

**Work Session Agenda
Staunton City Council
Rita S. Wilson Council Chambers
September 10, 2020
5:00 p.m.**

- | | | |
|------------------|-------------------|--|
| 5:00 p.m. | | Mayor's Introductory Remarks |
| 5:05 p.m. | 1. | Consideration of Work Session and Regular Meeting Agendas |
| 5:10 p.m. | 2. & B | Discussion of Ordinance to Amend the FY2021 Budget for the City of Staunton by Adding Budget Amendment Number Three |
| 5:25 p.m. | 3. | Presentation on Flood Mitigation Initiative |
| 6:10 p.m. | | Break |
| 6:30 p.m. | 4. | Update on U.S. Environmental Protection Agency (EPA) Brownfields Program and Grant |
| 6:45 p.m. | 5. | Discussion of Participation of Police Department and Fire-Rescue Department in July 4 Parade |
| 7:00 p.m. | 6. | Discussion of Previously Adopted Resolution of the Council of the City of Staunton, Virginia, Regarding Litigation Related to Continued Zoning and Building Code Violations |
| 7:15 p.m. | | Break |

**Regular Meeting Agenda
Staunton City Council
Rita S. Wilson Council Chambers
September 10, 2020
7:30 p.m.**

Call to Order

Mayor's Introductory Remarks

Pledge of Allegiance

Invocation/Moment of Silence—Mead

Mayor's Report

Proclamation—Constitution Week

Additional Items by Members of Council

Approval of Minutes

Work Session and Regular Meeting of August 27, 2020

REGULAR MEETING

- A. Public Hearing and Consideration of a Request by David Morgan for a Special Use Permit for 271 N. Lewis Street (PID# 1340) for the Construction of an Accessory Residential Structure on Property Zoned B-2, General Business District***
- B. Introduction and Public Hearing of Ordinance to Amend the FY2021 Budget for the City of Staunton by Adding Budget Amendment Number Three***
- C. Discussion and Consideration of Virginia Risk Sharing Association Risk Management Grant**
- D. Discussion and Consideration of Virginia Tourism Corporation Recovery Marketing Leverage Program Grant**
- E. Presentation and Consideration of Work Plan of Staunton Bicycle and Pedestrian Advisory Committee**

Matters from the City Manager

Matters from the Public*

Adjournment

***To participate in the Public Hearing and Matters from the Public portions of the City Council meeting:**

- Dial toll free number: **(844) 854-2222**
- When prompted, enter the access code for the meeting: **619358#**
- You will hear the automated word "Muted"
- At that point, you will have been added to the queue to share your comments with Council
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CITY COUNCIL



AGENDA BRIEFING

Staunton, VA

Meeting Date:	September 10, 2020	City Council
Item #	1	
Ordinance #		
Department:	City Council	
Council Vision:	Responsive, Efficient Government	
Subject:	Work Session and Regular Meeting Agendas	

Background: Consistent with Procedural Memorandum No. 3, attached are draft meeting agendas for City Council's consideration and for approval as Council prefers.

Suggested Motion: I move to approve the Work Session agenda and the Regular Meeting agenda [as presented] [with the following changes: as to the Work Session, the addition/deletion of _____; as to the Regular Session, the addition/deletion of _____].

City Manager: Steven L. Rosenberg

**Work Session Agenda
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CITY COUNCIL



AGENDA BRIEFING

Staunton, VA

Meeting Date:	September 10, 2020	Staff Members: Phil Trayer Chief Finance Officer Leslie Beauregard Assistant City Manager
Item #	2 & B	
Ordinance #		
Department:	Finance City Manager	
Council Vision:	Responsive, Efficient Government	
Subject:	Ordinance to Amend the FY2021 Budget for the City of Staunton by Adding Budget Amendment Number Three	

Background: The third budget amendment for fiscal year 2021 has been prepared for your review and discussion. The total budget amendment equals \$5,577,648. The introduction and public hearing of this ordinance is scheduled for this meeting, and consideration of the ordinance is scheduled for September 24, 2020.

City Budget Amendment—\$ 3,960,460

The amendment includes \$153,000 for appropriations associated with the elimination of three budgeted furlough days across all funds. The breakdown includes \$128,904 to the General Fund; \$13,086 to the Water Fund; \$1,815 to the Sewer Fund; \$780 to the Stormwater Fund; and \$8,415 to the Environmental Fund.

CARES Act—The Registrar's Office has been awarded \$56,275 in CARES Act funding to support local election efforts. The amendment also recognizes \$2,075,961 of Prior Year Fund Balance appropriation of CARES Act funding support received in FY2020 which remained unspent as of June 30, 2020. The amendment also includes \$1,675,221 in newly received CARES Act funding for the City in FY2021. Funding will be utilized in accordance with federal guidelines to support the City's efforts to minimize the negative impact of the COVID-19 pandemic on its citizens. Areas of focus includes support for public schools, small business assistance, COVID-19 testing, telework costs, disinfection and sanitation of public facilities, personal protective equipment and building modifications to enhance social distancing and minimize exposure opportunities to

citizens and staff, wage support for public safety personnel, regional jail COVID-19 related costs, and other costs deemed necessary for safe operations of government.

School Budget Amendment—\$1,593,092

The Education Fund amendment totaling \$1,593,092 appropriates CARES Act funding to be used to expand and enhance technology hardware to allow for effective distance learning capability. Funds will also be allocated to ensure proper sanitation of facilities when students return for in-person instruction as well as additional support staff for teachers for periods of remote learning. Finally, there will be allocations made to allow for social distancing to occur in the classroom as well as the food service setting.

Attachments:

Budget Amendment Number Three
Notice of Public Hearing
CARES Act Funding Update

City Manager's Recommendation: Recommend the ordinance be introduced as presented and that City Council conduct the public hearing.

Suggested Motion: I move to introduce an ordinance amending the fiscal year 2021 budget by adding Budget Amendment Number Three, totaling \$5,577,648 and that Council conduct a public hearing of the ordinance.

City Manager: Steven L. Rosenberg

Ordinance No. 2020-
AN ORDINANCE TO AMEND
THE FY 2021 BUDGET ORDINANCE
FOR THE CITY OF STAUNTON
BY ADDING BUDGET AMENDMENT NUMBER THREE

BE IT ORDAINED, by the City Council of the City of Staunton, Virginia, that the FY2021 Budget is amended as follows:

GENERAL FUND

Anticipated Revenue

General Revenue	\$ 153,000
Miscellaneous Federal Revenue	<u>3,807,460</u>
Total Revenue	<u><u>\$ 3,960,460</u></u>

Appropriations

Nondepartmental (CARES Act Funding)	2,343,272
Transfers to Other Funds	<u>1,617,188</u>
Total Appropriations	<u><u>\$ 3,960,460</u></u>

WATER FUND

Anticipated Revenue

General Revenues	\$ 13,086
Total Revenue	<u>\$ 13,086</u>

Appropriations

Operations	<u>\$ 13,086</u>
Total Appropriations	<u>\$ 13,086</u>

SEWER FUND

Anticipated Revenue

General Revenue	\$ 1,815
Total Revenue	<u>\$ 1,815</u>

Appropriations

Operations	<u>\$ 1,815</u>
Total Appropriations	<u>\$ 1,815</u>

ENVIRONMENTAL FUND

Anticipated Revenue

General Revenue	\$ 8,415
Total Revenue	<u>\$ 8,415</u>

Appropriations

Operations	<u>\$ 8,415</u>
Total Appropriations	<u>\$ 8,415</u>

STORMWATER FUND**Anticipated Revenue**

General Revenue	\$	780
Total Revenue	\$	780

Appropriations

Operations	\$	780
Total Appropriations	\$	780

EDUCATION FUND**Anticipated Revenue**

General Revenue	\$	1,593,092
Non-Capital Grants and Contributions		-
ec619	\$	1,593,092

Appropriations

Operations	\$	1,593,092
Total Appropriations	\$	1,593,092

GRAND TOTAL BUDGET AMENDMENT NO 3.	\$	5,577,648
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INTRODUCED: September 10, 2020

PUBLIC HEARING: September 10, 2020

Public Hearing Advertisement Date: September 01, 2020

Approved this _____ day of _____ 2020

Effective Date: _____

CERTIFIED: _____

ATTEST: _____

Suzanne F. Simmons
Clerk of Council

Andrea W. Oakes
Mayor of Council

FY 2021 BUDGET AMENDMENT NO. 3

	LEDGER CODE	REVENUE	EXPENDITURE
<u>NONDEPARTMENTAL</u>			
To record Furlough waivers			
Prior Year Fund Balance	11001-41930	\$ 128,904	
Suspense Account	11099800-56997		\$ 128,904
 <u>To appropriate CARES Act Funding</u>			
Miscellaneous federal revenue	11001-46250-COVID	\$ 3,751,182	
Contingency - CARES Act	11099800-56997-COVID		\$ 2,158,090
Transfer to Education Fund	11099600-59390-COVID		\$ 1,593,092
Record CARES Act Carryover Funding and new FY21 Funding			
Miscellaneous Federal Aid - Cares Act Elections	11013-46250-COVEL	\$ 56,278	
Materials and Supplies	11011410-55415-COVEL		\$ 56,278
Record Elections Cares Act Funding			
 TRANSFERS TO OTHER FUNDS			
<u>WATER FUND</u>			
Prior Year Fund Balance	11001-41930	\$ 13,086	
Transfer to Water Fund	11099600-XXXXX		\$ 13,086
<u>Sewer Fund</u>			
Prior Year Fund Balance	11001-41930	1815	
Transfer to Sewer Fund	11099600-XXXXX		\$ 1,815
<u>Stormwater</u>			
Prior Year Fund Balance	11001-41930	780	
Transfer to Stormwater Fund	11099600-XXXXX		\$ 780
 <u>Environmental Fund</u>			
Prior Year Fund Balance	11001-41930	\$ 8,415	
Transfer to Environmental Fund	11099600-XXXXX	.	\$ 8,415
TOTAL GENERAL FUND		\$ 3,960,460	\$ 3,960,460

FY 2021 BUDGET AMENDMENT NO. 3

GENERAL FUND		AMOUNT	
	LEDGER CODE	REVENUE	EXPENDITURE

BUDGET AMENDMENT NO. 3 GENERAL FUND SUMMARY

GENERAL FUND REVENUE SUMMARY

General Revenues		\$ 2,228,961
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Appropriation of Prior Year Fund Balance

Suspense Account	128,904
Federal CARES Act Funding	482,869
Transfer to Stormwater Fund	780
Transfer to Water Fund	13,086
Transfer to Sewer Fund	1,815
Transfer to Education Fund	1,593,092
Transfer to Environmental Fund	8,415

Federal Revenue		1,731,499
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CARES Act Funding	1,731,499
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Total General Fund Revenues	<u><u>\$ 3,960,460</u></u>
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GENERAL FUND EXPENDITURE SUMMARY

Nondepartmental	2,343,272
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Transfer to Other Funds	<u>1,617,188</u>
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Total General Fund Expenditures	<u><u>\$ 3,960,460</u></u>
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NOTICE OF PUBLIC HEARING

TO THE CITIZENS OF THE CITY OF STAUNTON, VIRGINIA

TAKE NOTICE that on Thursday, September 10, 2020, at the regular meeting of City Council at 7:30 p.m., a public hearing will be held to amend the Fiscal Year 2021 budget and will consider the adoption of the following ordinance:

An Ordinance to amend the FY 2021 Budget Ordinance for the City of Staunton, by adding Budget Amendment Number 3. A brief synopsis of the proposed budget amendment is stated below:

General Fund	\$ 153,000
General Fund - CARES Act Funding	\$ 3,807,460
Water Fund	\$ 13,086
Sewer Fund	\$ 1,815
Stormwater Fund	\$ 780
Environmental Fund	\$ 8,415
Education Fund	\$ 1,593,092
Total FY2021 Budget Amendment # 3	<u>\$ 5,577,648</u>

A copy of the full text of the proposed ordinance is available by (i) emailing the Clerk of Council at simmonssf@ci.staunton.va.us, (ii) calling the Clerk of Council at 540.332.3180 to request a copy, or (iii) viewing the meeting agenda packet available online at <https://www.ci.staunton.va.us/agendas-minutes>.

All persons wishing to address Council during the public hearing may do so in person or use the following procedure to participate by telephone:

- Dial toll free number: (844) 854-2222
- When prompted, enter the access code for the meeting: 619358#
- You will hear the automated word “Muted”
- At that point, you will have been added to the queue to share your comments with Council
- While you are in the queue, you will hear the audio feed of the meeting
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- Participants are reminded that the Public Hearing portion of the meeting is a time for Council simply to listen to your comments.

Suzanne F. Simmons
Clerk of Council

Please run this advertisement on Wednesday, September 1, 2020

CARES Act Funding Update

September 10, 2020

On May 12, 2020, the City received notice that it would receive \$2,175,221 in CARES Act relief funds. On July 28, 2020, staff received notice of a second round of CARES Act funding, for a revised total of \$4,350,442.

Very generally, CARES Act funds may be used for qualifying expenses of state and local governments that:

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the state or local government; and
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

City staff formed a CARES Act working group that has been working to determine how the City may spend these funds within the guidelines provided, and is reviewing new information on use of the funds as it is released. And as this is a fluid process, staff anticipates that decisions regarding the funds will continue to be made over the course of the next several months.

This is the second briefing providing an update to Council on the CARES Act funds and will include the following:

- FY2020 actual expenses
- FY2021 actual and encumbered expenses to date
- Staff recommended expenses through December 30, 2020
- Unfunded requests and requests under consideration

1. FY2020 actual expenses

As of June 30, 2020, **\$132,485** was expended on COVID-related costs for both the City and Staunton City Schools. These included personal protective equipment (PPE), disinfectant, hand sanitizer, cleaning supplies, Zoom platform subscriptions for virtual meetings, serology testing for employees, floor markings for physical distancing for elections and other city departments, custodial services, glass and plexiglass partitions for customer service areas, business assistance in the form of PPE kits, the match requirement for the Emergency Disaster Relief Loan Program for businesses administered by the Staunton Creative Community Fund, and communications related to COVID.

2. FY2021 actual and encumbered expenses to date

In FY2021, **\$1,925,237** has been spent and/or encumbered to date for these purposes:

All Departments/General Facilities – \$127,884

- PPE, including mask dispensers for the public, disinfectant, hand sanitizer, and cleaning supplies for all public buildings
- Physical distancing markings in all customer service areas
- Signage informing the public and employees of recommended safety practices
- Staff time substantially dedicated to COVID-related activities, such as cleaning restrooms and other public areas on a more frequent basis and communications services
- Touchless technology for bathrooms, such as touchless sinks, soap dispensers, toilets and foot-operated trashcans
- Updates to courthouse audio equipment, meals for jurors and additional courtroom cleaning/disinfecting

Human Resources/Employees – \$97,425

- Elimination of all furlough days for public safety employees
- Teleworking expenses to better accommodate employees who need to work from home
- Serology testing for any City employee who requests it

Public Safety – \$93,449

- Sheriff Office's vehicle to accommodate the transport of prisoners and maintain separation
- Four cardiac defibrillators to maintain distance from possible COVID-19 patients during CPR, reduce number of caregivers needed during a cardiac arrest incident and improve caregiver safety when providing CPR during transport
- Middle River Regional Jail related expenses

Business Recovery/Assistance – \$500,000

- Small Business Assistance Grant program administered by Staunton Economic Development Authority

City Schools – \$1,106,479

- Technology needs, including increase in wireless and server capacity
- Operations and transportation, PPE, touchless faucets and toilets, and sanitation equipment
- Nutrition needs including meal delivery for students and associated equipment

3. Staff recommended expenses through December 30, 2020**Support for Individuals/Nonprofits – \$250,000**

Working through the Community Foundation of the Central Blue Ridge, which would serve as a subrecipient of the funds, staff recommends allocating funds for the following purposes:

- Rent/Mortgage Assistance - \$125,000
- Gas/Electric Utilities Assistance - \$25,000
- Childcare Assistance - \$100,000

Note that these figures may change/increase if the demand begins to increase.

City Schools – \$458,690

- Technology needs, including increase in wireless and server capacity
- Childcare for school employees

SDDA – \$12,000

- Funding will help make the downtown experience better and safer in light of physical distancing and the need to brand formerly in person events to virtual events. Funds will pay for live cam technology, a digital shopping and dining guide, additional sandwich boards to provide signage on how to enjoy downtown in a safe manner, and additional mobile power boxes for special events.

Visitor Center/Tourism - \$32,240

- As the City prepares to reopen the visitor center, making the tourist experience safer in the COVID-19 environment would include interactive displays, digital tourism guides, PPE and face coverings for the public, contactless visitor sign-in system, outdoor kiosk to eliminate the need to enter the center, two air purifiers, and updated bathrooms with touchless technology.

HVAC Improvements – Courts and City Buildings – \$100,000 (est.)

- Still under review until the City's HVAC contractor, Carrier, can perform an assessment as to what various options might be available to improve air quality in City facilities.

Technology Improvements – Council Chambers and Caucus Room – \$200,000 (est.)

- There are several improvements being explored by staff to enhance the public meeting experience in Council Chambers and the Caucus Room as hybrid or all virtual meetings continue to be the norm. These include the following:
 - Audio improvements to integrate better with Zoom
 - In room video and presentation displays that can be integrated with Zoom
 - Audio stream improvements
 - Streaming video
 - Integrating the public comment sections into the system to include more efficient call screening and handling
 - Smart boards in the Caucus Room

Planning and Development Software – \$50,000

- This enterprise package software for permit and plan review management and code enforcement will allow customers to access these services online rather than requiring them to visit City Hall in person. This will improve responsiveness to citizens as well as efficiency for staff.

Valley Alcohol Safety Action Program (VASAP) – \$3,950

- VASAP requested funds to purchase technology to facilitate the provision of services to clients during the pandemic, including virtual class instruction. Funding would cover the cost of two desktop computers, one laptop computer, two cameras, and an intercom system that would allow their staff to communicate with clients in the lobby area to maintain appropriate physical distance.

Reserved Contingency – \$501,840

- Set aside for contingency purposes including, for example, for the purchase of additional PPE, disinfectant and sanitizing needs, teleworking needs, technology to improve virtual meetings and increase transparency, staffing needs to continue *Dine Out in Downtown*, and building modifications.

Unreserved – \$684,000

- Funds unallocated at the present time. Current unfunded requests under consideration, as detailed below, exceed proposed CARES Act funding by \$298,935, excluding the costs of addressing temporary housing needs or hazard pay.

4. Requests still under consideration

Temporary Housing Needs

It came to staff's attention recently that a need may arise to assist Staunton's unsheltered population. The Valley Community Services Board received \$120,000 recently to continue housing individuals at the Motel 6 through December 31; however, there is a waiting list and providing temporary housing during the pandemic would be a qualifying use of funds. Staff is waiting for an estimate of need and will inform Council as that information is made available to us.

Hazard Pay

The CARES Act guidance issued by the U.S. Treasury Department provides that localities may use CARES Act funds for hazard pay to public safety, public health, health care, human services and other employees who are substantially dedicated to mitigation or responding to the COVID-19 public health emergency. City staff are exploring how and the extent to which CARES Act funds might be used to pay hazard pay to the City's public safety employees, including police and fire-rescue personnel, and whether there is a mechanism (other than CARES Act funds) to provide some additional compensation to the City's non-public safety employees in recognition of the extra efforts and contributions of those employees, too, during the public health emergency. Staff will engage further with the City's external auditor to obtain clarification and will share a final recommendation with Council.

Fire & Rescue Department

- COVID Response Unit – \$700,000

Police Department

- 4 SUVs – \$106,000
- Parking Enforcement System – \$38,000

Visitor Center/Tourism

- Newly designed website – \$75,000
- New furniture and exhibits/reconfiguration of visitor center – \$40,000
- 5,000 custom branded face coverings – \$21,935

SDDA

- Mobile planters and street furniture for special events – \$2,000

CITY COUNCIL



AGENDA BRIEFING

Staunton, VA

Meeting Date:	September 10, 2020	Steve Rosenberg City Manager John Glover Building Official Nickie Mills City Engineer Phil Trayer Chief Finance Officer Rebecca Joyce Community Program Manager, CSPDC
Item #	3	
Ordinance #		
Departments:	City Manager's Office Community Development Finance	
Council Vision:	Built Environment Responsive, Efficient Government	
Subject:	Presentation on Flood Mitigation Initiative	

Background: Recognizing and understanding the devastating toll that the recent damaging floods have taken on residents and businesses, City staff, with urgency, has commenced exploration of measures to improve the City's flood resilience. At Council's work session on September 10, 2020, City staff will brief Council, framing the issues and suggesting next steps.

City Manager's Recommendation: Not applicable.

Suggested Motion: Not applicable.

City Manager: Steven L. Rosenberg

Staunton's Great Flood - September 29, 1896

On September 29, 1896 the Shenandoah Valley was hit by a significant flood event. According to hurricane data, this flood most likely occurred as a result of a tropical storm that was tracking through Virginia at the time. The rain which fell steadily all day, increased in volume through the evening, and culminated in torrential flooding that night.

For the City of Staunton, this was the worst flood in its history. Lewis Creek and its tributaries overflowed their banks devastating residential neighborhoods and the downtown business district. Houses, sheds, and stables were washed off their foundations and swept away, causing piles of debris to come crashing down streets. Six people died in Staunton as a result of the flood. Homes in the downtown residential area received four feet of water. Twenty-two businesses were heavily damaged or destroyed. Damages were estimated at over \$15 million dollars (2019 dollars).

Residents of Staunton compared the Flood of 1896 to the Great Flood of 1889 in Johnstown, Pennsylvania. The heavy, localized flooding was swift and its damage difficult for people to grasp. The Flood of 1896 would become the flood of record for the City of Staunton.

