City Council hearing, HFFI's counsel inquired about the format of the hearing and whether it would be an evidentiary hearing. The City Attorney responded that the City Council "is making a legislative decision" and "is not sitting in some quasi-judicial or appellate capacity." 1 J.A. at 65. Approximately a week before the hearing, the City Attorney further informed HFFI's counsel that, in her view, HFFI had not established that it was "aggrieved" with standing to appeal to the City Council and that she expected the City Council to "hear and decide the question of standing first." *Id.* at 67. In a memo provided to the City Council, the City Attorney advised the City Council that it needed to "decide a threshold issue" — whether HFFI was "an 'aggrieved person' with standing to appeal the approval of the certificate of appropriateness." *Id.* at 151. The City Attorney opined that "the issuance of the permit to demolish the [Subject Structure] does not impact HFFI's legal or equitable rights, or impose any obligation or burden on HFFI that is different from the interest of the public generally in the matter." *Id.* The City Attorney concluded that HFFI's "interest in this particular case does not meet the legal definition of 'standing.'" *Id.* at 158. "Upon consideration" of HFFI's assertions, the hearing arguments, and the City Attorney's standing memo, the City Council ultimately decided to dismiss HFFI's appeal of the ARB decision "due to HFFI's lack of legal authority or 'standing' to bring the appeal." *Id.* at 304.

HFFI next filed a Petition for Appeal and Motion for Declaratory Judgment in the circuit court. HFFI first sought declaratory judgments that the City Council had exceeded the scope of its authority by adopting a judicial standing test for a legislative appeal and that the City Council's dismissal of HFFI's appeal was per se arbitrary and capricious because the City Council applied a judicial standing test without any procedural rules or standards for the proceeding. In its petition for appeal, HFFI also asserted that the City Council's dismissal of its appeal was contrary to law because HFFI had sufficiently pleaded that it was an aggrieved person under the definition outlined in the City Code. The City Council demurred to each of HFFI's counts, and the circuit court sustained the City Council's demurrers and dismissed the case with prejudice.

The circuit court first reasoned that HFFI's two declaratory judgment claims were improper, in violation of the rule set forth in *Norton v. City of Danville*, 268 Va. 402 (2004), because HFFI challenged the ordinance underlying the City Council decision from which HFFI was appealing. *See* 2 J.A. at 820. Although the circuit court found the declaratory judgment claims to be untimely, it analyzed their merits in dicta and found them to be meritless. The circuit court concluded that the City Council's adoption of a judicial standing test for a legislative appeal did not violate the Dillon Rule because the ordinance was necessarily or fairly implied by its enabling statute. *Id.* at 821. The circuit court further reasoned that even though "[t]he city council acted in a legislative capacity, . . . determining whether a party has standing does not make the Council a judicial body." *Id.* Thus, the City Council's decision that HFFI lacked standing without any procedural rules or standards "was lawful . . . and was neither arbitrary nor capricious." *Id.* at 822.

As for HFFI's appeal of the City Council's standing decision on the merits, the circuit court also sustained the City's demurrer "given the deferential appeal standard of the [circuit court's] authority to consider the appeal" and HFFI's failure to demonstrate that the City Council's dismissal of the appeal on standing grounds "was either contrary to law or an abuse of discretion." *Id.* at 823. The circuit court, applying the fairly debatable standard of review, held that "the review of the petition and pleadings and record show reasonable persons could disagree as to whether the petitioner met the standard of particularized harm from the demolition" of the Subject Structure. *Id.* at 822-23.

HFFI appealed the circuit court's dismissal of its claims to the Court of Appeals. HFFI argued (1) that its declaratory judgment counts were ripe for adjudication; (2) that the City Council's adoption of the aggrieved-person standing test violated the Dillon Rule; (3) that the City Council's dismissal was arbitrary and capricious because it failed to adopt procedural rules and standards for a legal, not legislative, proceeding; (4) that the circuit court erred in applying the fairly debatable standard of review to uphold the City Council's standing determination; and (5) that the circuit court erred in finding the facts insufficient to satisfy the aggrieved-person standing test. In an unpublished opinion, the Court of Appeals affirmed the circuit court's judgment.

The Court of Appeals held that the circuit court did not err in finding HFFI's declaratory judgment counts to be untimely and moot and, as a result, in refusing to consider the merits of

HFFI's assignments of error concerning them. *See Historic Fredericksburg Found., Inc. v. City Council for the City of Fredericksburg*, Record No. 0822-23-2, 2024 Va. App. LEXIS 710, at *14 (Dec. 10, 2024) (unpublished). The Court of Appeals also held that the circuit court used the correct standard to review the City Council's decision based upon the express language of the City's ordinance and its enabling statute. *See id.* at *16-17. Based upon this "fairly debatable" standard of review, the Court of Appeals held that the circuit court was justified in upholding the City Council's decision that HFFI lacked standing because "reasonable and objective persons could have reached different conclusions as to whether HFFI would have suffered particularized harm — i.e., a decrease in HFFI's property value — from the demolition of the Subject Structure." *Id.* at *18-19. HFFI now appeals to this Court.