Staunton Flood Events:

September 28 - 30, 1870 Tropical System

September 29, 1896 Tropical System

March 16 - 17, 1936

June 19, 1972 Hurricane Agnes

November 4, 1985 Hurricane Juan

June 22 - 28, 1995

September 6, 1996 Hurricane Fran

August 8, 2003



Staunton: 1896 Flood Damage

Newspapers Reports About the Flood:

"Augusta Street from Frederick to the county jail became a Niagara. No woman could have lived in its torrent a moment...When the torrent struck against telephone poles, it leaped ten feet in the air. Central Avenue was likewise a cataract, and from the corner of the Crowle building to Thornburg's stable, it pitched with a force that was awful. Great abysses were dug by it in the street."

"... toward the arch bridge over the Middlebrook road, nothing but the broken roofs and sides of houses, lumber, machinery and smaller houses standing at all conceivable angles can be seen."

"M. Erskine Miller & Bro. had their coal yards cleaned out, all their shedding carried away, 1,500 tons of coal swept off, fifteen horses and mules drowned, a large amount of lumber, sash, doors, and other property gone."

"Up Lewis Street the water came about four feet deep in the floors of many of the residents, and their carpets, parlor, and dining room furniture are ruined with water and slime, many lost their canned fruit, and winter supplies of every character."

"Rhea was playing at the opera house and many persons had gone there and they did not realize the fury of the storm. Toward the last act one of the company announced that 'the village' was submerged, and this caused a rush for the door, but only for the audience to find that they had no chance of reaching home, as neither the Virginia Hotel nor the Eakleton could then be reached."

Sources:

Staunton Spectator, September 30, 1896

Yosts Weekly, October 2, 1896

Rockingham Register, October 2, 1896

Unisys Tropical Cyclone Data

Downtown Staunton's Flood - August 8, 2003

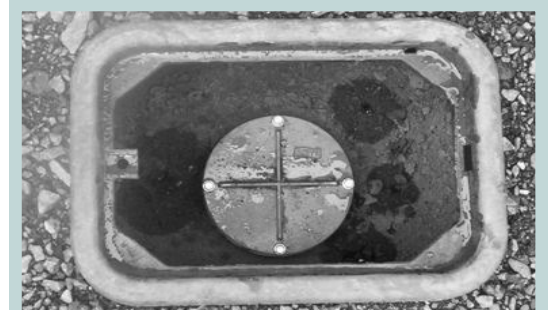


The Night Of The 2003 Flood

Staunton's most recent significant flood event occurred on August 8, 2003, after a thunderstorm cell stalled out over the downtown area, dropping between four to six inches of rain in an hour. This heavy rainfall caused structures downtown to fill with two to seven feet of water. Floodwaters receded within several hours leaving \$1.7 million dollars (2019 dollars) in damages to 55 businesses and up to 70 homes. Gypsy Hill Park and the Johnson Street Parking Garage also sustained damage. This severe flood event was not given a presidential disaster declaration because the flooding was so localized.

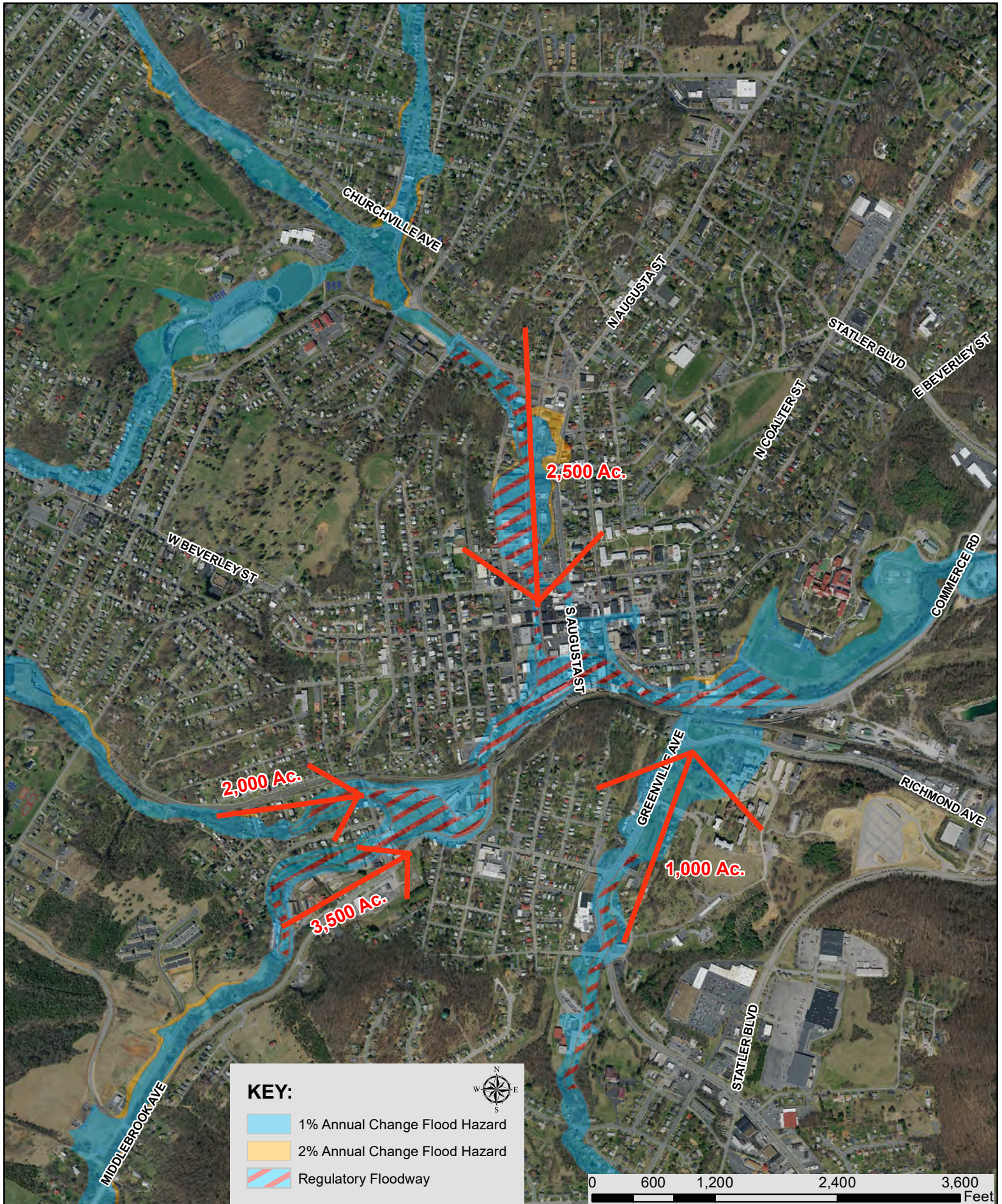
Because of a disaster declaration that occurred for the State of Virginia in September 2003 as a result of Hurricane Isabel, the City received grant funding from the Federal Emergency Management Agency (FEMA) and the Virginia Department of Management (VDEM) to implement a mitigation project in the downtown area. The City of Staunton contributed funding and in-kind resources to this project as well.

Through the City of Staunton Downtown Floodproofing Project, ten commercial properties implemented floodproofing measures in the Byers Street, Lewis Street, and Central Avenue areas of the commercial district. Installation of flood shields for window and door openings, retrofitting check valves on water and sewer lines, and raising applicable outdoor air conditioning units were measures implemented through this project. The construction phase of this project occurred from May to September 2009. Downtown Staunton is more resilient as a result of this floodproofing project.



Downtown Flood Mitigation Project

Flood Zones





August 28, 2020

TO: Leslie Beauregard, Assistant City Manager, City of Staunton
John Glover, Building Official, City of Staunton

FROM: Rebecca Joyce, Community Program Manager

RE: Potential Grant Funding Sources and Resources to Address Flooding Issues

Below are some potential federal and state grant funding programs and other resources that may be helpful to the City in addressing flooding issues. This is by no means an exhaustive list, but the grant programs mentioned below offer a wide range of options to address the flooding issues the City of Staunton encounters. Many of these grant programs include as eligible activities floodplain studies, engineering studies, or funding for project scoping in advance of implementing mitigation activities. In my experience, I have found having a comprehensive strategy based on studies and plans to deal with flooding issues in a community can be helpful because it allows for both vulnerabilities and mitigation activities to be prioritized and resources to be used most effectively.

Federal Emergency Management Agency – Hazard Mitigation Assistance Programs

Flood Mitigation Assistance (FMA) Grant Program:

- The FMA Program is a competitive grant program that provides funding for projects that reduce or eliminate the risk of repetitive flood damage to buildings insured by the National Flood Insurance Program.
- Types of activities that are eligible under this program that might be beneficial to the City include:
 1. Project scoping to develop community flood mitigation and/or individual flood mitigation projects.
 2. Community flood mitigation projects.
 3. Individual property flood mitigation projects.

-
- Federal funding is available for 75 percent of eligible project costs and the remaining 25 percent must come from non-federal sources. For “Severe Repetitive Loss” properties designated by the NFIP, FEMA may contribute up to 100 percent of the eligible costs. For “Repetitive Loss” properties designated by the NFIP, FEMA may contribute up to 90 percent of eligible costs.
 - For the Fiscal Year 2020 FMA Program, the application period opens on September 30, 2020 and will close at 3:00 p.m. on January 31, 2021.

Building Resilient Infrastructure and Communities (BRIC) Grant Program:

- The BRIC Program supports states, local communities, tribes, and territories as they undertake hazard mitigation projects to reduce risk. This new program replaces the Pre-Disaster Mitigation (PDM) Program.
- The guiding principles of BRIC are supporting communities through capability- and capacity-building; encouraging and enabling innovation; promoting partnerships; enabling large projects; maintaining flexibility; and providing consistency.
- The following activities are eligible through the BRIC program:
 1. Capability- and Capacity-Building activities such as strengthening building codes, partnership development, scoping, and mitigation planning.
 2. Mitigation Projects that are either structural or that focus on nature-based solutions.
 3. Management costs.
- Federal funding is available for 75 percent of eligible project costs and the remaining 25 percent must come from non-federal sources. The non-federal match may come in the form of cash, donated or third-party in-kind services, materials, or any combination of these.
- For the Fiscal Year 2020 BRIC program, the application period opens on September 30, 2020 and will close at 3:00 p.m. on January 27, 2021.

Virginia Department of Conservation and Recreation/Virginia Resource Authority

Virginia Dam Safety, Flood Prevention and Protection Assistance Fund:

- Dam Safety, Flood Prevention and Protection Assistance Fund state grants help dam owners and Virginia localities enhance public safety and reduce the risk of dam failures and

property damage from flooding. The fund was established to provide grants to public and private dam owners whose dams are under state regulation. Grants are available also to help local governments improve methods for flood prevention and protection.

- All grants are reimbursements and require a 50 percent match. The maximum amount per grant is determined based on amounts requested from eligible projects, application scores and available funds. The fund is managed by the Virginia Resources Authority on behalf of the Virginia Department of Conservation and Recreation. Grants are awarded through a competitive application process, and awards are approved by the Virginia Soil and Water Conservation Board.
- In previous years, the application period has run from November through February.
- Staunton applied and received funding from this program to do the flood study on Beverley Street. Because the City's funding award was received recently, it may not be eligible to apply for this funding immediately. It could be an opportunity for the future and worth keeping in mind.

Virginia Silver Jackets Team

The Virginia Silver Jackets Team may be a useful resource for the City. State Silver Jackets teams include state agencies with mission areas of hazard mitigation, emergency management, floodplain management, and natural resources management; and federal agencies such as the U.S. Army Corps of Engineers, the Federal Emergency Management Agency, the National Weather Service, and the U.S. Geological Survey. The expertise of the Silver Jackets team is a resource that leverages multiple programs and perspectives to provide cohesive solutions to flood management issues.

CITY COUNCIL



AGENDA BRIEFING

Staunton, VA

Meeting Date:	September 10, 2020	Staff Member: Billy Vaughn
Item #	4	
Ordinance #		
Department:	Community Development	
Council Vision:	Built Environment	
Subject:	U.S. Environmental Protection Agency (EPA) Brownfields Program and Grant Application	

Background: The U.S. Environmental Protection Agency (EPA) Brownfields Program has been instrumental in revitalizing communities across the Commonwealth of Virginia. The purpose of the program is to return vacant or underutilized properties to productive reuse by providing funds for initial assessments and planning that will serve to incentivize investment and jumpstart redevelopment and area-wide revitalization of communities.

While EPA offers multiple types of grants, the City has an opportunity to apply for a Community-Wide Brownfields Assessment Grant totaling \$300,000 which would be funded over a 3-year period. Funded activities include direct costs associated with:

- community engagement, including targeted, site specific efforts as well as broader community education about the program and its benefits;
- brownfields inventory, including initial site characterization, prioritization, access coordination, eligibility determinations;
- environmental site assessments (ESAs), including Phase I and Phase II ESAs, along with associated work plans required by the program;
- planning for site remediation and/or redevelopment, which can include target area or site specific planning, such as marketing/feasibility studies and concept plans; and

- grant administration and required federal reporting.

No direct cash match is required of the City for this grant. Communities typically provide in-kind services toward grant oversight and contract with a qualified environmental consultant to carry out most of the administrative and technical aspects of the program.

At the November 14, 2019 Council work Session, Lori Kroll, Community Resource Specialist with Draper Aden Associates, provided an overview of the program to City Council. Initially, Ms. Kroll recommended that the City apply for a Community-Wide Brownfields Assessment Grant totaling \$300,000, targeting the West Beverley Street corridor during the funding cycle with an application due date of December 3, 2019. However, as a result of a limited time to initiate community engagement efforts, Ms. Kroll subsequently suggested that the City delay submittal of a grant application until the next round.

At the February 27, 2020 Council work session, Ms. Kroll again provided an overview of the program and the community involvement process. Plans were shared to conduct three to four community meetings, beginning in March over a 6-month period, to gather input for the application. This approach was suggested to not only strengthen the application and the implementation should the city receive an award of grant funds, but to position the impacted community at the forefront as champions for these revitalization initiatives.

With the onset of the COVID-19 public health emergency in early March, the scheduled community meetings were postponed indefinitely. Now, staff plans to restart this effort with a community meeting on September 3.

Ms. Kroll will attend Council's work session on September 10, 2020, to provide an update to Council.

City Manager's Recommendation: Not applicable.

Suggested Motion: Not applicable.

City Manager: Steven L. Rosenberg

CITY COUNCIL



AGENDA BRIEFING

Staunton, VA

Meeting Date:	September 10, 2020	Councilwoman Carolyn Dull
Item #	5	
Ordinance #		
Department:	City Council	
Council Vision:	Responsive, Efficient Government	
Subject:	Participation of Police and Fire-Rescue Departments in July 4 Event	

Background: At the request Councilwoman Carolyn Dull, this item has been added to Council's work session agenda for September 10, 2020, for discussion.

Attachment:

Letter to Steven Rosenberg, City Manager

City Manager's Recommendation: Not applicable.

Suggested Motion: Not applicable.

City Manager: Steven L. Rosenberg

Mr. Steven Rosenberg, City Manager
City of Staunton
P.O. Box 58
Staunton, VA 24402

Dear Mr. Rosenberg:

As a City of Staunton citizen, I noticed that a "special" parade was held on the Fourth of July by the newly elected mayor Andrea Oakes and organized by the newly elected council member Amy Darby; with Mr. Robertson and Mr. Claffey participating. I understand that this was held only in certain neighborhoods in Staunton in which the Staunton Police Department and the Staunton Fire Department were participants. I was under the assumption that all Fourth of July activities in the City of Staunton were cancelled due to COVID-19. In watching the video and seeing pictures of the "special" parade on Ms. Darby's and Ms. Oakes's Facebook sites, it seemed to be a relatively small crowd of people involved, which leads me to believe that this was not an actual City of Staunton event where all citizens were invited to participate, even though taxpayers funds were used to pay the Police Department and the Fire Department. Instead, it looked more like a custom-designed "photo-op" for our new Mayor and the other three new members of City Council. Did the Police Department and Fire Department employees receive overtime pay for this? They should have, having to participate in a "special" parade on the Fourth of July during a pandemic.

In looking at comments on Ms. Darby's and Ms. Oakes' Facebook pages and questions regarding the other three Council members that were not present, they were unaware of the "special" parade until the morning it was held.

As a citizen, I am expressing my concerns and disappointment in how this event took place:

- Why was a "special" parade held using taxpayers' dollars and only privileged people knew about it?
- How were the citizens of the City informed of this taxpayer-supported event? Was it only the friends of the four participating City Council members who were notified of it?
- Why weren't ALL the citizens of the City of Staunton informed of this event so that they too could participate?
- What was the "special" parade's route? What neighborhoods were included, and which sections of town were excluded? Who determined this?
- Why were the other Council members not informed of this until the day of the event?

Is this how the newly elected Council members are going to conduct events and happenings for the City of Staunton? Secretively and for their benefit only? I think the City of Staunton citizens are smarter and more intelligent than this and we will be watching!

I am unable to sign this letter as I am an employee with the City of Staunton and considering how the newly elected mayor just pulled off a taxpayer parade for her personal benefit and enjoyment, I am afraid she will have me fired for calling her and the newly elected Council members out on this. Instead, I ask that you respond to these questions publicly.

cc: City of Staunton City Council Members
Staunton News Leader
Doug Guynn, City Attorney

CITY COUNCIL



AGENDA BRIEFING

Staunton, VA

Meeting Date:	September 10, 2020	Councilwoman Amy Darby
Item #	6	
Ordinance #		
Department:	City Council	
Council Vision:	Responsive, Efficient Government	
Subject:	Previously Adopted Resolution of the Council of the City of Staunton, Virginia, Regarding Litigation Related to Continued Zoning and Building Code Violations	

Background: At the request Councilwoman Amy Darby, this item has been added to Council's work session agenda for September 10, 2020, for discussion.

Attachments:

Attachment 1—Certified resolution adopted August 13, 2020, regarding litigation related to continued zoning and building code violations

Attachment 2—Certified resolution adopted June 14, 2018, to authorize appeal of variance decision of the Staunton Board of Zoning Appeals

Attachment 3—Certified resolution adopted June 26, 2014 regarding further authorization for civil enforcement of zoning provisions of the Staunton City Code

City Manager's Recommendation: Not applicable.

Suggested Motion: Not applicable.

City Manager: Steven L. Rosenberg

**RESOLUTION
OF THE
COUNCIL OF THE CITY OF STAUNTON, VIRGINIA,
REGARDING LITIGATION RELATED TO CONTINUED
ZONING AND BUILDING CODE VIOLATIONS**

Recitals

A. The City and its Zoning Administrator have been involved in proceedings for more than 10 years related to walls on property in a residential zone on North Augusta Street, in the City of Staunton, that have been found to violate the City's Zoning laws and were also required to have but lacked a City building permit, being constructed without such permit. Current litigation involves two proceedings: the City's appeal of the 2018 decision, by a 3-2 vote of the Staunton Board of Zoning Appeals, which now has been reversed by the Circuit Court yet another time as to the same walls, in granting the property owner a variance from zoning requirements applicable to others in the City, styled *City of Staunton, Virginia v. Chilton-Belloni*, CL18000404-00; and the City's enforcement action through an injunction proceeding, styled *Angle v. Chilton-Belloni*, CL14000311-00, which remains stayed pending further proceedings. These cases (the Litigation) have also consumed extensive judicial resources, because of the erroneous, unlawful decisions of the Staunton Board of Zoning Appeals.

B. Annexed and incorporated by reference as **Exhibit A** is a copy of the Circuit Court's final order, entered May 19, 2020, reversing the Staunton Board of Zoning Appeals for the second time as to the walls, which represents the fourth straight time that the Staunton Board of Zoning Appeals has been reversed in granting variances for the property owner and two other property owners as to height and location restrictions under Chapter 18.120 of the Staunton City Code.

C. Annexed and incorporated by reference as **Exhibit B** is a copy of the Circuit Court's December 2, 2019 letter opinion referenced and incorporated in the May 19, 2020 final order.

D. The property owner filed a notice of appeal from the Circuit Court's May 19, 2020 final order, a copy of which is annexed and incorporated as **Exhibit C**.

E. Because of the erroneous decision-making by the Staunton Board of Zoning Appeals, the City has had to commit and expend substantial resources, including funds totaling more than \$95,000.00 for legal fees in the Litigation so as to defend its zoning laws and the rule of law.

F. Soon after the entry of the Circuit Court's May 19, 2020 final order, which had been delayed by actions on behalf of the property owner, the City filed on June 9, 2020 a motion for referral to the judicial settlement-mediation process; a copy of the motion is annexed and incorporated as **Exhibit D**. In essence, the City sought to have the ongoing dispute referred to the mediation process under Virginia Supreme Court's judicial settlement program. With the

agreement of counsel for the parties, the Circuit Court entered an order making the referral. A copy of the Circuit Court's referral order is annexed and incorporated as **Exhibit E**.

G. Because of the appellate timeline under the Rules of the Virginia Supreme Court, it appears likely or possible that the mediation process may not be concluded before the City may have to expend further substantial resources in seeking affirmatively further to uphold its zoning laws and the rule of law in the Litigation. The City, through its Litigation counsel by letter dated July 20, 2020, a copy of which is annexed and incorporated as **Exhibit F**, sought the cooperation of the property owner's counsel to seek jointly from the Virginia Supreme Court an enlargement of time for appeal processes. The City Council understands that the Virginia Supreme Court has recognized the extraordinary circumstances already occasioned by the COVID-19 crisis and emergency, entering nine different orders that have enlarged or deferred various other court litigation timelines.

H. Instead of working with the City's Litigation counsel to seek enlargement of the appellate timeline, the property owner's counsel now has filed a petition for appeal on August 17, 2020.

I. The City desires to expend no further substantial resources at this time in the Litigation, especially with having prevailed on every substantive issue in the Litigation and in related litigation in a total of four cases over the years. The Council of the City of Staunton adopts this resolution to memorialize its desire and its respectful, deliberative decision accordingly and its direction to the City's legal counsel, including Litigation counsel, to forego at this time any more substantial expenditure of legal time and financial and other resources in the Litigation, except such necessary time and other resources for mediation and for protection of the integrity of the court record. At this moment and in the foreseeable future, the City of Staunton, as with all localities, continues to have extraordinary demands being placed on its financial and other resources because of the COVID-19 pandemic emergency and crisis situation and most recently for the City of Staunton the added devastating flooding effects suffered on and after August 8 that occasioned the declaration by the local director of emergency management and affirmed by City Council by its resolution adopted August 13, 2020, a copy of which is annexed and incorporated as **Exhibit G**, preliminarily estimated to implicate damages totaling \$3 million dollars and making its decision and direction to its legal counsel through this resolution an even greater imperative.

J. These recitals are an integral part of this resolution.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Staunton, Virginia, that particularly at this time of the COVID-19 crisis and emergency, with extraordinary demands on the financial and other resources of all localities, including the City of Staunton, and the added emergency of the devastating flooding effects suffered by the City of Staunton itself, businesses, and citizens, it respectfully **DIRECTS** its legal counsel, including Litigation counsel, to forego any more substantial expenditure of time and other resources in the Litigation, except for mediation and for protection of the integrity of the court record, and respectfully **DIRECTS** that, even though the property owner has filed a petition for appeal, Litigation counsel shall not prepare and shall not file a brief in opposition to the petition for appeal, provided, however, that Litigation counsel shall respectfully inform the Supreme Court of Virginia of City Council's decision and

directive and that the City and Zoning Administrator are relying upon the complete record and authorities cited, the arguments previously made, the rulings of the Circuit Court, and the Circuit Court's final order, also providing to the Virginia Supreme Court a copy of this adopted resolution.

Adopted this 27th day of August, 2020.



Andrea W. Oakes, Mayor

Attest: Suzanne F. Simmons
Suzanne F. Simmons, Clerk of Council

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF STAUNTON

IN RE: JUNE 12, 2018 DECISION OF THE BOARD OF ZONING APPEALS OF THE
CITY OF STAUNTON, VIRGINIA

CITY OF STAUNTON, VIRGINIA, et al.

Petitioners,

v.

CASE NO. CL18000404-00

DEBRA CHILTON-BELLONI,

Respondent.

FINAL ORDER

This matter is before the Court on the Petition (the Petition) filed by the City of Staunton, Virginia, the City Council of the City of Staunton, Virginia and Rodney S. Rhodes, Zoning Administrator, all by counsel, appealing the June 12, 2018 decision of the Board of Zoning Appeals of the City of Staunton (that Board being herein referenced as the BZA) granting the application of Debra Chilton-Belloni (Ms. Chilton-Belloni) for a variance concerning her real estate identified as 1403 North Augusta Street (the Property) in the City of Staunton, as well as on the Motion to Dismiss Writ of Certiorari and Appeal (the Motion) filed by Ms. Chilton-Belloni, by counsel.

On September 3, 2019 the parties and counsel appeared before the Court for oral argument on the Motion. Upon consideration of the arguments of counsel, both oral and written, the Court issued a letter opinion on September 17, 2019. That letter opinion, which is incorporated herein by reference, ruled upon the Motion in part, but refrained upon a full ruling on the merits of the Motion until further evidence could be heard.

On October 8, 2019 the parties and counsel came before the Court again on the Motion and also upon the Appeal of the award of a variance by the BZA. A hearing was conducted, at which time the Court took evidence from the parties and heard argument of counsel.

The Motion is DENIED for the reasons stated in this Court's letter opinion of December 2, 2019, which opinion is incorporated herein by reference.

Upon the Petition, the Court finds that on the grounds and for the reasons stated in the aforementioned December 2, 2019 letter opinion, the BZA erred in granting the variance to Ms. Chilton-Belloni.

Whereupon, having considered the record of the BZA, all evidence submitted by the parties, the written legal memoranda and oral arguments of counsel, and for the reasons set forth in the aforesaid December 2, 2019 letter opinion, the Court ADJUDGES, ORDERS and DECREES that the Petition is GRANTED, the June 12, 2018 decision of the BZA granting Ms. Chilton-Belloni a variance is hereby REVERSED and Ms. Chilton-Belloni's application for such a variance is DENIED.

All objections to entry of this Order and related arguments, including but not limited to those legal points and arguments reflected in any pleading or other document filed in this case or otherwise stated in oral argument, are noted and reserved by the parties.

In the exercise of its discretion, the Court dispenses with compliance with Rule 1:13 of the Rules of the Supreme Court of Virginia with respect to this Final Order, but counsel for Petitioners and counsel for Respondent may note any objections to it within ten (10) days following entry of this Final Order.

Nothing further to be done, this case is closed.

Entered this 19th day of May, 2020.


Judge

TWENTY-FIFTH JUDICIAL CIRCUIT OF VIRGINIA

CHARLES L. RICKETS, III
~~CHIEF JUDGE~~
GEORGE M. COCHRAN JUDICIAL CENTER
113 EAST BEVERLEY STREET
STAUNTON, VIRGINIA 24401



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COUNTIES
ALLEGANY, AUGUSTA, BATH
BOTETOURT, CRAIG, HIGHLAND ROCKBRIDGE

CITIES
BUENA VISTA, COVINGTON
LEXINGTON, STAUNTON AND WAYNESBORO

December 2, 2019

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In re: June 12, 2018, Decision of the Board of Zoning Appeals of the City of Staunton
City of Staunton, Virginia, *et al.* v. Debra Chilton-Belloni
CL18000404-00

Gentlemen:

This matter came before the Court on the City of Staunton's appeal of the June 12, 2018, decision of the Board of Zoning Appeals of the City of Staunton ("BZA") and Debra Chilton-Belloni's Motion to Dismiss Writ of Certiorari and Appeal ("the Motion"). Oral argument on the Motion was held on September 3, 2019. The Court issued a letter opinion on September 17, 2019, addressing part of the Motion. The rest of the Motion was taken under advisement until further evidence could be heard. The Motion was grounded on the passing of HB 2420 ("the Uncodified Act") in the 2019 Session of the Virginia General Assembly, which, if applicable, would cause the issue in this case to be moot. A hearing on the City's appeal was held on October 8, 2019, at which evidence regarding the Motion was also heard.

This letter opinion addresses the remaining issues from the Motion as well as the City's appeal. For the following reasons, this Court finds that the Uncodified Act does not apply to the

wall at issue in this case. Ms. Chilton-Belloni's Motion to Dismiss is denied. The Court also finds that the BZA did not apply erroneous principles of law. However, the Court finds that the City of Staunton has rebutted the presumption of Virginia Code Ann. § 15.2-2314, and the BZA erred in its decision to grant a variance in this case.

MS. CHILTON-BELLONI'S MOTION TO DISMISS

The Motion's remaining issue is whether the Uncodified Act applies to the wall at issue in this case. For the following reasons, the Uncodified Act does not apply in this case, and the Motion is denied.

ANALYSIS

The Uncodified Act was passed in the 2019 Session of the Virginia General Assembly. The Uncodified Act states:

A wall built on residential property shall be grandfathered as a valid nonconforming use, and the wall shall not be subject to removal solely due to such nonconformity, in any instance where (i) a residential property owner sought local government approval prior to 2008 for construction of a wall on the owner's property, (ii) the property owner was informed by a local official that such wall required no permit and that the structure would comply with the zoning ordinance, (iii) the wall was thereafter constructed, (iv) the locality subsequently informed the property owner that the wall was illegal, and (v) such a wall, had it been constructed as described in clauses (ii) and (iii) after 2017, would be considered a valid nonconforming use not subject to removal.

Ms. Chilton-Belloni must meet these five requirements for the Uncodified Act to apply to the wall at issue. Requirements (i), (ii), (iii), and (iv) of the Uncodified Act are easily met or uncontested. Accordingly, the Court will briefly discuss these elements together. Requirement (v) will be discussed separately below.

Uncodified Act Requirements (i), (ii), (iii), and (iv)

The evidence in this case establishes that the Bellonis were residential property owners of the home located at 1403 North Augusta Street, Staunton, Virginia ("the Property"), prior to 2008. The wall at issue in this case was constructed in 2007, and the events that form the focus of this dispute occurred between 2006 and 2007. While the parties dispute exactly who the Bellonis did or did not speak with regarding approval to build the wall, it is undisputed that they sought approval from the City of Staunton prior to 2008. Accordingly, Ms. Chilton-Belloni has shown that she and her husband were residential property owners and sought local government approval prior to 2008 for construction of the wall on their property.

The record reflects that the Bellonis met with Earl Thompson, a deputy building official, prior to construction of the wall. In a 2008 BZA hearing regarding the wall, Dr. Belloni testified that he met with Mr. Thompson at the Property sometime in the fall of 2006. At that time, Mr. Thompson walked the property along Ridgeview Road and North Augusta Street. According to Mr. Thompson, wall construction had not begun at that time.

Regarding construction of the wall, Dr. Belloni testified that Mr. Thompson told the Bellonis that they could “have at it.” In an October 12, 2011, criminal proceeding against the Bellonis regarding the wall, Mr. Thompson testified that he told the Bellonis that he “felt it would be okay” to build the wall behind the existing hedge. Mr. Thompson further stated that his “intent was that they could build a wall no taller than the hedge where the hedge was existing.”

While Mr. Thompson may not have explicitly told the Bellonis that a permit was not required, the evidence establishes that he met with the Bellonis, reviewed their property, and informed them that, in his opinion, they could build the wall to the height of the existing hedge without any type of approval. The evidence shows that Ms. Chilton-Belloni and her husband were informed by a local official that their wall required no permit and that the wall would comply with the zoning ordinance if it was built no taller than the existing hedge.

The Bellonis received a notice of violation from the City of Staunton in late September 2007, after construction of the wall had begun and was near completion, and well after Mr. Thompson had met and discussed the wall with the Bellonis. Given the above, the Court finds that Ms. Chilton-Belloni has met requirements (i) through (iv) of the Uncodified Act.

Uncodified Act Requirement (v)

The fifth requirement of the Uncodified Act states that, “such a wall, had it been constructed as described in clauses (ii) and (iii) after 2017, would be considered a valid nonconforming use not subject to removal.”

The reference to the year 2017 is important because Virginia Code Ann. § 15.2-2307, governing nonconforming uses, was amended in 2017. The amendment to subsection (D) added the following language:

If the structure is one that requires no permit, and an authorized local government official informs the property owner that the structure will comply with the zoning ordinance, and the improvement was thereafter constructed, a zoning ordinance

may provide that the structure is nonconforming but shall not provide that such structure is illegal and subject to removal solely due to such nonconformity.

Va. Code Ann. § 15.2-2307(D). Accordingly, § 15.2-2307 sets the standard for a “valid nonconforming use not subject to removal” that is required by the Uncodified Act. The relevant part of § 15.2-2307(D) in this case is whether the wall at issue was a structure that required no permit. Thus, the Court must look to the Staunton City Code to determine whether a permit was required for the wall.

Nothing in the Staunton City Code states that a permit is required for a wall. However, Section 15.10.010 provides that the “Virginia Uniform Statewide Building Code . . . is hereby adopted and incorporated herein as fully as if set forth at length herein and the provisions thereof shall be controlling in the construction and maintenance of buildings and structures within the area of jurisdiction of the city.” Because the Staunton City Code incorporates the Virginia Uniform Statewide Building Code (VUSBC), the Court must review the VUSBC to determine if it requires a permit for the construction of a wall.

Ms. Chilton-Belloni argues that the 2000 edition of the VUSBC applies because the 2003 edition, which went into effect on November 16, 2005, allows a *permit applicant* during the one-year period after November 16, 2005, to “choose whether to comply with the provisions of this code or the provisions of the code in effect immediately prior to November 16, 2005.” VUSBC, § 103.2. The 2000 edition was in effect immediately prior to November 16, 2005.

Ms. Chilton-Belloni cannot choose to comply with the 2000 edition because she is not a permit applicant. Section 103.2 of the VUSBC states that, “[c]onstruction for which a *permit application* is submitted to the local building department after November 16, 2005, shall comply with the provisions of this code, except for *permit applications*” that are submitted during the one-year period following November 16, 2005 (emphasis added). Only construction for which a permit application was submitted is entitled to comply with the 2000 edition of the VUSBC. Ms. Chilton-Belloni did not apply for a building permit for the wall, so she was not a permit applicant. Accordingly, the Court finds that the 2003 edition of the VUSBC applies to this case because Ms. Chilton-Belloni was not a permit applicant and the 2003 edition was in effect when the wall was constructed in 2007.

Section 108.1 of the 2003 edition of the VUSBC states that, “[a]pplication for a permit shall be made to the building official and a permit shall be obtained prior to the commencement of any of the following activities . . . 1. Construction or demolition of a building or structure” Section 108.2 of the 2003 edition exempts from application for permit, “fences and privacy walls not part of a building, structure or of the barrier for

a swimming pool, provided such fences and privacy walls do not exceed six feet in height above the finished grade.”

Here, the best evidence regarding the height of the wall is that the wall varies in height between six (6) and seven (7) feet. Tim Hartless has testified several times that he is 6 feet 4 inches tall and that the wall is taller than he is. In addition, photos from the record and hearings on these matters indicate that the wall is taller than Mr. Hartless.

The Court finds that a permit was required before construction of the Bellonis’ wall because the 2003 edition of the VUSBC applies in this case; the wall is a structure for which a permit would be required under the 2003 edition; and the City of Staunton has fully incorporated the VUSBC into their city code. In addition, because the wall required a permit, the Court finds that the wall is not a valid nonconforming use not subject to removal under § 15.2-2307(D). Ms. Chilton-Belloni cannot meet the final requirement of the Uncodified Act.

The Uncodified Act does not apply to the wall in this case, and Ms. Chilton-Belloni’s motion to dismiss is denied.

CITY OF STAUNTON’S APPEAL OF THE JUNE 12, 2018, DECISION OF THE STAUNTON BOARD OF ZONING APPEALS

STANDARD

Virginia Code Ann. § 15.2-2314 provides that a circuit court “may reverse or affirm, wholly or partly, or may modify the decision brought up for review.” The board of zoning appeal’s decision denying or granting a variance application is presumed to be correct. Va. Code Ann. § 15.2-2314. The petitioner must show, by a preponderance of the evidence, that the board of zoning appeals erred in its decision. *Id.*

ANALYSIS

Variance Requirements

The parties have disagreed about the proper version of the statutes applicable in this case. The relevant statutes are Va. Code Ann. § 15.2-2201 (defining variance) and § 15.2-2309 (providing boards of zoning appeals the power to grant variances). The parties argued this variance under the 2014 versions at the BZA as well as before this Court during the City’s appeal of the BZA’s decision. Accordingly, the Court will examine this case under the 2014 versions.

A variance is defined as

[A] reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done.

Va. Code Ann. § 15.2-2201. Boards of zoning appeals have the power to grant variance applications when, because of special conditions, literal enforcement of an ordinance will result in unnecessary hardship, provided that the ordinance's spirit is observed and substantial justice done. Va. Code Ann. § 15.2-2309(2).

In observing an ordinance's spirit and ensuring that substantial justice is done, the power to grant a variance under § 15.2-2309(2) requires that:

[A] property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

Finally, § 15.2-2309(2) limits the power of the board by listing specific findings that must be made before a variance may be granted. A board must find:

[1] [T]hat the strict application of the ordinance would produce undue hardship relating to the property . . . [2] that the hardship is not generally shared by other properties in the same zoning district and the same vicinity[, and] [3] that the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

The board must also find “that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.” *Id.*

Hardship

While the Virginia Code contains several requirements before a board may grant a variance, the most litigated issue, and the primary issue in this case, is whether the hardship requirement has been met.

Here, the City argues that the BZA erred in its decision because the hardship presented by Ms. Chilton-Belloni is not one which is contemplated by the Virginia Code. Ms. Chilton-Belloni argues that it would be a hardship to require her to bring her wall into compliance for a combination of two reasons. First, Mr. Thompson represented that the wall could be built without a permit, and the Bellonis relied on that representation. According to Ms. Chilton-Belloni, requiring that the wall be taken down after being told to build it is a hardship. June 12, 2018, Tr. at 105. Second, compliance with the ordinance would create a financial hardship because the costs in building and removing the wall would be burdensome. *Id.* at 108–09. Thus, the costs of building and removing the wall combined with the Mr. Thompson’s representation that a permit was not needed creates a hardship which requires a variance.

Before addressing whether the hardships advanced by Ms. Chilton-Belloni are those contemplated by the Virginia Code, the Court notes that the BZA failed to make specific findings required by the Virginia Code. As noted above, a board is required to make specific findings before granting a variance. In this case, the BZA failed to make these findings. While Ms. Chilton-Belloni submitted proposed findings, the BZA failed to adopt them. For purposes of this appeal, the Court assumes that the BZA’s votes in favor of granting the variance means that the BZA made the findings required in § 15.2-2309(2).

The Supreme Court of Virginia, as well as the General Assembly, have addressed whether erroneous decisions by building officials confer any rights on the affected individual. In *Segaloff v. City of Newport News*, the Court stated that “a building permit . . . issued in violation of law . . . confers no greater rights upon a permittee than an ordinance itself, for the permit cannot in effect amend or repeal an ordinance, or authorize a structure at a location prohibited by the ordinance.” 209 Va. 259, 261 (1968).

In 1995, the General Assembly enacted a vested rights provision to eliminate the hardship property owners may have suffered from their reliance on erroneous or void zoning decisions. See Va. Code Ann. § 15.2-2311(C); *Bd. of Sup’rs of Richmond Cty v. Rhoads*, 294 Va. 43, 51 (2017). The vested rights provision “manifestly creates a legislatively-mandated limited exception to the judicially-created general principle that a building permit issued in violation of applicable zoning ordinances is void.” *Rhoads*, 294 Va. at 52.

Although this case does not involve an erroneously issued building permit, the general principle still applies. According to the evidence, Mr. Thompson, a building official, represented to the Bellonis that a permit was not needed for the construction of the wall. However, as discussed above regarding the Uncodified Act, a permit was required for construction of the wall.

Mr. Thompson, although perhaps meaning well, did not have the authority to grant the Bellonis permission to build the wall in violation of the City's zoning ordinances. Granting a building permit is preceded by the application for and consideration of such permit. It is a process that can take some time. If the general principle is that an erroneously issued building permit does not confer rights upon the applicant, the same can be said for the erroneously delivered verbal statements of a building official. Furthermore, the vested rights exception to the general principle does not apply in this case. This is not a hardship contemplated by the Virginia Code.

The Supreme Court of Virginia has also addressed whether financial considerations create the type of hardship contemplated by the Virginia Code. The Court has made clear that financial considerations alone do not create the type of hardship required by the code.

The Supreme Court of Virginia has held that financial loss alone cannot establish an exceptional hardship approaching confiscation, but that it "is a factor or an element to be taken into consideration and should not be ignored." *Natrella v. Bd. of Sup'rs of Arlington Cty*, 231 Va. 451, 458 (1986). In *Baum v. Lunsford*, the Supreme Court held that financial loss alone cannot establish a hardship, even under a lesser burden of proof of an "undue hardship." 235 Va. 5, 8 (1988).

It is clear, then, that the financial loss Ms. Chilton-Belloni faces if her variance application is denied is, standing alone, not enough to establish a hardship under Virginia Code, but it should be considered. Considering both financial loss and the reliance on Mr. Thompson's statements together, Ms. Chilton-Belloni has failed to establish a hardship contemplated by the Virginia Code. Each of the two hardships claimed by Ms. Chilton-Belloni are hardships that have been held to not meet the requirements for granting a variance.

While this Court sympathizes with Ms. Chilton-Belloni, and without expressing an opinion as to whether the wall should be removed, this Court finds that the City of Staunton has met their burden of showing, by a preponderance of the evidence, that the BZA erred in its decision granting Ms. Chilton-Belloni a variance. No hardship exists which would require or allow the granting of a variance in this case.

CONCLUSION

Ms. Chilton-Belloni's Motion is denied, and the Court finds that the BZA erred in its June 12, 2018, decision granting Ms. Chilton-Belloni a variance. The Court would respectfully

request that Mr. Santos prepare an order consistent with and incorporating this letter opinion and circulate the same for entry.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'CLR, III', followed by a stylized flourish or mark.

Charles L. Ricketts, III

CLR,III/epl

Cc: Clerk of Court

EXHIBIT C

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF STAUNTON

IN RE: JUNE 12, 2018 DECISION OF THE BOARD OF ZONING APPEALS OF THE CITY
OF STAUNTON, VIRGINIA

CITY OF STAUNTON, VIRGINIA, a municipal corporation

CITY COUNCIL OF THE CITY OF STAUNTON, VIRGINIA

and

RODNEY S. RHODES, Zoning Administrator, of and for the City of Staunton, Virginia

Petitioners,

v.

CASE NO. CL18000404-00

DEBRA CHILTON-BELLONI,

Respondent.

NOTICE OF APPEAL

The Respondent, Debra Chilton-Belloni, by counsel, hereby gives notice of appeal to the Supreme Court of Virginia from the Final Order entered in this case on the 19th day of May, 2020, and from all other adverse rulings entered in the cause, and further gives notice that a transcript or statement of facts, testimony, and other incidents of the case will be filed.

Respectfully submitted this 2nd day of June, 2020.

DEBRA CHILTON-BELLONI
By Counsel

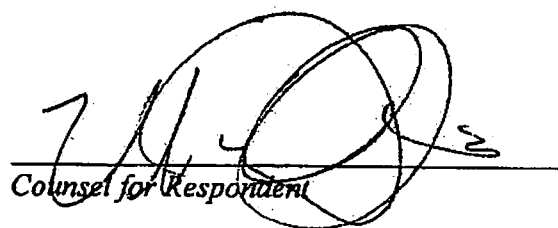


MARK D. OBENSHAIN (VSB #27476)
JUSTIN M. WOLCOTT (VSB #83367)
OBENSHAIN LAW GROUP
420 Neff Avenue, Suite 130
Harrisonburg, Virginia 22801
Tel: (540) 208-0727
Fax: (540) 266-3568
mdo@obenshainlaw.com
jmw@obenshainlaw.com
Counsel for Respondent

CERTIFICATE

I hereby certify that a true copy of the foregoing pleading was sent by facsimile and regular mail this 2nd day of June, 2020 to:

Victor M. Santos, Esquire
John C. Wirth, Esquire
Nelson, McPherson, Summers & Santos, L.C.
P.O. Box 1287
Staunton, VA 24402-1287
Facsimile: (540) 885-2039
Counsel for Petitioners


Counsel for Respondent

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF STAUNTON

**ZONING ADMINISTRATOR FOR AND ON BEHALF
OF THE CITY OF STAUNTON, VIRGINIA, A
MUNICIPAL CORPORATION**
Plaintiff

v.