II.

HFFI challenges on various grounds the decision of the Court of Appeals affirming the circuit court. "On appeal, we review a circuit court's judgment sustaining a demurrer de novo." *Eubank v. Thomas*, 300 Va. 201, 206 (2021). "We consider as true the facts alleged in the motion for judgment and the reasonable factual inferences that can be drawn from the facts alleged," but "[w]e do not evaluate the merits of the allegations" — "only whether the factual allegations sufficiently plead a cause of action." *Id.* We will address each of HFFI's arguments in turn.

A.

HFFI first argues that its declaratory judgment claims were not "untimely" and "moot" but were "ripe for adjudication." *See* Appellant's Br. at 20-28. The Court of Appeals reasoned that "HFFI had already participated in its legislative appeal under [Fredericksburg City Code § 72-23.1(F)(1)], subjected itself fully to the ordinance's standing test, and received an unfavorable decision from the City Council that HFFI lacked standing" before it filed its declaratory judgment claims in circuit court. *Historic Fredericksburg Found., Inc.*, 2024 Va. App. LEXIS 710, at *12. We agree with the Court of Appeals that the circuit court correctly dismissed HFFI's declaratory judgment claims because HFFI's right had already matured and the alleged wrong had already been suffered.

Declaratory judgment statutes were enacted to respond to the common-law principle that "there could be no action in the absence of actual injury — someone must have been hurt." *Pure Presbyterian Church of Wash. v. Grace of God Presbyterian Church*, 296 Va. 42, 55 (2018)

(citation omitted); *see also Morgan v. Board of Supervisors*, 302 Va. 46, 69 (2023) ("The Declaratory Judgment Act provides 'a speedy determination of actual controversies between citizens, and to prune, as far as is consonant with right and justice, the dead wood attached to the common law rule of "injury before action" and a multitude of suits to establish a single right.'" (citation omitted)). Virginia's Declaratory Judgment Act states that its purpose "is to afford relief from the uncertainty and insecurity attendant upon controversies over legal rights, without requiring one of the parties interested so to invade the rights asserted by the other as to entitle him to maintain an ordinary action therefor." Code § 8.01-191.

"The main purpose of the declaratory judgment is that a man may have a judicial declaration of what his rights, powers, privileges and immunities are before he has suffered an injury or done a wrong to another." Martin P. Burks, Common Law and Statutory Pleading and Practice § 192, at 309 (T. Munford Boyd ed., 4th ed. 1952). A simple metaphor illustrates the point well: "Under the [common] law you take a step in the dark and then turn on the light to see if you have stepped in a hole. Under the declaratory judgment law you turn on the light and then take the step." *Id.* (citation omitted). This statutory novelty "created an intermediate tier of judicial power between the open-gate response to fully accrued claims and the closed-gate response to anything less than that." *Ames Ctr., L.C. v. Soho Arlington, LLC*, 301 Va. 246, 253 (2022). Courts are thus permitted to declare a party's rights before they mature in a declaratory judgment, but disputed issues or facts should not be resolved in a declaratory judgment. *See Pure Presbyterian Church of Wash.*, 296 Va. at 55. "[W]here claims and rights asserted have fully matured, and the alleged wrongs have already been suffered, a declaratory judgment proceeding, which is intended to permit the declaration of rights before they mature, is not an available remedy." *Id.* (citation omitted).

HFFI's declaratory judgment claims were untimely because HFFI did not raise them until after it had suffered the alleged wrong caused by the underlying ordinance that HFFI sought to invalidate with a declaratory judgment. In order to present a proper declaratory judgment claim, HFFI should have brought a challenge to the ordinance before the ordinance was enforced against it in its legislative appeal to the City Council. We thus find no error in the judgment of the Court of Appeals affirming the circuit court's dismissal of the declaratory judgment claims because HFFI's rights had already matured. For the same reason, the Court of Appeals did not

err by refusing to review HFFI's challenges to the circuit court's dicta (albeit stated as substantive rulings) regarding HFFI's declaratory judgment claims.

B.

HFFI next challenges the judgment of the Court of Appeals affirming the circuit court's dismissal of HFFI's appeal of the City Council's decision that HFFI was not an aggrieved person and thus lacked standing to appeal the ARB's decision to the City Council. HFFI further argued that the Court of Appeals erred by affirming the circuit court's application of the fairly debatable standard when reviewing the City Council's standing decision. Agreeing with HFFI that the circuit court applied an incorrect standard of review to the standing issue, we reverse and remand to the Court of Appeals with instructions to remand to the circuit court for consideration of the standing issue in the first instance using the proper standard of review.