Case No.: CL14000311-00

DEBRA CHILTON-BELLONI
Defendant

MOTION FOR REFERRAL TO A JUDICIAL SETTLEMENT CONFERENCE

Petitioner, Zoning Administrator for and on behalf of the City of Staunton, by counsel, respectfully moves that the Court, to the fullest extent necessary, refer the parties to mediation by a retired circuit court judge, based on the following:

1. Disagreement between the parties has continued for an extended time and involved numerous proceedings before the Staunton Board of Zoning Appeals (the BZA), the Circuit Court, and the Supreme Court of Virginia regarding the Respondent's claim to a variance from generally applicable City of Staunton zoning laws of which all other Staunton citizens are obliged to follow.

2. Counting the original three cases appealed from the BZA, including one involving the Respondent, and now the latest case, the BZA has been reversed by the Circuit Court in each of the four instances.

3. The unlawful decisions of the BZA and the protracted delays, and special legislation proposed in the General Assembly, caused the City of Staunton to have to incur substantial expense of time and other resources in the City of Staunton's defense of its zoning laws, the integrity of local public body decision-making by the BZA, and the rule of law. It

also has taken substantial time of the judicial system.

4. Now, with the latest rulings again in favor of the City of Staunton and its Zoning Administrator by the Circuit Court last December, memorialized in the Circuit Court's recently entered Final Order, the Respondent has indicated that she intends to cause the City of Staunton and its Zoning Administrator more burden through litigation in the proceedings that reversed the BZA, if not also in this injunction proceeding. Moreover, given the history of the disagreement, it is possible if not likely that the City of Staunton and its Zoning Administrator will be caused added expense as to any further effort to push through the General Assembly yet another piece of legislation that is specifically intended to favor only the Respondent and no one else in the City of Staunton.

5. The City of Staunton and its Zoning Administrator, through counsel, previously proposed a substantial compromise resolution several years ago to the Respondent, who declined to engage in compromise discussions and declined even to propose an counter-alternative to find a basis for compromise resolution.

6. At this juncture, it seems especially timely to ask the Court to refer the parties to mediation and have mediation by a retired circuit court judge occur so that further expense to the City of Staunton, its Zoning Administrator, and the judicial system are avoided.

7. The City of Staunton and its Zoning Administrator remain committed to engage in good-faith, serious mediation proceedings.

**ZONING ADMINISTRATOR
CITY OF STAUNTON, VIRGINIA**
By Counsel

Requested:

Nelson, McPherson, Summers & Santos, L.C.



By: _____

Victor M. Santos (VSB No. 16233)

✓ John C. Wirth (VSB No. 37334)

Courtney A. Dymond (VSB No. 88227)

P.O. Box 1287

Staunton, VA 24402-1287

Tel.: 540-885-0346

Fax: 540-885-2039

CERTIFICATE

I certify that a true copy of this Motion was mailed and faxed on this 9th day of June, 2020 to:

Mark D. Obenshain, Esq.
Justin M. Wolcott, Esq.
Obenshain Law Group
420 Neff Avenue, Suite 130
Harrisonburg, VA 22801



John C. Wirth

**ORDER OF DESIGNATION AND REFERRAL TO
SETTLEMENT CONFERENCE**
COMMONWEALTH OF VIRGINIA Rule 1:19

Case No.

CL14000311-00

In the Circuit Court of the ☒ City ☐ County of

City of Staunton

Sharon E. Angle, Zoning Administrator
PLAINTIFF

v.

Debra Chilton-Belloni
DEFENDANT

The Court has determined that this matter, which is currently before the Court as a contested civil matter, is appropriate for referral to a Settlement Conference. It is hereby ORDERED that:

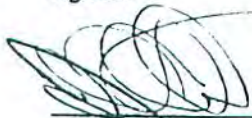
1. The matter is referred to a Settlement Conference, for which there will be no cost to the parties.
2. Pursuant to Code Section 17.1-105, the Honorable Paul M. Peatross, Jr.
Retired Judge for the Sixteenth Judicial Circuit, and a qualified Judicial
Settlement Conference judge, is designated to conduct a Settlement Conference only, to assist the judges
of the Twenty-Fifth Judicial Circuit in the performance of their duties.
3. Counsel will schedule a pre-Settlement phone conference with the Settlement Judge, in order to verify
the date, time, and location of the Settlement Conference, no later than one week prior to the Settlement
Conference.
4. Counsel must submit a confidential pre-Conference brief, of no longer than 5 pages, to the Settlement
Judge no later than 5 days before the Settlement Conference.
5. Each party must provide a representative in person or by telephone who shall have final authority to
settle the case.
6. Irrespective of this referral, this case has been set for return to the Court in accordance with the Court's
normal docketing procedures on October 13, 2020 at 9:00 am
7. The Court must be informed in writing if the dispute is resolved prior to the return date. Otherwise, the
parties shall appear in court at that time.

ENTER:

7/15/2020

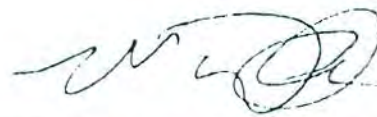
Carrie F. Reed
JUDGE

Agreed:



John C. Wirth (VSB No. 37334)

Nelson, McPherson, Summers & Santos, L.C.
P.O. Box 1287
Staunton, VA 24401
Telephone: (540) 885-0346
Facsimile: (540) 885-2039



Mark D. Obenshain (VSB No. 27476)

Obenshain Law Group
420 Neff Avenue, Suite 130
Harrisonburg, VA 22801
Telephone: (540) 208-0727
Facsimile: (540) 266-3568

A COPY

TESTE

Circuit Court, Staunton, VA

CLERK

NELSON, McPHERSON, SUMMERS & SANTOS, L.C.

ATTORNEYS AT LAW

P.O. BOX 1287

STAUNTON, VIRGINIA 24402-1287

THOMAS R. NELSON (1899-1980)
RICHARD F. McPHERSON (1925-2002)
FRANK L. SUMMERS (1930-2018)
VICTOR M. SANTOS
THOMAS P. McPHERSON
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WEB SITE: www.nelsonmcperson.com

12 NORTH NEW STREET

JESSICA L. ROBINSON
DANIEL E. MOWRY
COURTNEY A. DYMOND

July 20, 2020

**Via Fax (540) 266-3568
and U.S. Mail**

Mark D. Obenshain, Esq.
Obenshain Law Group
420 Neff Avenue, Suite 130
Harrisonburg, VA 22801

Re: *Angle, Zoning Administrator v. Chilton-Belloni*

Dear Mark:

Following up on your email to John of last week, and for clarification, yes, my understanding from direct discussion with City Council is that it declines your client's suggestion that it immediately discontinue its efforts to enforce Ms. Chilton-Belloni's compliance with the zoning ordinance in return for her promise to use her "best efforts" to "maintain the wall...in good repair" and to "care for and maintain" the existing hedge. As stated previously, however, the City remains committed to good faith negotiations in an effort to resolve the dispute, as the City offered before and has renewed in June more formally through a motion for referral to the Virginia Supreme Court's judicial mediation process.

I'd note that the second paragraph of your email evinces a misunderstanding concerning the practicality of the City's settlement proposal. The engineer with whom I met at the site made clear that, despite the fact that some of the block within the wall is reinforced with concrete and rebar, it is entirely possible for the wall to be reduced to a mortar line of block, with cap re-installed, that would approach substantial compliance, though there may still be a slight deviation. The City previously proposed that it would provide a front-end loader and operator for a limited duration at its own expense, to allow Ms. Chilton-Belloni's contractor to load the debris which would then be moved off site in a dump truck supplied by the City. We never received a response, so it seemed obvious your client rejected the City's good-faith compromise offer then. We'd hope that with the Circuit Court's final ruling, now reversing the BZA yet another time in the Belloni matter, not to count the other two original companion matters, Ms. Chilton-Belloni would be willing to seriously explore a prompt resolution.

Mark D. Obenshain, Esq.
July 20, 2020
Page 2

We're prepared to have a mediation session within days, even during a weekend, if necessary. If you know of another settlement judge who will offer us such a quick date, we're ready and willing. Judge Peatross, the settlement judge, proposed initially the date of August 28, which still seemingly would give us time to reach a resolution before any further filings are due. Understanding from your email that you tell us you're unavailable on August 28, I'd appreciate your confirming for us whether you will be available on the next available date Judge Peatross supplied, that being September 25. In the meantime, I will also check to confirm whether an earlier mediation date might be or becomes available. Also, would you join us in a motion that would seek to stay any filing deadlines to afford the parties to use the mediation process, given your apparent lack of availability for so long?

Many thanks.

With best wishes and awaiting your reply, I remain

Sincerely yours,

A handwritten signature in black ink, appearing to be 'V. Santos', written in a cursive style.

Victor M. Santos

VMS:lsj

**RESOLUTION
OF THE
COUNCIL OF THE CITY OF STAUNTON, VIRGINIA
CONSENTING TO AND CONFIRMING DECLARATION OF A LOCAL
EMERGENCY BEGINNING AUGUST 8, 2020**

Recitals

- A. Virginia Code § 44-146.21 authorizes the declaration of a local emergency;
- B. Section 11 of the Charter of the City of Staunton also grants broad powers to City Council;
- C. Retroactive to August 8, 2020, Steven L. Rosenberg, City Manager and Emergency Management Director of the City of Staunton, Virginia did find and declare:

C.1. That due to a significant weather event (and necessarily the effects from it), involving sudden, sustained torrential rainfall and flooding, and real and personal property damage suffered by businesses and individuals, the City of Staunton, Virginia faced dangerous conditions of sufficient scope, severity and magnitude to merit coordinated local government emergency management action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused, especially given the continued existence also of the COVID-19 crisis, emergency and disaster, most recently reaffirmed by City Council in Ordinance No. 2020-04; and

C.2. That due to the significant weather event a condition of extreme peril to life and property necessitated and merited such declaration or proclamation of the existence of a local emergency beginning August 8, 2020 and such circumstances continue, with some citizens and local business owners reportedly dealing with continuing conditions of sufficient severity and magnitude to merit coordinated local government emergency management action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused or being caused; and

- D. These recitals are an integral part of this resolution.

NOW, THEREFORE, the Council of the City of Staunton, Virginia:

1. CONFIRMS, RESOLVES, AND DECLARES, pursuant to Virginia Code § 44-146.21 and such other applicable laws, including, but not limited to, the powers granted by the Charter of the City of Staunton, Virginia, that on August 8, 2020, the Council of the City of Staunton, Virginia, could not and did not convene due to the exigent circumstances and that a local emergency did exist throughout the City of Staunton, Virginia, and continues; and

2. CONFIRMS, RESOLVES, DECLARES AND ORDERS that during the existence of such emergency, the powers, functions, and duties of the Local Emergency Management Director and local emergency services planning organization or committee and City staff shall be those prescribed by Virginia law and the ordinances, resolutions, and approved plans

of the City of Staunton in order to mitigate and otherwise address the effects of such emergency;
and

3. **RESOLVES** that now and retroactively to and including August 8, 2020, Council **CONSENTS** to and **CONFIRMS** such declaration of local emergency, and **RATIFIES** and **AFFIRMS** that all City officials are granted such authority, pursuant to extant law, in such circumstances to take all actions, to the fullest extent permitted by law, to prevent or alleviate the damage, loss, hardship or suffering threatened or caused or being caused by such local emergency;
and

4. **RESOLVES** that, under the unique circumstances, to the extent necessary, the City Manager or designee is authorized to waive any building permit fees under Staunton City Code Section 15.10.120 as to any construction and demolition for property damaged as a result of the August 8, 2020 weather event and necessarily the effects from it for any person, including a corporate entity, current with payment of all obligations otherwise to the City.

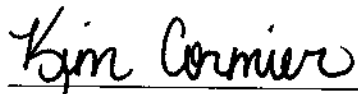
Introduced: August 13, 2020

Adopted: August 13, 2020

Effective: Retroactively as provided



Andrea W. Oakes, Mayor

Attest: 

Kim Cormier, Acting Clerk of Council

**RESOLUTION
OF THE COUNCIL OF THE CITY OF STAUNTON, VIRGINIA
TO AUTHORIZE
APPEAL OF VARIANCE DECISION OF
THE STAUNTON BOARD OF ZONING APPEALS**

BE IT RESOLVED by the Council of the City of Staunton, Virginia, as follows:

1. Uniform enforcement of the zoning provisions of the Staunton City Code (the "City Code") is important for the purposes of achieving the express and implied intent of Title 18 of the City Code and in assuring citizens of the generally equal or similar application of the rule of law in zoning compliance regardless of where the property may be located in the City of Staunton, Virginia, regardless of the standing or identity of the property owner, and regardless of who may represent the property owner.

2. Because of the erroneous actions in 2008 by the Staunton Board of Zoning Appeals ("BZA") in granting variances from longstanding provisions and interpretation of the City Code that reasonably limit the height of fences and walls and restrict the construction of fences and walls at the intersection of two streets, the City of Staunton had to expend substantial resources in seeking judicial review and intervention by the Staunton Circuit Court to correct and reverse the unlawful decisions of the BZA to grant variances or special treatment in three cases. The Circuit Court, invalidating the BZA's actions in all three cases, concluded in its June 17, 2009 Final Order "that the decisions of the Staunton Board of Zoning Appeals to grant each of the three variances are REVERSED; and that the three variance applications are hereby denied", a copy of which Order is annexed and incorporated as **Exhibit 1**. The Circuit Court's Final Order was not appealed by any of the property owners in the three cases, including the case involving the property located at 1403 N. Augusta Street (the "Property").

3. Since the entry of the Circuit Court's Final Order, the Zoning Administrator and the City of Staunton sought voluntary compliance by the property owners in each of the three cases, expressing a desire to work cooperatively with the property owners to achieve substantial compliance notwithstanding the expense and delay the BZA had caused the Zoning Administrator and the City of Staunton with regard to the proper enforcement of the City Code. In two of the matters, the property owners reasonably cooperated and substantially complied. With respect to the remaining, non-compliant property owner (the "Property Owner") of 1403 N. Augusta Street, the City of Staunton, through its Zoning Administrator, continued to seek compliance, but since the ruling of the Circuit Court, the Property Owner engaged in repeated and protracted delay, and used the delay tactically to try to avoid such compliance with the City Code as to the Property. The Zoning Administrator, by communications through at least 10 letters over an extended period of years, has sought voluntary compliance, to no avail.

4. The Property Owner also sought to have the Zoning Administrator, in effect, modify the law under the City Code so that the Property Owner would not be required to comply with provisions that generally have applied to other properties in the City of Staunton in similar situations. The Zoning Administrator properly declined, concluding that the Zoning Administrator had no authority to override laws enacted by the City Council and so notified the Property Owner's legal counsel.

5. The Property Owner continued in violation of the City Code for approximately 10 years despite the City's efforts to achieve compliance.

6. It appeared beyond reasonable doubt to the respected City staff that despite the efforts to get voluntary compliance, the Property Owner ultimately would not comply with the City Code and would continue to seek further delay. Accordingly, the Zoning Administrator and the City of Staunton had no choice but to pursue Council-authorized formal civil injunctive enforcement proceedings through the Circuit Court to assure substantial compliance. Largely to avoid the City's enforcement through injunction proceedings, the Property Owner waited over five years to file yet a second application for a variance with the BZA in 2014, seeking once again another variance from the BZA even though no facts had changed, including that the Property Owner failed to appeal the Circuit Court's 2009 decision to reverse the BZA and invalidate the variance granted to the Property Owner. The City even offered a compromise resolution before injunction proceedings were further pursued, but the Property Owner refused the compromise opportunity simply to lower the wall, choosing instead essentially to continue with the ensuing injunction litigation and now the latest variance proceedings.

7. Following the further judicial proceedings in the Circuit Court, the Supreme Court of Virginia issued a decision that authorized the Property Owner to have yet another hearing before the BZA despite the extensive prior proceedings and the Circuit Court's reversal of the BZA unlawful variance actions in 2009 in all three cases, including that of the Property Owner.

8. The Zoning Administrator properly opposed the latest variance request of the Property Owner, asserting before the BZA in a supplemental briefing, annexed and incorporated as **Exhibit 2**, that the Property Owner, even under the version of the law in 2014 as preferred by the Property Owner, could not establish entitlement to a variance under the facts and the law.

9. On June 12, 2018, the BZA, despite failing to explain how the Property Owner had satisfied all of the necessary requirements under even the Property Owner's preferred version of the law (outlined in a table in **Exhibit 2**), voted by a bare majority of 3-2 to grant the variance. Portions of the transcript of the June 12, 2018 proceedings are annexed and incorporated by reference as **Exhibit 3**. Of the three BZA members who voted for what is

believed to be an unlawful variance, two of the three were also members of the BZA who voted for the unlawful variance in 2008—as reversed and invalidated by the Circuit Court. Also, two of the current three bare-majority members also have essentially declined repeatedly to take the statewide BZA training despite the City of Staunton, through the Zoning Administrator, having offered over various years to have the City pay for the costs related to such training—and despite the Circuit Court, in its May 10, 2017 Order provided to all BZA members, placing emphasis on the value and importance of such training, a copy of which Order is annexed and incorporated as **Exhibit 4**.

10. The Zoning Administrator, the City of Staunton, and the Council of the City of Staunton believe that once again the BZA’s action to grant a variance was unlawful—and once again the BZA’s action merits judicial review, as recommended by the City’s legal counsel and, yet once again, the BZA’s actions will cause the City to incur expense to uphold what are believed to be the reasonable provisions of the City Code.

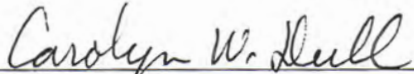
11. Absent an appeal of the BZA’s actions believed to be unlawful under the facts and the law, the bare-majority’s decision to grant the variance will likely be cited as precedent to justify similar variances and, in effect, potentially change the character of residential neighborhoods in the City. It also would be tantamount to sanctioning of the rewriting provisions of the City Code by the BZA, an unelected bare majority of three people. Again, two of those members have repeatedly declined BZA training, and two were part of the BZA whose actions were previously found to be unlawful by the Circuit Court in 2009, one of whom even made the motion—without any reasoning offered under the facts and the law—to grant the variance in the most recent proceedings conducted on June 12, 2018 (**Exhibit 3**). If that state of matters prevails, the BZA’s bare-majority actions, taken utterly without public explanation, would essentially operate to trump City Code zoning provisions that were enacted by the democratically elected members of City Council.

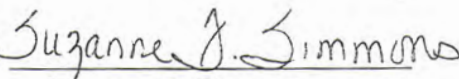
12. City Council realizes that additional expense will be incurred, but it is believed that the expense has been occasioned substantially by the patently erroneous actions of the BZA which originally took unlawful actions in 2008 that had to be reversed by the Circuit Court and, once more, has now taken further action by a bare 3-2 majority to grant a variance without any explanation and public discussion by such majority as to the reasoning based upon the facts and the law. Some of the expense also could have been avoided had the Property Owner not refused the City of Staunton’s effort at compromise which would have simply reduced the height of the wall.

NOW, THEREFORE, to the extent required by law or deemed necessary, the Zoning Administrator, all other appropriate City officials and employees, and the City of Staunton, Virginia, as a municipal corporation, and the Council of the City of Staunton, as the governing body, and counsel for the City are **HEREBY AUTHORIZED** to proceed to take all actions and pursue all recourse and remedies deemed necessary and proper to

appeal and seek reversal of the June 12, 2018 BZA decision as to the Property and Property Owner and otherwise to enforce substantially without further unnecessary delay the applicable provisions of the City Code, including other proceedings and appeals of any kind that may include, but not be limited to, injunctive relief requiring compliance with the City Code, including but not limited to any walls, all at the full expense of the Property Owner, as to the Property, located at 1403 N. Augusta Street (PIN number 3060), in the City of Staunton, Virginia, to the fullest extent permitted by law.

ADOPTED this 14th day of June 2018.


Carolyn W. Dull, Mayor

ATTEST: 
Suzanne F. Simmons
Clerk of Council

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF STAUNTON

**JOHN W. GLOVER and
THE CITY OF STAUNTON, VIRGINIA,**

Petitioners,

v.

**Case Nos. CL08000025-00
 CL08000026-00
 CL08000051-00**

**THE BOARD OF ZONING APPEALS OF THE
CITY OF STAUNTON, VIRGINIA, et al.,**

Respondents.

FINAL ORDER

With the agreement of counsel and the parties acting pro se, these certiorari proceedings have been conducted as consolidated for purposes of trial and rulings. In recognition of this agreement, and with the concurrence of the Court, it is HEREBY ORDERED that the proceedings are consolidated to that extent.

On October 21, 2008, the Court conducted a pre-trial conference and a hearing on motions matured for consideration, in anticipation of the previously scheduled December 4, 2008 trial pursuant to Virginia Code § 15.2-2314. During the conference, the Staunton Board of Zoning Appeals withdrew its September 29, 2008 Motion for Leave to File Answer. Also, the Court then concluded and, in confirmation, does HEREBY ORDER that the September 12, 2008 motion of the City of Staunton to reconsider and vacate or modify the July 24, 2008 Orders of the prior judge designate is DENIED; however, the services of William E. Shmidheiser as court-appointed counsel for the Staunton Board of Zoning Appeals are HEREBY SUSPENDED effective October 21, 2008, given the appearance of John A. Conrad as counsel.

On December 4, 2008, with all parties present, and represented by counsel or acting pro se, the Court conducted an appeal trial of the three Petitions filed by the City of Staunton, et al. and the Answers of the Respondents, if any, in these three consolidated cases pursuant to Virginia Code Section 15.2-2314.

For good cause appearing, and after considering objections of the Petitioners and the argument of counsel, it is hereby ORDERED that the Motion for Leave to File Answer of the Staunton Board of Zoning Appeals is granted and the Answer of the Staunton Board of Zoning Appeals is duly filed, to which the Petitioners objected on the same grounds identified in their October 17, 2008 objection and on the grounds that the motion had been withdrawn and otherwise now was untimely, with the Staunton Board of Zoning Appeals had remaining in default.

Whereupon, the Court received opening arguments, admitted into evidence all evidence submitted by the BZA, overruling the objection of the Petitioners on grounds that additional evidence was not necessary for the proper disposition of the matter, and then the BZA and all other Respondents rested; the Court heard all closing arguments of counsel for the Petitioners and the BZA, and pro se Respondents, and concluded the trial, with leave for the parties to submit additional briefs and/or memoranda of points and authorities, as well as the minutes of the Staunton City Council, all of which were submitted by the parties and considered by the Court.

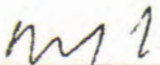
Whereupon, in consideration of the record of the Staunton Board of Zoning Appeals, all evidence submitted by the parties, the written briefs and oral argument of all counsel and all parties, and for the reasons stated in the Court's January 14, 2009 letter opinion, it is HEREBY ORDERED and ADJUDGED that the Staunton Board of Zoning

Appeals' motion to dismiss all three Petitions for lack of standing is DENIED; that the decisions of the Staunton Board of Zoning Appeals to grant each of the three variances are REVERSED; and that the three variance applications are hereby denied.

It is further ORDERED that the transcript of the October 21, 2008 hearing before the Court is hereby made a part of the record in all of these proceedings.

The Clerk is directed to forward an attested copy of the Final Order to counsel of record and all parties acting pro se.

ENTERED this 17th day of June, 2009.



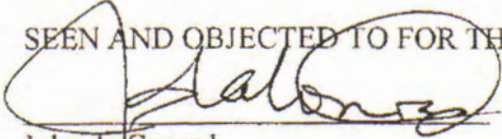
Judge

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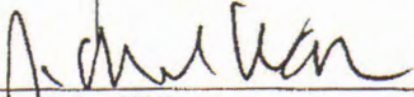


Douglas L. Guynn
Attorney for Petitioners

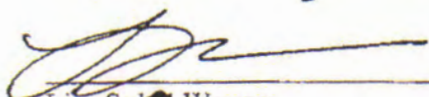
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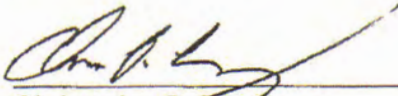
John A. Conrad,
Board of Zoning Appeals Attorney



Michael Warren



Lisa Solari Warren



Christopher P. Lowery

Exhibit 1

Brandy Pierce Lowery
Brandy Pierce Lowery

Frank Belloni
Frank Belloni

Debra Chilton-Belloni
Debra Chilton-Belloni

SEEN:

William E. Schmidheiser, III
William E. Schmidheiser, Esquire

A J APPEARANCE
After Notice
Endorsement waived
pursuant to Rule 1:13
but see letters
dated April 29, 2009
and MAY 15, 2009
M.S.I.
6-17-09

**BOARD OF
ZONING APPEALS**

**SUPPLEMENT TO
AGENDA BRIEFING**

Staunton, VA

Meeting Date:	June 12, 2018	Zoning Administrator: Rodney Rhodes, Certified Zoning Admin.
Item #		
Applicant	Debra Chilton-Belloni: Variance Request	
Location	1403 North Augusta Street (PID #3060)	
Code Section	Various Virginia Code provisions; and Staunton City Code Sections 18.120.010(2), 18.120.010 (3)(b), 18.120.010(3)(d)	

Introduction

This briefing supplements my original briefing which was prepared in anticipation of the scheduled April 3, 2018 board of zoning appeals (BZA) meeting to consider Ms. Belloni's latest application for variance from the City of Staunton zoning provisions under Title 18 of the Staunton City Code. Once more, she is seeking special treatment, asking the BZA to grant her a variance, now arguing that current law under the Virginia Code should not apply. Instead, apparently believing that she has a better chance of getting a variance under old law, she wants the BZA to apply old law. My position as the Zoning Administrator is that whether under the old law or the current law, Ms. Chilton-Belloni falls far short of establishing entitlement to special treatment in the form of a variance.

In the original Agenda Briefing supplied to the BZA in March before Ms. Chilton-Belloni informed everyone that she would attempt to use old law, I provided an analysis of the standard(s) which the 2015 amendments of the Virginia Code mandated for the BZA's consideration of a variance application. Given that Ms. Chilton-Belloni now lately asserts that the applicable statutory provisions are those which existed in 2014, however, I am supplementing to provide the BZA with my analysis and judgment as to consideration of the 2014 provisions, although it continues to be my view that my prior analysis obtained and required denial of a variance. Let me emphasize: this supplemental briefing is not intended to *replace* my original briefing, with attachments; but rather, it assumes for the purpose of argument, without waiving my prior position, that the old 2014 law applies and provides additional analysis and information within the framework of Ms. Chilton-Belloni's assertion that the law as it existed in 2014 is

applicable to this hearing. My view is that, while I preserve my prior position that current law applies, the BZA should make alternative decisions under the old and current law—and under either and both, Ms. Chilton-Belloni fails to be entitled to a variance as a matter of fact and of law.

Variance Standards Under 2014 Code

In 2014, under the provisions of Virginia Code Section 15.2-2201 a "variance" meant, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land or the size¹, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It does not—and, also in the language of the statute, shall not include a change in use which change shall be accomplished by a rezoning or by a conditional zoning. In addition to some review of the language of the Virginia Code, I offer the BZA my analysis of the Belloni situation so that the BZA may witness for itself that even under the old law, which actually is not that different from the current law, Ms. Chilton-Belloni cannot prevail and the BZA's grant of a variance would be fundamentally flawed.

Under the provisions of Virginia Code Sec. 15.2-2309 as it existed in 2014, boards of zoning appeals were permitted to authorize in specific cases such variance as defined in § 15.2-2201 from the terms of a locality's zoning provisions applicable to everyone else similarly situated as follows as delineated:

- as will not be contrary to the public interest,
- when, owing to special conditions a literal enforcement of the provisions will result in *unnecessary hardship*
- provided that the spirit of the ordinance shall be observed and substantial justice done,
- when a property owner can show that his property was acquired in good faith and
- where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto,
- the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant,
- provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

¹ It appears to me that the term "height" was added in 2015, but was not a part of the 2014 statute, which Ms. Chilton-Belloni contends is applicable.

Further, it is abundantly clear and unequivocal in 2014 no such variance was authorized unless the Board found:

- (1) That the strict application of the ordinance would produce undue hardship *relating to the property*;
- (2) That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- (3) That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
- (4) That the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In my view as an experienced zoning administrator, it is at least very doubtful whether the above standards are significantly different than those which were applied by boards of zoning appeals prior to the 2009 amendments which removed the requirement that the applicant demonstrate a hardship “approaching confiscation” before a variance could be granted. To illustrate this point, for example, in *Martin v. City of Alexandria*, 286 Va. 61 (2013) the variance applicants argued that since they were now not required to prove a hardship “approaching confiscation” the BZA could “authorize variances in instances that previously were not authorized.” The Supreme Court of Virginia held that the “argument ignores, however, the fact that the amendment did not alter the remainder of” the City Charter, which contained language “virtually identical” to that found at Va. Code §15.2-2309(2). Taking into consideration the considerable remaining requirements for a variance, none was justified, and the Court of Virginia held that the Alexandria board of zoning appeals acted erroneously—as did this BZA originally—in granting a variance, in that its doing so was contrary to law. While I acknowledge that the *Martin* case involved the City Charter, the same reasoning applies because, as the Supreme Court of Virginia, noted, the applicable language of the City Charter and the Virginia Code Section 15.2-2309(2) were “virtually identical”.

Regardless, the same analysis which results in a denial of the variance application under the current law, which reflects amendments made in 2015, the old-law standard merits and requires that I recommend the same denial under the version of the statute which applied prior to the 2015 amendments. I urge the BZA to deny the variance under both the old law and the current law, and yet as I mentioned, I will illustrate the fatal flaws in Ms. Chilton-Belloni’s position even under the old, pre-2015 law. What Ms. Chilton-Belloni hopes is that the BZA will try to find some language, even under a distorted reading of it, that will allow the BZA erroneously to act from feelings or from the “heart” to purport to grant her what she is not entitled to get as a special treatment that her other neighbors would not get. If the BZA acts erroneously to give her what she wants, it essentially will be deciding that all other properties in the neighborhood would be entitled to have a wall that violates the Staunton City Code.

Illustrative Analysis Under 2014 Statute

I offer the following illustrative analysis of some aspects to show that a variance cannot, within even the old 2014 law, be granted in this situation. In essence, Ms. Chilton-

Exhibit 2

Belloni must show that all requirements are satisfied, as reflected in the table which is part of the attachments to this briefing, and she cannot do so.

As one example of a standard that cannot be met to gain a variance, Ms. Chilton-Belloni has not shown that enforcement of the zoning ordinance would “result in unnecessary hardship” as the 2014 statute required.

The subject property, for example, obviously has no unique physical condition (shape, size, slope, etc.) that restricts its use more so than other lots in the same zoning district or in the neighborhood vicinity. It has no “exceptional narrowness, shallowness, size or shape” or any “exceptional topographic conditions” as referenced in the 2014 statute. None of her arguments can change the reality that the lot is rectangular, nearly 1.3 acres, and relatively level with a front yard depth of approximately 100 feet when the P-1 District requires a minimum set back from the street right-of-way of only 25 feet.

Furthermore, in the language of the old 2014 Virginia statute, there is no “condition, situation, or development of property immediately adjacent thereto” that “effectively prohibits or unreasonably restricts the utilization of the property”. The adjoining lots are zoned P-1 and most have been developed with residential dwellings. The adjoining property to the north, 1409 North Augusta Road, was at one time even utilized as a gift shop. The property to the south, across Ridgeview Road, is zoned R-2 Low Density Residential and is developed with a single-family dwelling. None of these adjacent uses “effectively prohibits or unreasonably restricts the utilization of the property”.

In this situation, a variance is not needed to reach parity with other lots in the district and, actually, to grant a variance in this instance would be affording this property and its owner what really is truly preferential treatment compared to other properties. It would be a “special privilege or convenience” which the 2014 statute specifically prohibited.

In addition, strict application of the zoning regulations does not “effectively prohibit or unreasonably restrict” Ms. Chilton-Belloni’s utilization of her property. To the contrary, the property has been utilized as residential for over 100 years—and apparently still is today, even being used beyond its original purpose to operate separately rented apartments to tenants. It’s still residential today—and, maybe, in a sense, even more residential and lucrative. Without doubt, the property may continue to be used for this purpose without the granting of a variance. The wall as currently configured is an accessory structure which, by definition under Section 18.10.020 of the Staunton City Code, is incidental to the main building or house and, even without it, the reasonable utilization of the property remains and will remain as all along.

Further, it is notable that the 2014 statute prohibits issuance of a variance unless the BZA finds that “strict application of the ordinance would produce undue hardship *relating to the property*”. Ms. Chilton-Belloni suggests no such hardship, and a limitation on the height of exterior walls at the property does not prevent its full and complete utilization in any logical sense. The only “hardship” which Ms. Chilton-Belloni appears to propose is that her compliance with the law would cause her *economic loss* because she would have to modify what she regards as an *improvement* which she made to the property. Yet, such economic losses, standing alone, have not been found by the Courts to constitute the sort of “hardship” which justify the grant of a variance. I refer you to the cases cited by Greg Kamptner, County Attorney for Albemarle County, in the analysis provided as Exhibit G with the original briefing materials. (Mr. Kamptner is the author of materials used to provide statewide training certification to members of locality

Exhibit 2

boards of zoning appeals.) That analysis includes, as Appendix B (pages B-1 through B-6) a detailed review of the state of the law prior to the 2015 amendments, and I respectfully encourage the BZA to review it thoroughly.

At its last meeting, although I did not know or expect it would be a subject of discussion by the BZA, especially given the absence of counsel for Ms. Chilton-Belloni and counsel for the Zoning Administrator, the BZA pursued the concept of "hardship." But, let me be sure that the BZA understands that the term "hardship" under the controlling law, whether it be in 2014 or 2015, *must relate to the property*. There is no such connection to a physical condition relating to the property. None.

Finally, Ms. Chilton-Belloni has not demonstrated that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance. If City Council wished to reduce, or even eliminate, the wall height requirement of the zoning ordinance, it can certainly do so by adopting an ordinance to effect such an amendment to the existing zoning provisions of the Staunton City Code. Its making that choice would certainly be "reasonably practicable" even if, in my view, not necessarily prudent. Regardless, the fact that the height requirements can be addressed legislatively by Council, thus resolving the special privilege Ms. Chilton-Belloni asks the BZA to grant, makes her variance application even less tenable, given the requirements of the 2014 statute.

The applicant fails to meet other applicable requirements as well, including in my view the reality that the wall, as currently configured, has changed the character of the neighborhood—and, by necessity of precedent by decision of the BZA, would do so even more because any other property owner in the vicinity would expect the same special privilege. In effect, Ms. Chilton-Belloni really is asking the BZA to be an unelected, super-City Council, to legislate changes to the City's zoning provisions.

In my earlier submission to the BZA I provided a table, drawn from the current provisions of the Virginia Code, to illustrate the test that must be met for entitlement to a variance. It illustrated the lack of merit of Ms. Chilton-Belloni's application. In like form, attached as Exhibit O is a similar table, referencing the statutes as they existed in 2014 under the old law that Ms. Belloni seeks to exploit.

Whether before or after adoption of the 2015 amendments to the Virginia Code, Ms. Chilton-Belloni fails to establish that her application meets the standard for a variance as defined in Va. Code Section 15.2-2201 and the criteria set out in Va. Code Section 15.2-2309. A variance issued for a lesser reason or simply because the BZA feels it is doing "justice" or following its "heart," a word used either explicitly or implicitly by one or more BZA members, at the BZA's February 13, 2018 meeting, would constitute a disregard of the law, plainly wrong decision-making, and a failure to follow and apply the law as written, whether under the old or current law.

Staff Recommendation

The Zoning Administrator continues to oppose and urge denial of the variance request.

Exhibits:

**Exhibit O – Zoning Administrator Table Entitled “Board of Zoning Appeals –
Variance Provisions of 2014 Statues”**

Specific Requirements	Va. Code Section	
The zoning administrator shall transmit a copy of the application for variances to the local planning commission which may send a recommendation to the BZA or appear as a party at the BZA hearing.	§ 15.2-2310	
“Variance” means, in the application of a zoning ordinance, — a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure — when the strict application of the ordinance would: — result in unnecessary or unreasonable hardship to the property owner, — and such need for a variance would not be shared generally by other properties, — and provided such variance is not contrary to the intended spirit and purpose of the zoning ordinance, — and would result in substantial justice being done. “Variance” shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.	§ 15.2-2201	
Boards of zoning appeals shall have the following powers and duties: — 2. To authorize upon appeal or original application in specific cases such variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:	§ 15.2-2309(2)	

When a property owner can show that his property was acquired in good faith — <u>and</u> where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, — the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property — <u>or</u> where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.	§ 15.2-2309(2)	
No such variance shall be authorized by the board unless it finds: — a. That the strict application of the ordinance would produce undue hardship relating to the property; — b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; <u>and</u> — c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.	§ 15.2-2309(2)	
No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.	§ 15.2-2309(2)	

BOARD OF ZONING APPEALS

Transcript of Proceedings
June 12, 2018

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BOARD OF ZONING APPEALS

Staunton, Virginia

ORIGINAL

EXCERPT FROM TRANSCRIPT OF PROCEEDINGS

Tuesday, June 12, 2018

2:00 p.m.

Pages 1 - 5

Reported by: Kay Trigilio, RPR

1 A P P E A R A N C E S

2

3 BOARD MEMBERS:

4 PAUL VAMES, Chairman

5 HAL SHARP

6 WILLARD KEELING

7 BRADLEY BRYANT

8 JUDITH WIEGAND

9

10 ON BEHALF OF THE ZONING COMMISSIONER:

11 VICTOR SANTOS, ESQUIRE

12 NELSON, McPHERSON, SUMMERS & SANTOS

13 12 North New Street

14 Staunton, Virginia 24401

15 (540) 885-0346

16

17 ON BEHALF OF DEBRA CHILTON-BELLONI:

18 MARK D. OBENSHAIN, ESQUIRE

19 OBENSHAIN LAW GROUP

20 420 Neff Avenue, Suite 130

21 Harrisonburg, Virginia 22801

22 (540) 208-0727

23 mdo@obenshainlaw.com

24

25

1 E X C E R P T

2

3 MR. VAMES: Thank you, gentlemen. Once
4 again, we'll close the public session of this part of
5 this meeting and I'll open the closed session, if
6 anyone wants to make a motion. Is anyone ready to
7 make a motion?

8 MS. WIEGAND: Not quite yet. I'm still
9 looking through my material here.

10 MR. VAMES: Okay. Anyone wish to make a
11 motion?

12 MR. KEELING: I can make a motion. Are you
13 all ready to make a motion?

14 MS. WIEGAND: If you are, please go ahead.

15 MR. KEELING: Okay. I've listened -- first
16 of all, let me say I've been on this thing since the
17 very beginning, so I kind of know all the facts, I
18 think. I've carefully listened to all the material,
19 the evidence presented by both sides. I've listened
20 to all the arguments presented by both sides today, so
21 I now make a motion to grant variances to Section
22 18.120.010(2), Section 18.120.010(3)(b), and Section
23 18.120.010(3)(d) for the property at North Augusta and
24 Ridgeview Road. My motion in variances are to leave
25 the wall in place without modification and to allow

1 for repairs to the damage to the entrance gate.

2 MR. VAMES: Members of the board, you all
3 heard a motion. Is there a second to the motion?

4 MR. SHARP: Second.

5 MR. VAMES: Motion has been made and
6 seconded. Call for the vote. Let's do this one at a
7 time.

8 MS. WIEGAND: Nay.

9 MR. BRYANT: Nay.

10 MR. SHARP: Yes.

11 MR. KEELING: Yes.

12 MR. VAMES: Yes. Motion carries, 3 to 2.

13 And there is no other business to come before the
14 board today. Again, either party, when they are on
15 the losing side of this, know you have 30 days to file
16 an appeal.

17 MR. SANTOS: Thank you for your time.

18 MR. OBENSHAIN: Thank you, members of the
19 board.

20

21 (Proceedings were concluded at 5:08 p.m.)

22

23

24

25

CERTIFICATE OF COURT REPORTER

I, Kay Trigilio, RPR, do hereby certify that I recorded verbatim the proceedings at the Board of Zoning Appeals for the City of Staunton in the captioned cause, on June 12, 2018.

I further certify that the foregoing pages, numbering 1 through 4 inclusive, constitute a true, accurate, and complete transcript of excerpted proceedings.

Given under my hand this 13th day of June, 2018.

Kay Trigilio



Kay Trigilio, RPR

1	D	members 4:2,18 modification 3:25 motion 3:6,7,11,12, 13,21,24 4:3,5,12	T
18.120.010(2) 3:22 18.120.010(3)(b) 3:22 18.120.010(3)(d) 3:23	damage 4:1 days 4:15		thing 3:16 time 4:7,17 today 3:20 4:14
2	E	N	V
2 4:12	entrance 4:1 evidence 3:19	Nay 4:8,9 North 3:23	VAMES 3:3,10 4:2, 5,12 variances 3:21,24 vote 4:6
3	F	O	W
3 4:12 30 4:15	facts 3:17 file 4:15	OBENSHAIN 4:18 open 3:5	wall 3:25 WIEGAND 3:8,14 4:8
5	G	P	
5:08 4:21	gate 4:1 gentlemen 3:3 grant 3:21	p.m. 4:21 part 3:4 party 4:14 place 3:25 presented 3:19,20 proceedings 4:21 property 3:23 public 3:4	
A	H	R	
ahead 3:14 appeal 4:16 arguments 3:20 Augusta 3:23	heard 4:3	ready 3:6,13 repairs 4:1 Ridgeview 3:24 Road 3:24	
B	K	S	
beginning 3:17 board 4:2,14,19 BRYANT 4:9 business 4:13	KEELING 3:12,15 4:11 kind 3:17	SANTOS 4:17 seconded 4:6 Section 3:21,22 session 3:4,5 SHARP 4:4,10 side 4:15 sides 3:19,20	
C	L		
Call 4:6 carefully 3:18 carries 4:12 close 3:4 closed 3:5 concluded 4:21	leave 3:24 listened 3:15,18,19 losing 4:15		
	M		
	made 4:5 make 3:6,7,10,12, 13,21 material 3:9,18 meeting 3:5		

BOARD OF ZONING APPEALS

Transcript of Proceedings
June 12, 2018

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BOARD OF ZONING APPEALS

Staunton, Virginia

ORIGINAL

EXCERPT FROM MR. GLOVER'S STATEMENTS

Tuesday, June 12, 2018

2:00 p.m.

Pages 1 - 5

Reported by: Kay Trigilio, RPR

1 A P P E A R A N C E S

2

3 BOARD MEMBERS:

4 PAUL VAMES, Chairman

5 HAL SHARP

6 WILLARD KEELING

7 BRADLEY BRYANT

8 JUDITH WIEGAND

9

10 ON BEHALF OF THE ZONING COMMISSIONER:

11 VICTOR SANTOS, ESQUIRE

12 NELSON, McPHERSON, SUMMERS & SANTOS

13 12 North New Street

14 Staunton, Virginia 24401

15 (540) 885-0346

16

17 ON BEHALF OF DEBRA CHILTON-BELLONI:

18 MARK D. OBENSHAIN, ESQUIRE

19 OBENSHAIN LAW GROUP

20 420 Neff Avenue, Suite 130

21 Harrisonburg, Virginia 22801

22 (540) 208-0727

23 mdo@obenshainlaw.com

24

25

1 E X C E R P T

2

3 (Answers by Mr. Glover)

4 BY MR. SANTOS:

5 Q. Do you recall going to the Belloni property
6 with Mr. Hartless?

7 A. I do.

8 Q. What was the purpose of going there?

9 A. We had sent a Notice of Violation sometime
10 around September, middle of September, maybe the 20th,
11 I can't remember dates exactly, but somewhere around
12 September the 20th.