Fredericksburg City Code § 72-23.1(F)(1) and (2) both state that "[a]ny person aggrieved by a decision" of either the ARB or the City Council may appeal to the City Council or to the circuit court, respectively.[1] The term "aggrieved party" is defined in Fredericksburg City Code § 72-84 as one "with a direct, substantial, immediate, and pecuniary interest in the subject matter of the proceeding, in the nature of a denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon the party different from that suffered by the public generally." This definition incorporates the judicial standing test previously set forth by this Court in similar land-use cases. *See, e.g.*, *Morgan*, 302 Va. at 59; *Friends of the Rappahannock*, 286 Va. at 48-49. The enabling statute for the locality's ordinances on historical districts also states that "[t]he governing body shall provide by ordinance for appeals to the circuit court for such locality from any final decision of the governing body . . . and shall specify therein the parties entitled to appeal the decisions." Code § 15.2-2306(A)(3).

[1] During oral argument before this Court, the City Attorney contended that the aggrieved-person standard in the City's ordinance in this case was similar to the ordinance in *Historic Alexandria Found. v. City of Alexandria*, 299 Va. 694 (2021). *See* Oral Argument Audio at 18:17 to 18:45 (contending that *Historic Alexandria Foundation* is "not very dissimilar from this case except that the setting for the decision of standing was determined by a court and not by the City Council"). The ordinance in *Historic Alexandria Foundation*, however, had one important distinction — the "aggrieved" standard in the ordinance only governed who could appeal the City Council's decision to the circuit court while mere "opponents to the granting" of a COA by the ARB "shall have the right to appeal to and be heard before the city council." 299 Va. at 697 (citation omitted).

Standing is a legal question that is subject to de novo review. *See, e.g., Anders Larsen Tr. v. Board of Supervisors*, 301 Va. 116, 122 (2022); *Platt v. Griffith*, 299 Va. 690, 692 (2021). Even legal questions that arise during legislative hearings are subject to de novo review by the circuit court. *See Rowland v. Town Council of Warrenton*, 298 Va. 703, 710 (2020). As this Court has previously held, a standing determination "requires an exercise in judicial line-drawing." *Morgan*, 302 Va. at 59. The City Council is not a judicial body or even a quasi-judicial body — it is a legislative body that does not conduct "judicial line-drawing," *id.*[2] Further, standing "is a preliminary jurisdictional issue having no relation to the substantive merits of an action" and "can be satisfied without the necessity of asserting a plausibly successful claim on the merits." *Id.* at 58 (citation omitted). "If the standing analysis simply tracked this decisional sequence on the merits, it could create an absurdity: A court would never be able to decide the merits of a claim against a claimant because that would mean the court never had jurisdiction to address the merits in the first place." *Id.* at 59.

The Court of Appeals improperly framed its review of the standing issue by focusing on the standing issue before the City Council rather than the standing issue before the circuit court. While standing can be incorporated into local government codes and enabling statutes for use by local governmental bodies, these provisions cannot change the concept of judicial standing before a court. The standing issue before the circuit court did not require it to consider whether the City Council had correctly decided standing under the City Code but rather whether HFFI had judicial standing to appeal the City Council's decision to the circuit court. While this distinction is nuanced, the standards of review for these two questions vary greatly. The question of judicial standing before the circuit court was a legal question subject to de novo review. *See Anders Larsen Tr.*, 301 Va. at 122. The Court of Appeals thus erred in affirming the circuit court's application of the fairly debatable standard[3] to uphold the City Council's dismissal

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[2] The City Council does not contend otherwise, and the City Attorney admitted to HFFI's counsel in an email that "the Council is making a legislative decision when it decides one of these appeals — it is not sitting in some quasi-judicial or appellate capacity in that sense." 1 J.A. at 65.

[3] This highly deferential standard cannot be applied to review legal questions but is only used to review legislative actions. "[L]egislative actions are presumptively correct" and are reviewed by courts for reasonableness. *Norton*, 268 Va. at 408-09. "Legislative action is reasonable if the matter in issue is fairly debatable" or "when the evidence offered in support of

for lack of standing. Because the circuit court has not yet decided the legal question of judicial standing in the first instance using de novo review, we remand this matter to the Court of Appeals with instructions to remand to the circuit court to make such a determination consistent with this order.[4]

III.

Finding error in the judgment of the Court of Appeals only as to the circuit court's review of HFFI's standing to appeal, we affirm in part, reverse in part, and remand for further consideration by the circuit court.

This order shall be certified to the Court of Appeals of Virginia and to the Circuit Court of the City of Fredericksburg.

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Clerk

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the opposing views would lead objective and reasonable persons to reach different conclusions." *Id.* at 409 (citations omitted).

[4] This order, however, does not answer whether an aggrieved party as defined in the Fredericksburg City Code would be the same as a party who has judicial standing before the circuit court because the circuit court has yet to decide this legal question in the first instance.