13 Q. This is of?

14 A. This is 2007 for a Notice of Violation.
15 Work continued on the wall after the Notice of
16 Violation was delivered, so -- I wasn't there
17 personally when it was delivered. You mentioned that
18 earlier in the proceedings.

19 So later on, between September and
20 November, I went back -- I think it was sometime the
21 end of September, probably, beginning of October, I
22 went back with Mr. Hartless, and we delivered a Stop
23 Work Order and advised Dr. and Mrs. Belloni to stop
24 construction on the wall at that time. It was not
25 complete.

1 Q. So describe what you recall the condition
2 of the wall was at that time.

3 A. When we parked on the Ridgeview side and
4 got out of the car, walked directly, stepped over the
5 wall, it was no more than -- I can't remember -- maybe
6 one course of the block, maybe; we were able to step
7 right over it. We walked to the front door, rang the
8 doorbell, and Dr. and Mrs. Belloni both came out and
9 spoke with us.

10 Q. Did you hand them the Stop Work Order?

11 A. Yes, sir, I did.

12 Q. In terms of the front, Augusta Street, can
13 you recall how much construction had been done?

14 A. It was considerably more complete on
15 Augusta. I can't say whether it was a hundred percent
16 or 50, but it was considerably more complete, but the
17 Ridgeview side was not very complete.

18 Q. Did the Bellonis stop construction after
19 being provided -- after being told to stop?

20 A. No, sir. They continued yet to construct
21 the wall until it was completed.

22

23 * * * * *

24

25

CERTIFICATE OF COURT REPORTER

I, Kay Trigilio, RPR, do hereby certify that I recorded verbatim the proceedings at the Board of Zoning Appeals for the City of Staunton in the captioned cause, on June 12, 2018.

I further certify that the foregoing pages, numbering 1 through 4 inclusive, constitute a true, accurate, and complete transcript of excerpted proceedings.

Given under my hand this 14th day of June, 2018.

Kay Trigilio



Kay Trigilio, RPR

1	BEHALF 2:10,17 Belloni 3:5,23 4:8 Bellonis 4:18 block 4:6 Board 1:5 2:3 5:4 BRADLEY 2:7 BRYANT 2:7	describe 4:1 directly 4:4 door 4:7 doorbell 4:8	K	percent 4:15 personally 3:17 proceedings 3:18 5:4,10 property 3:5 provided 4:19 purpose 3:8
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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF STAUNTON

IN RE: APPOINTMENT TO THE STAUNTON BOARD OF ZONING APPEALS

ORDER

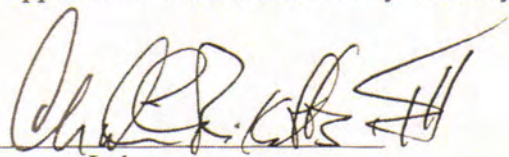
Taking notice that Carl V.W. Hensley, who served on the Staunton Board of Zoning Appeals, passed away on or about February 23, 2017, according to the obituary published in The News Leader, the Court finds it appropriate now to appoint a successor to the Staunton Board of Zoning Appeals.

Upon consideration of the qualifications of Judith Wiegand, a resident of the City of Staunton and a member of the Staunton Planning Commission, it is ADJUGED, ORDERED AND DECREED that Judith Wiegand is HEREBY APPOINTED to serve as a member of the Staunton Board of Zoning Appeals for the unexpired portion of Mr. Hensley's term of office, namely until January 31, 2021, pursuant to Virginia Code § 15.2-2308(A), which provides that "[a]ppointments to fill vacancies shall be only for the unexpired portion of the term." Also consistent with the provisions of Virginia Code § 15.2-2308(A) that "[m]embers of the board shall hold no other public office in the locality except that one may be a member of the local planning commission," Ms. Wiegand would be the sole member of the Staunton Planning Commission to serve on the Staunton Board of Zoning Appeals.

To the extent made available through funding by the City of Staunton, all members of the Staunton Board of Zoning Appeals are encouraged to take advantage of training through the Virginia Certified Boards of Zoning Appeals Program, so that each member has the knowledge and skills needed to perform their duties effectively and responsibly in accordance with law. For any future appointment consideration, the Court will expect to be informed whether the person is committed to completing such training before the end of the second year of service after an initial appointment or, if already an incumbent for a full term of office, has completed such training before the expiration of the incumbent's term of office.

The Clerk of the Court is directed to provide an attested copy of this Order to the Clerk for the Staunton Board of Zoning Appeals, requesting that the Clerk for the Staunton Board of Zoning Appeals provide a copy to all members of the Staunton Board of Zoning Appeals and to the Staunton City Attorney.

ENTER this 8th day of May, 2017.


Judge

TESTE: Stacy Fall ^{A COPY} Dep
Circuit Court, Staunton, VA CLERK

**RESOLUTION
OF THE COUNCIL OF THE CITY OF STAUNTON, VIRGINIA
REGARDING FURTHER AUTHORIZATION FOR CIVIL ENFORCEMENT
OF ZONING PROVISIONS OF THE STAUNTON CITY CODE**

BE IT RESOLVED by the Council of the City of Staunton, Virginia, as follows:

1. Uniform enforcement of the zoning provisions of the Staunton City Code (the "Code") is important for the purposes of achieving the express and implied intent of Title 18 of the Staunton City Code and in assuring citizens of the generally equal application of the rule of law regardless of where the property may be located in the City of Staunton, Virginia, and regardless of the standing or identity of the property owner.
2. Because of the erroneous actions in 2008 by the Staunton Board of Zoning Appeals ("BZA") in granting variances from longstanding provisions and interpretation of the Code that limit the height of fences and walls and restrict the construction of fences and walls at the intersection of two streets, the City of Staunton had to expend substantial resources in seeking judicial review and intervention by the Staunton Circuit Court to correct and reverse the decisions of the BZA. The Circuit Court, invalidating the BZA's actions, concluded in its Final Order "that the decisions of the Staunton Board of Zoning Appeals to grant each of the three variances are REVERSED; and that the three variance applications are hereby denied." The Circuit Court's Final Order was not appealed by any of the property owners in the three cases, including the case involving the property located at 1403 N. Augusta Street (the "Property").
3. Since the entry of the Circuit Court's Final Order, the Zoning Administrator and the City of Staunton have sought voluntary compliance by the property owners in each of the three cases, expressing a desire to work cooperatively with the property owners to achieve substantial compliance notwithstanding the expense and delay the BZA had caused the Zoning Administrator and the City of Staunton in the enforcement of the Code. In two of the matters, the property owners cooperated and substantially complied. With respect to the remaining, non-compliant property owner (the "Property Owner") of 1403 N. Augusta Street, the City of Staunton, through its Zoning Administrator, has continued to seek compliance, but since the ruling of the Circuit Court, the Property Owner has engaged in repeated and extended delay, and used the delay tactically to try to avoid such compliance with the Code as to the Property. The Zoning Administrator, by communications through at least 10 letters over an extended period of years, has sought voluntary compliance, to no avail.
4. The delay also has been used by the Property Owner to thwart usual enforcement by the Commonwealth Attorney, and the Zoning Administrator and the City of Staunton more recently have had to rely upon civil enforcement authority, which is permissible and expected. This matter now comes before the City Council for further, formal authorization for civil enforcement after the Zoning Administrator, again, has repeatedly endeavored to seek voluntary compliance, again to no avail.
5. More recently this year, the Property Owner has sought to have the Zoning Administrator, in effect, modify the law under the Code so that the Property Owner would not be required to comply with provisions that generally have applied to other properties in the City of Staunton. The Zoning

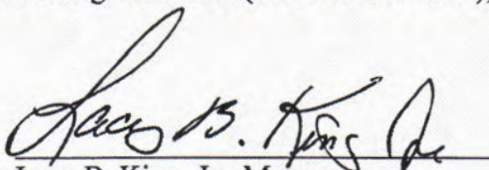
Administrator declined, concluding that the Zoning Administrator had no authority to do so and so notified the Property Owner's legal counsel, as reflected in the Zoning Administrator's May 30, 2014 letter annexed and incorporated by reference as **Exhibit A** into this Resolution. Prior to this letter, on April 16, 2014 the Zoning Administrator further corresponded with the lawyer for the Property Owner, and this earlier letter is annexed and incorporated by reference as **Exhibit B** into this Resolution.

6. The Property Owner, still apparently as part of a continuing tactic to further delay compliance, now has sought to institute proceedings adverse to the Zoning Administrator and the City of Staunton again before the BZA which had to be reversed by the Circuit Court of the City of Staunton for unlawfully purporting to grant variances from applicable restrictions on walls and fences in the City of Staunton. The Property Owner has taken this action despite knowing that the BZA also had originally agreed with the Zoning Administrator's interpretation and application of the zoning restriction—and despite the property owner's failure to appeal that aspect of the BZA's decision in 2008. The Property Owner presently seeks to pursue the BZA proceedings also despite not contesting that under the law no employee of the City of Staunton or other unelected body may, in effect, rewrite the requirements of the Staunton City Code. The Property Owner, through the Property Owner's counsel, has even suggested a threat that City Council would pay a political price for enforcing compliance notwithstanding the City's demonstrated patience with the Property Owner and a willingness to seek a resolution in the spirit of compromise.

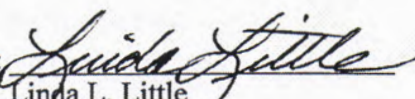
7. It appears now, beyond any doubt whatsoever, that the Property Owner will not comply with the Code and will continue to seek further inappropriate delay through the BZA. Accordingly, the Zoning Administrator and the City of Staunton have no choice but to pursue formal civil enforcement through the Circuit Court and such other civil recourse as may be appropriate to assure substantial compliance.

NOW, THEREFORE, to the extent required by law or deemed necessary, the Zoning Administrator, all other appropriate City officials and employees, and the City of Staunton, Virginia, as a municipal corporation, and the Council of the City of Staunton and counsel are **HEREBY AUTHORIZED** to proceed to take all civil actions and pursue all civil recourse and remedies deemed necessary and proper, as may be determined, to enforce substantially without further unnecessary delay the applicable provisions of the Code, including judicial intervention by the Circuit Court as well as any other proceedings and appeals of any kind that may include, but not be limited to, injunctive relief requiring removal or modification, including but not limited to any walls, all at the full expense of the Property Owner, as to the Property, located at 1403 N. Augusta Street (PIN number 3060), in the City of Staunton, Virginia.

ADOPTED this 26th day of June 2014.


Lacy B. King, Jr., Mayor

ATTEST:


Linda L. Little
Clerk of Council



May 30, 2014

Mr. Mark D. Obenshain, Esq.
Lenhart and Pettit
90 North Main Street, Suite 201
P.O. Box 1287
Harrisonburg, Virginia 22803

Dear Mr. Obenshain:

Based upon my review, it appears that the Staunton Zoning Administrator has not had and does not have the authority to grant a modification to provisions of the Staunton City Code. Even if it were assumed some authority existed otherwise, the matter of hardship already has been fully adjudicated, with the Staunton Circuit Court having ruled several years ago against the property owners' position and in favor of the City—and reversing the board of zoning appeals because the board of zoning appeals had acted contrary to law.

Even assuming that some limited aspects of the Staunton City Code merit some updating, as is often the ongoing challenge with all localities given the volume of recurring changes made by the General Assembly annually, we endeavor to read the City Code in light of any applicable changed provisions of the Virginia Code. The City Code provisions, I respectfully suggest, are not unlawful but simply have to be read accordingly in light of any applicable provisions of the Virginia Code. I express no view on your assertions about the effect of any subsequent changes to Section 15.2-2309, although I am not aware that any changes would purport to have retroactive effect or any effect as to what has been a continuing unlawful situation despite our patient efforts to work with the property owners.

In reaching this view about the lack of authority to make a modification, I have put aside any inquiry or consideration of what the property owner have asserted regarding the underlying circumstances, which already were considered by the circuit court. As you know, the City respectfully has continued to disagree with the property owner's assertions and characterizations. But, also, please remember that the board of zoning appeals had actually agreed with the Zoning Administrator's interpretation and application of the provisions of the City Code, and that determination by the board of zoning appeals apparently was not challenged by the property owners on appeal to the circuit court and, as well, not beyond the circuit court.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharon E. Angle".

Sharon E. Angle
Director of Planning/Zoning Administrator

c: Victor Santos, Esq.

116 W. BEVERLEY STREET
P.O. Box 58
STAUNTON, VA 24402



April 16, 2014

Mr. Mark D. Obenchain, Esq.
Lenhart and Pettit
90 North Main Street, Suite 201
P.O. Box 1287
Harrisonburg, Virginia 22803

Dear Mr. Obenchain:

I understand that following my April 7, 2014 letter to you that you contacted Mr. Santos. I realize that neither you nor the property owner has lived in Staunton and likely don't really know about our collective city efforts over the years to promote and preserve the special character and other related zoning interests in various ways related to streetscapes. So, perhaps Mr. Santos can within a constructive legal framework help you appreciate why the City has continued to have an interest in working—even too patiently, perhaps, over an extended time—to achieve civil zoning compliance with respect to the illegal walls on Augusta Street. We still would prefer the property owner work with us, but it appears from the extended history that your property owner has no intention at this point in doing so.

Neither Mr. Glover, my predecessor, nor I as Zoning Administrator authorized the walls and, in fact, in addition to what Mr. Hartless advised the property owner originally, the walls were continued to be built, even after Mr. Glover personally visited the site as Zoning Administrator and confirmed their illegality for the property owners. As you know, not even the Zoning Administrator has authority to issue zoning opinions contrary to the provisions of the Staunton City Code. And even if someone purported to do so, the City is not bound by such an action or prevented from expecting compliance with the law that applies to everyone else, as written. It's unfortunate that the property owners ignored Mr. Glover when he visited the property. It's also regrettable that so much time has passed without compliance, but as a small city we strive to keep communications open, even to a fault, and maintain hope that a property owner will ultimately decide to work with us. The other two property owners involved at the time took that approach, cooperating with us after the circuit court ruled in favor of the City and against them and your property owners as to the variances, and concluded the Staunton Board of Zoning Appeals had acted contrary to law in all three cases in purporting to make exceptions to our zoning conditions on the location and height of the walls or fences.



Mr. Santos forwarded this week your note to him "requesting copies of the following records: 1) Complaints concerning the wall on the subject property; 2) Responses or notes relating to responses made by City officials to complainants referenced in No. 1; 3) Any records related to alleged zoning violations in connection with the subject property dated or generated after October 12, 2011." Your request covers almost three years, and we're glad to respond to it. Particularly in these continuing tight budget times especially for a small city, we have a limited number of staff in our department, and one of them is out this week at training. For these reasons and other demands on our staff, it is not practical for us to respond in 5 work days even to fully ascertain what kind of time and estimated expense may be involved in the search, identification, retrieval, and copying of any records that fall within your broad request. We also will need to evaluate to what extent your request implicates exclusions under the Virginia Freedom of Information Act, such as to investigation of official zoning enforcement complaints.

Sincerely,

A handwritten signature in cursive script that reads "Sharon E. Angle".

Sharon E. Angle
Director of Planning/Zoning Administrator



CITY OF STAUNTON, VIRGINIA

Proclamation

Constitution Week September 17-23, 2020

- WHEREAS,** September 17, 2020 marks the two hundred and thirty-third anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and
- WHEREAS,** it is fitting and proper to officially recognize the patriotic celebrations which will commemorate the occasion; and
- WHEREAS,** Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week.

NOW, THEREFORE, BE IT PROCLAIMED, by Staunton City Council that September 17-23, 2020, is hereby designated as

Constitution Week

in the City of Staunton and all the City's citizens are asked to reaffirm the ideals established by the Framers of the Constitution in 1787.

Adopted this 10th day of September, 2020.

ANDREA W. OAKES, MAYOR

ATTEST: _____
CLERK OF COUNCIL

City Council
WORK SESSION
August 27, 2020
5:15 p.m.

Council Members Present: Mayor Oakes, Vice Mayor Robertson, Council Members Holmes, Claffey, and Darby. Participating by Zoom platform were Council Members Dull and Mead.

Mayor Oakes requested citizens to wear a mask while in City Hall and Council Chambers.

Mayor Oakes called the meeting to order: As Mayor, I call this meeting of Staunton City Council to order. I note that this meeting is being broadcast over the City's cable channel and streamed live on the City's website so that members of the public may hear our meeting. The meeting is also being recorded.

Mayor Oakes asked the Clerk of Council to call the roll for confirmation of those Council members present for today's meeting.

Clerk of Council Call the Roll of Council Members Present:

Mayor Oakes	aye	Ms. Darby	aye
Vice Mayor Robertson	aye	Ms. Mead	aye
Ms. Dull	aye	Mr. Claffey	aye
Mr. Holmes	aye		

City Manager Identifies City Officials Present:

Mayor Oakes asked City Manager, Steve Rosenberg, to note the participation of any City officials or colleagues, or anyone else, during today's meeting by Zoom or telephone.

Mr. Rosenberg stated the only individuals participating on Zoom were Council members Mead, Dull and Vice Mayor Robertson. All other City officials were participating in person in Council Chambers.

Background Statement:

Mayor Oakes stated "Please let me mention that notice, reasonable under the circumstances, of this meeting has been given to the public contemporaneously with the notice provided to members of City Council. In addition to limited public seating in city hall, access to this meeting has been provided to the public by audio feed on the City's cable channel and the City's website. During this work session, as in the past, there will be no opportunity for public comment. Public comment will be received during Council's regular meeting, which will begin at 7:30 p.m. Instructions for public comment by telephone can be found on agenda for the regular meeting and on Council's website at: www.ci.staunton.va.us/government/city-council .

Also, let me highlight and have reflected in the meeting minutes that this meeting, although being conducted in person, is also being conducted by Zoom, with virtual participation by certain members of City Council, given the catastrophic nature of the declared emergency and disaster related to the Covid-19 outbreak, which as part of the total circumstances, makes it impracticable

or unsafe to assemble in a single location. The meeting is being held consistent with City Council Ordinance 2020-04 regarding continuity of government, a copy of which can be found online at : www.staunton.va.us/cogord2020-04.”

1. Consideration of Work Session and Regular Meeting Agendas

Consistent with Procedural Memorandum No. 3, the agendas were presented for Council consideration.

Ms. Darby moved to approve the Work Session agenda along with the Regular Meeting agenda with the addition of Item E to the Regular Meeting agenda – Consideration of a Proposed Resolution Regarding Litigation Related to Continued Zoning and Building Code Violations.

The motion was seconded by Mr. Claffey and carried as follows:

Mr. Claffey	aye	Ms. Mead	aye
Mr. Holmes	aye	Vice Mayor Robertson	aye
Ms. Darby	aye	Ms. Dull	aye
Mayor Oakes	aye		

2. Update from Staunton City Schools Regarding Reopening Plan

Mr. Rosenberg stated Dr. Garrett Smith, Division Superintendent of Staunton City Schools, and Brad Wegner, Budget Director, would provide an update on the school’s reopening plan in consideration of the COVID-19 health pandemic.

Dr. Smith stated he wanted to provide information regarding the revised budget that was presented previously to Council on April 23, 2020 as well as providing an update on the reopening of Staunton City Schools which happened this week.

Mr. Wegner stated the original FY2021 School budget was approved four days before the Governor announced the statewide school closures. He noted the revised budget was approved by Council on April 23, 2020. A 25% reduction was projected in state sales tax and lottery proceeds, worth approximately \$1.1 million in revenue. He stated \$1.9 million was cut from appropriations from the City, a reduction to \$12 million, a 13.6% decrease. Mr. Wegner stated this was \$1.8 million less than last year.

Dr. Smith stated the proposed 2% raise was cut, but the goal was not to cut any positions. He noted one strategic objective was to expand the pre-school program and have the same amount of sessions as kindergarten. Unfortunately, that was cut from the budget as well several proposed positions.

Mr. Wegner stated 6.1% was ultimately cut from the School’s principle operating accounts. He explained how wide range spending cuts were made. He noted the City allocated approximately \$1.6 million of its CARES Act funding to the Schools. Those funds could only be used to address needs precipitated by Covid-19. Those funds were applied to technology for hybrid and virtual learning, sanitation supplies, PPE, and building upgrades, meal packaging and delivery systems, and childcare for essential School and City employees.

Dr. Smith stated over 90 positions had been lost since the recession in 2008, including over 50 full-time positions. He noted the level of state funding was just now getting back to an equivalent level, but did not account for at least 14% of the budget. Dr. Smith explained how teachers were adapting to virtual and hybrid teaching since the pandemic began.

Ms. Darby asked Dr. Smith to explain the process of bringing students back to school.

Dr. Smith stated this was a temporary situation and staff was fully committed to getting students back for in-person learning as soon as possible. He noted plans were being made to bring students back for outside activities with plans to phase students back this semester.

Ms. Darby asked if there was a time frame for that plan. Dr. Smith stated it would be several weeks as long as pandemic numbers did not increase. He thanked Council for their support for the high school construction project and invited Council members to tour the building in the future.

Ms. Mead asked Dr. Smith how many children that were doing virtual learning were home alone. Dr. Smith stated they did not have statistics to measure that. He noted they were in a partnership with the group C4 that provided childcare.

Ms. Mead asked Dr. Smith what was an acceptable level of infection that would cause schools to pivot and move back towards more virtual learning. Dr. Smith stated currently Staunton was at an acceptable level. He noted a spike in cases was anticipated in early September, but currently the numbers looked good. Dr. Smith stated it was important to get parents and students comfortable with both models of teaching.

Ms. Dull noted her grandson and daughter were both pleased with the virtual schedule so far.

Mr. Claffey thanked Dr. Smith for his work and was glad to hear that the students may be back to school before the semester is out.

Vice Mayor Robertson asked Dr. Smith if there were any studies or indications if there was a learning curve and did they lose any time not being in class. Dr. Smith stated there was, but even more concerning was the social and emotional aspect. He noted counseling was being offered to some students. He stated learning gaps did exist and students would be tested.

Mayor Oakes asked Dr. Smith to describe how meals were being handled. Dr. Smith stated over 163,000 meals had been provided since the closure began. He noted bus drivers, instructional assistants, school nutrition workers all helped. Dr. Smith stated Staunton Schools have now qualified to provide free breakfast and lunch to all students in all of the schools.

Ms. Darby asked Dr. Smith what kind of numbers was he looking at regarding teachers that wanted to teach all virtual versus those that did. Dr. Smith stated there was talk of doing a referendum along those lines, but he didn't want to divide staff into two groups. He noted they wanted to get through this as quickly as possible.

Council members did not have any further questions.

3. Discussion of Grant Application to Firehouse Subs Public Safety Foundation / Cochran Judicial Center Automated External Defibrillators

Mr. Rosenberg stated Sheriff Robertson had asked for this item to be on the agenda, but he had a personal engagement was not present. He noted the Sheriff's Office had applied to the Firehouse Subs Public Safety Foundation (Firehouse) for a grant to fund four automated external defibrillators (AEDs) for the Cochran Judicial Center. Mr. Rosenberg stated this was a circumstance in which staff became aware of the deadline for the grant and had to move forward with submission of the application before it was brought to Council for formal approval. The deadline for grant applications was reported as August 18, 2020. If the grant is approved, the Sheriff would coordinate the installation of the AEDs with the Public Works Department. Mr. Rosenberg stated staff at the same time had applied to the City's insurer, Virginia Risk Sharing Association, to also fund AEDs for the same facility. He noted staff was uncertain whether the application to the Firehouse Subs Public Safety Foundation would be favorably considered. Given the fact that the Cochran Judicial Center was a high traffic facility, Mr. Rosenberg stated staff wanted to make sure that funding was available for that installation. He noted he'd received word today from the Virginia Risk Sharing Association that they had approved a grant in the amount of \$2,100 to fund 2 AEDs for the City Courthouse. Mr. Rosenberg stated if funding for all six devices was approved, then staff would approach one or both funding agencies and ask for their permission to use the funds to place devices perhaps in another City facility.

Mayor Oakes asked Council members if they had any questions.

Ms. Darby noted Mr. Rosenberg had answered her question regarding possible placement if funding was approved for all six devices.

Council members did not have any further questions.

This will be Item B on the Regular meeting agenda.

4. Discussion of Acceptance of Local Emergency Management Performance Grant from Virginia Department of Emergency Management

Fire Chief Scott Garber stated the Virginia Department of Emergency Management (VDEM) announced the awarding of \$2.7 million in grant funding for the Local Emergency Management Performance Grant (LEMPG) program, including a matching grant to the City of Staunton in the amount of \$7,500 for a total of \$15,000. The LEMPG program is a federally funded, state distributed grant program. The grant focuses on funding planning, operations, equipment acquisitions, trainings, exercises, construction and renovation efforts at the local government level. LEMPG program funding is provided to every locality in the Commonwealth of Virginia.

Grant funding for the program is available to cities, counties and those towns recognized as emergency management jurisdictions under Title 44 of the Code of Virginia. Chief Garber stated the Fire and Rescue Department would utilize grant funds to acquire new public safety Unmanned Aerial Vehicle (UAV/drone) equipment. The new advanced equipment would be utilized for search and rescue missions, special events, and assessment of damages caused by natural disasters such as the severe flood event on August 8, 2020. The equipment will be available for deployment on a regional and statewide basis, in response to requests for assistance from other localities.

Mayor Oakes asked Council members if they had any questions.

Mr. Rosenberg stated although this was a grant, it required no application by the City. He noted it was provided by the state on an annual basis without the requirement to submit any application. He noted it was to approve the receipt of the funds rather than to approve a grant application.

Vice Mayor Robertson asked Chief Garber if the UAVs would be available to other agencies. Chief Garber stated other departments already had UAVs, but would add to the City's capability as a whole as well as on a regional approach as well.

Mr. Claffey asked Chief Garber how many people were qualified to navigate the UAVs. Chief Garber stated in order to be qualified intense training was required. He noted two personnel in the Fire and Rescue Department had already completed the training.

Council members did not have any further questions.

This will be Item C on the Regular meeting agenda.

Mr. Rosenberg there was enough time for Chief Garber to share details regarding the forthcoming delivery of the Department's new apparatus and the training that staff was receiving presently.

Chief Garber stated the Department took delivery of that apparatus this week. He explained training would last several days.

Ms. Darby asked Chief Garber to explain what made the apparatus different from others. Chief Garber explained the new ladder truck was called a tractor drawn aerial and was actually a tractor trailer that bent in the middle. He stated the vehicle had a driver in the front as well as the rear. He noted the vehicle was designed for tight and narrow streets such as Staunton.

Mr. Claffey asked Chief Garber about the cost of the vehicle. Chief Garber stated the vehicle cost \$1.55 million with a 15-year life expectancy. He noted it had a 107' ladder and would reach any building within the city.

Mr. Holmes asked Chief Garber if the Department would be retiring any equipment. Chief Garber stated the new apparatus replaced a 2002 rear mount tower. He noted when staff was fully trained then that equipment would be transferred to the new truck with a goal of being in service by November 1st. He noted the old equipment would be sold.

5. Presentation on My Brother's and Sister's Keeper Initiative and Marcus Alert

Mr. Rosenberg stated this item was on the agenda at the request of Councilwoman Mead. At her request, representatives of the Staunton Equity Coalition—Jazmine Brooks and Meghan Kramer—had been invited to make a presentation.

Ms. Mead stated on June 12, 2020, City Council issued a statement condemning racially motivated violence and injustice. She noted it was said that Council would immediately consider specific initiatives that would help the City ensure fair and equitable treatment of all Staunton residents and visitors, including interactions with law enforcement. Ms. Mead stated this presentation was not about defunding police in Staunton nor was it about pulling back on support its first responders, but was about supporting and delivering on promises of this country to Staunton citizens.

Rev. Brooks stated she was speaking particularly on My Brother's and Sister's Keeper initiative alone. She stated those initiatives were established in 2014 to help close the academic achievement gap and ensure equal opportunity both in school and outside of school for young black men. She noted it used a comprehensive approach to establishing support and programs engaging the city, the school system, and families. Rev. Brooks stated the closest alliance was the Charlottesville community. She noted it was their intention to help Staunton join the alliance. She noted part of that role came from data that included housing, employment, policing, city management, and academic achievement. She noted in both reading and math, those students were barely meeting the benchmarks, if at all. She noted it was not a reflection of intellectual capacity and capability as much as it was a reflection of disparity that was completely out of control of the student attending public schools. Rev. Brooks stated those same disparities were found in policing in Staunton. She stated it was their hope that Council would consider implementing a committee on equity, achievement, and opportunity.

Mayor Oakes asked Council members if they had any questions.

Vice Mayor Robertson asked Rev. Brooks what were the disparities and why were black students being suspended more than other students. Rev. Brooks stated they were talking about racism that manifests itself in harsher disciplinary punishments.

Ms. Dull stated she would also be interested in seeing the same type of data on gender disparities. Rev. Brooks stated, to be clear, the My Brother's and Sister's Keeper initiative was aimed at addressing racial disparities in particular.

Mr. Holmes asked if this also included Hispanic students. Rev. Brooks stated currently their target audience was to address the racial disparities between black students and white students.

Vice Mayor Robertson asked how Council was committed to contribute. He noted he had never been about having a quota system, but stated he wanted the best person that had applied for the job. Rev. Brooks stated their goal was not to meet any type of quota, but to make the leadership reflective of the population.

Mayor Oakes asked Rev. Brooks if she was looking for Council to approve a My Brother's and My Sister's Keeper community. Rev. Brooks stated they were looking for the city to become a community, but their specific request was for Council to sanction a committee to work on that project.

Mayor Oakes asked Rev. Brooks if this had been presented to the School Board. Rev. Brooks stated it had been presented to the Superintendent who made a presentation to the School Board.

Mayor Oakes stated she'd spoken to the founder of My Brother's Keeper in Richmond, Stephan Hicks. She noted he told her that every community was unique for that locality. She stated the six challenges definitely had value. Mayor Oakes stated she understood the desire to want to have this committee look into that matter, but she would like to hear what the School Board had to say on this matter and then together, City Council and the School Board, could decide the best route to go for the city. Rev. Brooks stated the School Board had already agreed to adopt the initiative; however, she noted those were two distinct roles. Discussion ensued.

Mr. Claffey noted the first goal/objective was to ensure that children entering school cognitively, physically, socially, and emotionally were ready, and the second goal was to ensure that all children were reading at grade level by the 3rd grade. Mr. Claffey stated parents were committed to that in the community and noted Dr. Smith stated earlier that he was trying to get the pre-K program started one year earlier, but were canceled by the pandemic crisis. Mr. Claffey stated he felt one thing that Council needed to do was to get money to get that program going.

Ms. Mead stated she did not want the focus to drift solely into the school systems. She noted, beyond education, there are discrepancies in housing, wages, differences in opportunities in terms of hiring and representation of minorities on City staff and Boards and Commissions. Ms. Mead stated she was also not about quotas. She noted the proposed committee would begin by identifying the areas where there were inequities and move forward to develop strategies to bridge the gaps.

Vice Mayor Robertson stated he agreed with Ms. Mead. He questioned what kind of balance there was in the application thereof when hiring a new City Manager. He noted perhaps Council needed to have a discussion regarding how to get more diverse applications.

Ms. Darby stated perhaps Council could receive a presentation from Jon Venn, Director of Human Resources, to answer questions.

Mr. Holmes stated he understood the proposed committee would be doing some fact searching and present advice to Council. He noted currently Council was not represented diversely and it would be nice to give viewpoints from the community.

Rev. Brooks stated those initiatives were not a fact finding and she wanted to establish a Council sanctioned committee to do the work that needed to be done.

Meghan Kramer stated she was asking Council for a commitment to the Marcus Alert. She noted a petition with over 550 signatures had been received supporting that measure. She noted it was a common sense solution to a nationwide problem that would benefit law enforcement and citizens alike when dealing with mental health crises. The Marcus Alert would call for the creation of a community care team within the Police Department composed of mental health professionals and one police officer. She noted the care team would respond to mental health calls and wellness checks, and the police officer would be on site as backup only if non-lethal force was needed. Ms. Kramer stated part of the goal of the team would be to decrease mental health crises in the community in general. She asked that Council add this request to their agenda to help with the statewide fight to enact the Marcus Alert. She noted they would also like to be added to a public meeting agenda to consider the establishment of a work group included the police chief, certain City employees, and a member of City Council to develop a plan and recommendations for the implementation of a Marcus Alert program.

Mayor Oakes asked Council members if they had any questions.

Ms. Dull stated the special session that was currently going on in the state legislature, both the House and the Senate, were advancing Marcus Alert legislation. She felt locally the City had done a good job in terms of training all police officers in crisis intervention with the mental health department. She stated the city may end up doing the Marcus Alert from the state and noted she

would support any efforts to ensure that citizens with mental illness that were decompensating did not end up in the prison system or end up dead.

Mayor Oakes noted when it came to those initiatives, she requested that Council be given the opportunity to speak with the School Board and the School system and investigate further with Anna Leavitt of CAPSAW as well as Police Chief Williams.

Vice Mayor Robertson stated he would like to have a full presentation with Chief Williams
Council members did not have any further questions.

6. Discussion of an Ordinance to Amend the FY2021 Budget Ordinance for the City of Staunton by Adding Budget Amendment Number Two for CARES Act Funded Support for Small Businesses Impacted by the COVID-19 Pandemic Via the Staunton Economic Development Authority

Mr. Rosenberg stated Phil Trayer, Chief Finance Officer, would be presenting this item. He noted, due to time constraints, Council may consider deferring agenda Item 7 on the FY2020 Revenue Update to the Regular meeting. Mayor Oakes and Council members were in agreement.

Mr. Trayer stated he was presenting Budget Amendment Number 2 for FY2021 which transferred \$500,000 in CARES Act Relief funds to the Economic Development Authority (EDA) in support of the Staunton Cares Business Grant program. He noted that program was designed to support local businesses impacted by the Covid-19 pandemic. Mr. Trayer stated, to date, the City had received combined payments of \$4.3 million to address the following areas related to the pandemic:

- Medical expenses
- Public health expenses
- Payroll expenses for public safety officials
- Expenses to facilitate compliance with COVID-19 public health measures
- Economic support for local businesses
- Other COVID-19 related expense that is reasonably necessary to the function of government

Mr. Trayer stated in order to receive the grants, businesses must meet multiple criteria which includes:

- Has suffered a qualified business interruption due to COVID-19
- Has a physical location within the corporate limits of Staunton
- Taxes and fees to City of Staunton current
- Locally owned and operated (Staunton business license)
- Had between one and 20 (Full Time Equivalent*) W-2 employees as of March 13, 2020
*Full Time Equivalent (FTE) means the number of employees required to achieve one week (40 hours) of work—for example, one full time (40 hours) employee and two part time (20 hours each) employees would be 2 FTE
- Have received or been approved for an SBA-backed Paycheck Protection Program (PPP) loan or an Economic Injury Disaster Loan or Grant, and still in need of funding

- Did not receive and have not been awarded reimbursement under any other federal program for the expenses that will be reimbursed by this grant
- Did not receive compensation from an insurance company for the covered business interruption due to COVID-19 or received less than \$10,000 in insurance compensation
- The business is not a subsidiary of a business with more than 50 employees, is not part of a larger business enterprise with more than 50 employees and is not owned by a business with more than 50 employees

Mr. Trayer stated the proposed transfer was a qualified CARES Act expenditure. He noted the City Manager had reviewed the ordinance and recommended introduction and approval.

Mayor Oakes asked Council members if they had any questions.

Ms. Darby asked Mr. Trayer if the criteria was determined locally or did it come from the CARES Act specifically.

Mr. Trayer stated there was some local input in that, but staff relied heavily upon criteria that was found in CARES Act guidance.

Mr. Claffey asked Mr. Trayer if there were enough applications to disperse the \$500,000.

Mr. Trayer stated currently there were 34 applicant requests totaling \$366,000. He noted the deadline had been August 21, 2020, but believed there were plans to open it up further to September 4, 2020 in order to gather more applicants. He stated some of the applicants were busy cleaning up after the recent floods.

Mr. Claffey asked Mr. Trayer what would happen to the money in the event that there weren't enough applications for.

Mr. Trayer stated the money would be transferred back to the City and additional uses would be found.

Ms. Darby asked Mr. Trayer if the 34 businesses that had already applied, geographically was it a good composite across the whole city or was it localized to one area.

Mr. Trayer stated he'd been informed that they were businesses located throughout the city and not just the downtown area.

Vice Mayor Robertson asked Mr. Trayer on how businesses could apply.

Mr. Trayer stated there was a CARES Act application on the City's website through the EDA and with the Staunton Community Development Fund. He noted the Staunton Downtown Development Authority (SDDA) had also sent out application notifications to businesses.

Mr. Holmes questioned Mr. Trayer if \$500,000 had to be met to qualify.

Mr. Trayer stated the City had up to \$500,000 to provide. If it was not all utilized it would be brought back into the City.

439
440 Council members did not have any further questions.

441
442 This will be Item D on the Regular meeting agenda.

443
444 **7. Presentation of FY2020 Revenue Update**

445
446 Due to time constraints, this item was moved to the Regular meeting agenda.

447
448 The work session adjourned at 7:08 p.m.

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455

Suzanne F. Simmons
Clerk of Council

REGULAR MEETING OF STAUNTON CITY COUNCIL**Thursday, August 27, 2020****7:30 p.m.****Rita S. Wilson Council Chambers**

PRESENT: **Mayor Andrea Oakes**
 Mark Robertson, Vice Mayor
 Carolyn W. Dull
 R. Terry Holmes
 Brenda O. Mead
 Stephen W. Claffey
 Amy G. Darby

ALSO PRESENT: **Steven Rosenberg, City Manager**
 Leslie Beauregard, Assistant City Manager
 Douglas Guynn, City Attorney
 Suzanne F. Simmons, Clerk of Council

Mayor Oakes called the meeting to order: As Mayor, I call this meeting of Staunton City Council to order. I note that this meeting is being broadcast over the City's cable channel and streamed live on the City's website so that members of the public may hear our meeting. The meeting is also being recorded.

Mayor Oakes asked the Clerk of Council to call the roll for confirmation of those Council members present for today's meeting.

Clerk of Council Call the Roll of Council Members Present:

Mayor Oakes	aye	Vice Mayor Robertson	aye
Ms. Darby	aye	Ms. Dull	aye
Mr. Holmes	aye	Ms. Mead	aye
Mr. Claffey	aye		

Mayor Oakes asked that City Manager Steve Rosenberg note the participation of any City officials or colleagues, or anyone else, during today's meeting by Zoom or telephone.

Mr. Rosenberg stated all City staff and officials were participating in person and Councilwomen Dull and Mead were participating on Zoom.

Background Statement:

Mayor Oakes stated "Please let me mention that notice, reasonable under the circumstances, of this meeting has been given to the public contemporaneously with the notice provided to members of City Council. In addition to limited public seating in city hall, access to this meeting has been provided to the public by audio feed on the City's cable channel and the City's website. During public hearings, toward the beginning of the meeting, and Matters from the Public on Council's agenda, toward the end of the meeting, public comments will be taken, in person and by telephone. Members of the public who wish to participate in such matters by telephone, at the appropriate time, may call (844) 854-2222 and, when prompted enter the access code 619358#. Callers will

be recognized in order. The public is reminded that public hearings and Matters from the Public are times for Council simply to listen to your comments. Each speaker will be limited to five minutes. Detailed instructions for public participation by telephone have been publicized over the course of the past week on the City's website and Facebook page and can be found now on the agenda for this meeting and on Council's website at www.ci.staunton.va.us/government/city-council.

Also, let me highlight and have reflected in the meeting minutes that this meeting, although being conducted in person, is also being conducted by Zoom, with virtual participation of certain members of City Council, given the catastrophic nature of the declared emergency and disaster related to the Covid-19 outbreak, which as part of the total circumstances makes it impracticable or unsafe to assemble in a single location. The meeting is being held consistent with City Council Ordinance 2020-04 regarding continuity of government, a copy of which can be found online at: www.staunton.va.us/cogord2020-04.

Mayor Oakes then asked that everyone wear a mask while in City Hall and Council Chambers.

The Pledge of Allegiance was recited in unison.

The invocation/moment of silence was given by Mr. Holmes.

MAYOR'S REPORT

Mayor Oakes stated she would like to echo Mr. Holmes' comments. She thanked everyone that continued to help with the restoration from the flood damage. She noted Staunton was truly strong. Mayor Oakes stated bad weather was being called for during the weekend and Mr. Rosenberg would be addressing that later in the meeting.

Mayor Oakes stated she had the honor of welcoming back Mary Baldwin University students through Zoom. She noted she'd also welcomed people to the Ruck Hiking event. Mayor Oakes stated she visited citizens participating in the West End Road Rally.

ADDITIONAL ITEMS BY MEMBERS OF COUNCIL

Vice Mayor Robertson stated Council would be backing the City Manager with the weather forecasted for the weekend. He asked that everyone be proactive rather than reactive. He commended City staff for their work during the recent flood events.

Mr. Claffey stated as Council liaison he had participated in a conference call with the Library Board. He thanked the Library Board for their assistance on collecting supplies during the flood. He noted there would be a limited reopening for the Library in early September. Mr. Claffey stated earlier today he'd attended the EDA meeting as Council liaison and noted Ophie Kier had been elected as Vice Chair.

Ms. Darby stated she attended the recent Planning Commission meeting as Council liaison. She noted it was very informative and thanked Rodney Rhodes, Senior Planner, for his help during the meeting. She noted Staunton citizens were doing a great job helping each other out with the flood damage. She asked that everyone prepare for further weather events.

Ms. Dull stated she would like to thank Central United Methodist Church for coordinating with their region's emergency disaster response team and the early emergency response team. She noted they'd done outstanding work and had helped her with flood cleanup at her home. Ms. Dull stated the oldest WWII veteran would be celebrating his 111th birthday and the National WWII museum was coordinate a birthday card mail shower. She provided the veteran's name and address.

APPROVAL OF MINUTES

Ms. Darby stated in regards to the meeting of August 13, 2020, she would like to make it known that during the vote for the Nominations Committee, the clerk inadvertently did not call Ms. Darby's name. Ms. Darby indicated that she would have voted in favor of the motion, which was unanimous, and asked that it be included in the motion.

Ms. Darby moved to approve the work session and regular meeting minutes of August 13, 2020 as presented.

The motion was seconded by Vice Mayor Robertson and carried as follows:

Vice Mayor Robertson	aye	Mayor Oakes	aye
Mr. Holmes	aye	Ms. Mead	aye
Ms. Darby	aye	Mr. Claffey	aye
Ms. Dull	aye		

REGULAR MEETING

A. Public Hearing and Consideration of a Request by Enio Viera for a Special Use Permit for 430 N. New Street (PID# 5748) Under the Provisions of SCC 18.60.070, Uses Permitted on Review, of Chapter 18.60, B-2, General Business District, of Title 18, Zoning, of the Staunton City Code

Rodney Rhodes, Senior Planner, stated Enio Viera, owner of 430 N. New Street, had requested a Special Use Permit to add two additional dwelling units on the ground floor. He noted the property was a multi-family dwelling, containing four units, and was located at the southwest corner of the intersection of N. New Street and Points Street. The property is zoned B-2, General Business District. Mr. Viera would like to add two additional units to the ground floor. Mr. Rhodes stated in the B-2, General Business District, residential use was not permitted on the ground floor by right and required a Special Use Permit. The structure was built prior to 1921 (appears on City maps starting in 1921). According to the City Assessor's records, the property contained five apartments in the 1960s and 1970s. The first floor of the building contained various businesses over the years, including a radio station in the 1980s.

Mr. Viera purchased the property in January of 2020, and would like to add two additional dwelling units to the ground floor level. If approved, this multi-family structure would contain a total of six units.

Mr. Rhodes stated staff reviewed the request and raised some concerns regarding off-street parking. He noted the zoning ordinance requires that multi-family units have two parking spaces per unit off-street and also has to be on the same property of the units. Some of the existing parking

150 is located on adjoining lots owned by Mr. Viera. Prior to approval of the Special Use Permit, a
151 minor subdivision plat, vacating interior property lines, needed to be submitted for review. Mr.
152 Rhodes stated staff otherwise supported the request.

153
154 Mr. Rhodes stated generally that area, although zoned B-2, General Business, was predominantly
155 residential with several churches in the area.
156 lings.

157
158 Mr. Rhodes stated at its meeting of July 16, 2020, the Planning Commission conducted a public
159 hearing and considered the request. During the public hearing, no one spoke in opposition. Mr.
160 Rhodes stated no one had called his department regarding tonight's meeting based on
161 advertisements or adjacent property owner notifications to ask any questions regarding the request.
162 On a 4-0 vote, the Commission unanimously voted to recommend approval of the Special Use
163 Permit with the following conditions:

- 164
165 1. A plat must be submitted, reviewed, approved, and recorded prior to this Special Use
166 Permit taking effect.
167 2. A scale drawing of the parking lot plan shall be submitted to City staff for review.
168

169 Mr. Rhodes noted Mr. Viera had already completed those two conditions. He noted a parking
170 plan completed by a surveyor had been included in Council's packets. He stated the applicant
171 had also submitted a plat plan which was reviewed and approved and recorded.

172
173 Mayor Oakes asked Council members if they had any questions.

174
175 Vice Mayor Robertson clarified with Mr. Rhodes that City staff did not have any problems with
176 the request.

177
178 Mr. Rhodes stated there were no problems whatsoever. He noted Mr. Viera had plans to make
179 improvements to that parking lot. The plans showed fourteen spaces with plans to pave and stripe
180 the lot and add bumper blocks.

181
182 Ms. Mead thanked Mr. Viera for making an investment in the community.

183
184 Council members did not have any further questions.

185
186 The public hearing was opened.

187
188 Enio Viera stated he'd completed the required conditions.

189
190 There were no phone calls or speakers on the Zoom platform.

191
192 There being no one else wishing to speak, the public hearing was closed.

193
194 Ms. Darby moved that Council approve the Special Use Permit for 430 N. New Street, as
195 recommended by the Planning Commission.

196
197 The motion was seconded by Mr. Holmes.

198
199 Vice Mayor Robertson asked Mr. Viera what was his time frame for finishing the project.

Mr. Viera stated he would like to start immediately if approved by Council. He noted he hoped to have it completed by the first of the year.

Mayor Oakes also thanked Mr. Viera for investing in Staunton.

Mr. Viera thanked Council and noted the City was doing a good job from the recent floods.

The motion carried as follows:

Ms. Darby	aye	Mr. Claffey	aye
Ms. Dull	aye	Vice Mayor Robertson	aye
Mayor Oakes	aye	Mr. Holmes	aye
Ms. Mead	aye		

**B. Consideration of Grant Application to Firehouse Subs Public Safety Foundation/
Cochran Center Automated External Defibrillators**

Mr. Rosenberg stated this item was on the meeting at the request of Sheriff Matt Robertson. He stated the Sheriff had a personal engagement and was unable to attend the meeting. Mr. Rosenberg stated this item was for an application to the Firehouse Subs Public Safety Foundation (Firehouse) for a grant in the amount of \$5,800 with no local match required to fund the purchase of four automated external defibrillators (AEDs) for the Cochran Judicial Center. The deadline for the grant applications was learned before Council's meeting date. The application deadline was August 18, 2020 and is before Council for retroactive approval. As noted during the Work Session, Mr. Rosenberg stated an application was also made to the City's insurer – the Virginia Risk Sharing Association (VRSA) – to fund two AEDs for the same facility. Mr. Rosenberg stated it was learned that afternoon that that grant had been awarded in the amount of \$2,100. He noted staff would wait to see on how the application from the Firehouse Subs foundation was handled. If approval was received for all four AEDs pursuant to that application, staff would go back to the granting agencies and ask for some flexibility and hopefully find other locations in the City where the units could be placed.

Mayor Oakes asked Council members if they had any questions.

Vice Mayor Robertson stated he knew that the Commonwealth Attorney's office did not have any AEDs in their office.

Council members did not have any further questions.

Mr. Holmes moved that, to the extent required by law, City Council authorize application for an acceptance of a grant from the Firehouse Subs Public Safety Foundation to fund four automated external defibrillators for the Cochran Judicial Center, retroactively to August 18, 2020, as proposed.

The motion was seconded by Mr. Claffey and carried as follows:

Ms. Dull	aye	Vice Mayor Robertson	aye
Mayor Oakes	aye	Mr. Holmes	aye

250 Ms. Mead aye Ms. Darby aye
251 Mr. Claffey aye
252
253

254 **C. Consideration of Acceptance of Local Emergency Management Performance**
255 **Grant from Virginia Department of Emergency Management**
256

257 Mr. Rosenberg stated during the Work Session, Fire Chief Scott Garber briefed Council on the
258 grant program administered by the Virginia Department of Emergency Management (VDEM). He
259 noted it was the Local Emergency Management Performance Grant (LEMPG) program and is an
260 annual funding program which provided funding to every locality in the Commonwealth of
261 Virginia. Mr. Rosenberg stated the City of Staunton was slated to receive a grant in the amount
262 of \$7,500. He noted this was a federally funded, state distributed grant program. The proposed
263 use of the \$7,500 by the Fire and Rescue Department was to acquire a new public safety Unmanned
264 Aerial Vehicle (UAV/drone) and would be used for search and rescue missions, special events,
265 and assessment of damages caused by natural disasters such as the severe flood event on August
266 8, 2020. Mr. Rosenberg stated the grant did require a local match in the amount of \$7,500, but that
267 would be funded using what was known as Aids Locality Funding which was provided by the
268 Virginia Department of Fire Programs. Mr. Rosenberg stated there was no City derived funding
269 required.
270

271 Mayor Oakes asked Council members if they had any questions.
272

273 Council members did not have any questions.
274

275 Mr. Holmes moved that City Council approve acceptance of the award to the City of
276 Staunton of a Local Emergency Management Performance Grant, in the amount of
277 \$7,500, from the Virginia Department of Emergency Management and authorize the City
278 Manager or his designee to complete any actions necessary in connection with such
279 grant, as proposed.
280

281 The motion was seconded by Ms. Darby and carried as follows:
282

283 Mayor Oakes	aye	Mr. Holmes	aye
284 Ms. Mead	aye	Ms. Darby	aye
285 Mr. Claffey	aye	Ms. Dull	aye
286 Vice Mayor Robertson	aye		

287

288 **D. Introduction and Consideration of an Ordinance to Amend the FY2021 Budget**
289 **Ordinance for the City of Staunton by Adding Budget Amendment Number Two**
290 **for CARES Act Funded Support for Small Businesses Impacted by the COVID-19**
291 **Pandemic Via the Staunton Economic Development Authority**
292

293 Phil Trayer, Chief Finance Officer, stated he was there to consider a budget amendment to transfer
294 CARES Act Relief funds in the amount of \$500,000 to the Economic Development Authority
295 (EDA) in support of the Staunton Cares Business Grant program. He noted that program was
296 designed to support local businesses impacted by the Covid-19 pandemic. Mr. Trayer stated, to
297 date, the City had received combined payments of \$4.3 million to address the economic impact
298 within the city and these are qualified uses of the CARES Act funding. Selection criteria and
299 additional qualified expenses had been reviewed during the Work Session

following areas and the City Manager had reviewed the ordinance and recommended approval.
Council members did not have any questions.

Mr. Claffey moved to approve an ordinance to amend the fiscal year 2021 budget ordinance to the City of Staunton by adding Budget Amendment Number Two in the CARES Act fund and support for small businesses impacted by the Covid-19 pandemic via the Staunton Economic Development Authority.

The motion was seconded by Vice Mayor Robertson and carried as follows:

Ms. Mead	aye	Ms. Darby	aye
Mr. Claffey	aye	Ms. Dull	aye
Vice Mayor Robertson	aye	Mayor Oakes	aye
Mr. Holmes	aye		

(SEE ATTACHMENT 1)

Presentation of FY2020 Revenue Update

Mr. Trayer stated he was there to review with Council the initial revenue results for FY2020. He noted they were unaudited revenues, but were a close projection. He provided a review of information previously provided to Council during the revised budgeting process. Prior to the shutdown, the City was experiencing positive variances in most of the City's local revenue sources. As reported to Council on March 18, 2020...at the time:

- Our Sales tax were \$219K over same time last year with revenue posted thru December.
- Meals Tax were \$240K over same time last year with revenues posted thru January
- Lodging Tax were up \$148K over same time last year with revenue posted thru January.
- Personal Property was up over \$200 over budget.
- Real Estate Tax was expected to be at budget levels.

Mr. Trayer stated in a matter of days our FY2020 Revenue projections were completely upended.

- Sales Tax was projected to finish the months of March thru June at just 60% of same time last year.
- Meals Tax 33%.
- Lodging Tax 25%.
- Real Estate Tax delinquencies were forecasted to increase by 5% which represented a reduction of over \$675K.
- Collection of prior year delinquencies were expected to be significantly impacted as well.

Mr. Trayer stated:

- A. Overall, as a result of the economic contraction, FY2020 General Fund Revenues were projected to be \$2.6 million less than budget.

B. Those projections closely mirrored Jim Regimbal's of Fiscal Analytics FY2020 projections for Staunton for the months of March thru June. The main difference was primarily the Real Estate Tax delinquency factor.

C. Unknown at the time of the projections was the magnitude of the CARES Act funding. Additional unemployment benefits of \$600 per week as well as support for business, schools and local governments helped immensely.

Mr. Trayer stated:

Actual revenue postings for the months of March through June exceeded projections for Meals, Lodging, Sales and Real Estate by \$2.3 million.

Meals Tax up \$719K over projections

Lodging Tax up \$66K over projections

Sales Tax up \$699K over projections

Real Estate Tax up \$836K over projections

Mr. Trayer stated year to date (unaudited) revenues posted thru June 30, 2020 total \$60,897,470 versus a revised budget of \$59,876,993 for a positive variance of \$1,020,475 or 1.7%.

Mr. Trayer stated positive variances in Property Taxes, Local Taxes and Federal Revenues helped to offset losses in Service Charges, State Revenue, and Fines & Forfeitures. He noted that did not include CARES Act funding or the transfer of \$1.4 million to sure our FY2020 revenues.

Mr. Trayer stated there were a few bullet points pertaining to expenses and year end timeline:

The spending freeze enacted by the City Manager in March, 2020 was projected to produce savings of upwards of \$1 million +.

A firm expense projection was not available at that time as invoices for FY2020 will be processed until the end of the month. Year-end entries would be posted in September and reviewed with the Auditors in October.

The FY2020 Audit was scheduled to be completed in November and would be presented to Council for acceptance at the December Meeting.

Mr. Trayer reviewed some of the revised budget assumptions used for FY21's budget:

- Most notably was that Safety Net Reserves were intentionally not utilized as a budgeting strategy for FY2021's Budget. Our strategy was to make difficult decisions up front and to only use Safety Net Reserves in the event actual Revenues in FY21 were significantly below estimates.
- The City planned to continue to freeze the positions frozen in March, 2020 as well as future openings as attrition occurred. Limited exceptions were planned to be allowed as approved by the City Manager.
- Pay increases were tabled during the revised budget process.

- And 10 furlough days were budgeted for all departments with the exception of Fire Fighters which were budgeted for an equivalent of one furlough shift per quarter.
- We appropriated of 60% our FY2021's Budget which will require additional appropriations by Council as revenues materialized and offered Council maximum flexibility on the FY2021 budget.

Mr. Trayer stated revenues could go in either direction and were uncertain at that point. He noted he had enlisted the help from the Commissioner of Revenue and the Treasurer as well as statewide projections.

Mr. Trayer stated this was a summary of the revenue reductions that were made in the FY2021 revised budget:

Local Tax	Amount	Comment
Real Estate Tax	\$ 912,000	Additional Delinquency Provision of 5%
Personal Property Tax	\$ 208,000	Additional Delinquency Provision of 4%
Meals Tax	\$ 1,187,500	25% Reduction to Original Budget
Lodging Tax	\$ 209,000	20% Reduction to Original Budget
Business License Tax	\$ 550,000	25% Reduction to Original Budget
Sales Tax	\$ 1,131,250	25% Reduction to Original Budget

Estimated Revenue Reductions **\$ 4,197,750**

Mr. Trayer stated last month Jim Regimbal, from the Virginia Municipal League, provided a revised local revenue forecasts for Cities in Virginia:

Projected Decline in Local Revenues

Category	Virginia Municipal League Estimates	City of Staunton's FY21 Budget	\$ Impact
Real Property	5%	5%	\$ -
Personal Property	5%	4%	\$ (41,600.00)
Local Sales Tax	10%	25%	\$ 678,750.00
Business License	15%	25%	\$ 220,000.00
Transient Occupancy	25%	20%	\$ (39,280.25)
Meals	25%	25%	\$ -
All Other	5%	0%	\$ (174,669.00)

Total Impact \$ 643,200.75

Mr. Trayer stated there were some additional considerations:

- Furlough days originally scheduled for the months of July 2020 through April 2021 had been deferred to the months of September, 2020 through June, 2021.

- Given the positive revenue performance in FY2020, and anticipated expense savings, consideration may be given to the elimination of some of the budgeted furlough days. Each furlough days represents approximately \$45K in savings.

ADDITIONAL CONSIDERATION - FLOODS

- Estimated losses associated with the flood on August 8th equals approximately \$900K. We anticipate approximately \$350K in insurance recovery for a potential net loss of \$550K.
- State assistance was unknown at that time.

Mr. Trayer stated because of the decisions made in March, 2020 and during the FY21 budgeting process, albeit unpopular, especially with employees, the City was in a position to not only absorb the losses associated with the flood, but also possibly eliminate some of the furlough days.

Mayor Oakes asked Council members if they had any questions.

Mr. Claffey asked Mr. Trayer about the variance of over \$1 million. He noted he appreciated his ability to contain expenses in the March through June period and that revenues did not fall off the face of the earth as badly as anticipated. Mr. Claffey stated it had a lot to do with the fact that every individual got a \$1,200 check from the government which was why the sales tax went up was because people spent the money. He noted the City had stopped doing any CIP projects and recently there had been two floods. He questioned if the City needed to spend money on some wastewater treatment facility or what did the City need to do to make that a positive and be able take that money and work it into some flood relief Capital Improvement Projects. He stated the City was not looking into any CIP projects for FY2021. He stated he felt the citizens wanted Council to spend the money wisely and that they saw the biggest need was wastewater treatment.

Mr. Trayer stated there were certain projects that were proceeding that had already begun and part of the stormwater was the Gypsy Hill Park stream restoration and was scheduled to proceed. As far as an overall plan, Mr. Trayer stated there was a new Public Works director coming on board soon as well as a new City Engineer. He noted there had been serious discussions amongst staff and the City Manager for that very point. He noted staff was very aware that was a high priority for Council and staff would be acting accordingly.

Mr. Claffey stated he was glad to hear that and that Council was very worried about the City's infrastructure. He noted he would like to see that extra \$1 million spent where it was needed.

Ms. Mead stated she felt the City did not have \$1 million extra. She noted the City hadn't gotten hit as badly as was anticipated so it wasn't like there was an extra \$1 million. She pointed out the \$600/week federal unemployment benefits and the \$1,200 checks were going away. She stated on December 31, 2020 the federal unemployment benefits would go away, but state benefits for many people who lost their jobs during the pandemic that benefits would have all been expended unless something else changed. Ms. Mead stated, as much as the City needed to address the stormwater issues, she felt the City needed to keep some "dry powder" and wait to see what happened in the next few months.

Mr. Rosenberg stated he wanted to make clear a point that he thought Mr. Trayer was sharing subtly which was one of the places that the City was looking to use a small portion of the \$1 million

was in eliminating some or all of the furlough days for the remaining employees who had not been excluded already from the furlough. Mr. Rosenberg explained that CARES Act funding was able to be used for first responder staff. He noted there was a desire on the part of others in the City workforce to be treated in a similar manner. He noted CARES Act funding could not be used for those employees.

Ms. Dull stated in terms of the Real Estate tax, she noted there were some Staunton residents that paid their entire amount in June to try to help the City. She asked Mr. Trayer if there had been an analysis of that.

Mr. Trayer stated there had been. He noted part of the year end closing process, which had already taken place, revenue was deferred that had been paid in advance to put it into the next fiscal year. He noted that had been deducted from FY2020 and was in FY2021 as of today.

Council members did not have any further questions.

E. Consideration of Adoption of a Resolution Regarding Pending Litigation

Mr. Rosenberg stated this item was added to the agenda at the request of Doug Guynn, City Attorney.

Mr. Guynn stated this item before Council was for a draft dated August 27, 2020 of a resolution titled Resolution of the Council of the City of Staunton, Virginia, Regarding Litigation Related to Continued Zoning and Building Code Violations. He noted the resolution was to deal with the property owner's choice to continue litigation despite the City having once more prevailed in court regarding the wall at 1403 N. Augusta Street. He stated that win by the City represented the fourth time that the Staunton Board of Zoning Appeals had been reversed by the Circuit Court. Despite the Circuit Court ruling again in favor of the City, the property owner had decided to protract the litigation further. Mr. Guynn stated in an effort to curtail any substantial further expense by the City, the proposed resolution would direct litigation counsel for the City not to expend any further substantial expense at this time in response to the appeal which had been filed by the property owner.

Mr. Guynn then read the concluding paragraph from the proposed resolution. He stated, at the City's initiative, a motion for mediation was filed which the Circuit Court agreed to because they believe that may be the best way finally to resolve the matter. Mr. Guynn stated apparently the property owner decided to retract the litigation, but the mediation process was still ongoing. He noted the mediation process would be held in mid-October or so. He stated the resolution was before Council.

Mayor Oakes asked Council members if they had any questions.

Vice Mayor Robertson moved the litigation involving the City of Staunton versus Debra Chilton Belloni concerning the wall at 1403 N. Augusta Street shall cease in its entirety immediately.

The motion was seconded by Ms. Darby.

Ms. Dull stated the whole episode had to do with whether Council abided and believed in the rule of law in the country. She noted if Council let the owner not abide by the City's own ordinance because she had a powerful attorney who was friends with powerful people, but in the meantime

were requiring other people, and had required other people, to be compliant with that law. Ms. Dull stated if Council ceased that action it was a travesty to the rule of law. She noted there was no other way to describe it and that it was an invitation to anyone with money to ignore any one of the City's ordinances because then they could refer to this particular case as case law of an example of how they did not have to abide by the City's ordinances either. Ms. Dull stated that it was disgusting.

Vice Mayor Robertson stated he called for the question.

The motion carried as follows and failed:

Mayor Oakes	aye	Mr. Claffey	no
Vice Mayor Robertson	aye	Ms. Dull	no
Ms. Mead	no	Ms. Darby	aye
Mr. Holmes	no		

Mayor Oakes stated the motion had failed and would entertain another motion.

Mr. Claffey moved that City Council adopt the proposed resolution regarding litigation related to the continued zoning and building violations and direct and authorize the Mayor to execute the resolution with such modifications and in such final form as approved by legal counsel as provided in Mr. Guynn's resolution.

The motion was seconded by Mr. Holmes.

Ms. Dull stated it was also a travesty for Council not to represent the City in this appeal because the City had won by case law in every instance. She noted the City only had one more to win and it would be done. She stated there was also mediation going on. Ms. Dull stated if Council said they were not going to represent the City in defense of its own ordinances at that time, then that sent a signal that there was no need to do mediation because the City would not do anything. Ms. Dull stated she would donate the money since Council now had a precedent for doing those types of things. She noted she would donate the money for Victor Santos to continue the appeal representing the City.

Mayor Oakes stated that case had been going on as long as she had been on City Council, approximately 12 years. She stated the City made the initial mistake and that it needed to take ownership of that.

Mayor Oakes called Ms. Dull out of order.

Mayor Oakes stated the City continue the case through mediation which meant the City was still spending money. She noted the resolution itself said no further substantial resources and didn't mean that additional money wouldn't be spent on the case. She stated it needed to come to an end and it needed to come to an end tonight. Mayor Oakes stated the resolution did not solve the problem, but it continued the spending and it continued the case.

Ms. Dull stated that she was clarifying that Mayor Oakes made a statement that a misrepresentation. She noted the City did not make an initial error. She stated the property owners were told initially that they could not build that wall. Ms. Dull stated even if that was the first, the law states that did not count. She noted Mr. Guynn had explained it to Council many, many times

that the City was not at fault. She noted the City had tried their best to work with the owners, had tried to provide equipment to haul off the excess materials to help in every way so that the owner was in compliance. Ms. Dull stated to not defend this when it was being appealed was a travesty and was not helping the citizens of Staunton because they were not following the rule of law.

Mayor Oakes stated the City initially had an employee initially tell the owners that they could build the wall and noted it had been going on for almost 12 years.

Vice Mayor Robertson stated he understood what Ms. Dull was saying. He noted the resolution had changed a date from October 1 and now stated it could be ended on October 19. He stated whatever Ms. Dull said, the case would go on in perpetuity because the owner would not give up. He noted it had been to the Supreme Court twice and it had come back down twice. He stated sooner or later enough was enough.

Ms. Dull asked how much was the rule of law worth. She asked if it were not priceless that they should not abide by the principle that of the rule of law. She stated she would ask at that time if Mr. Guynn would clarify if the City had someone who initially told them wrong or whether that happened subsequent to the initial response.

Mayor Oakes asked for the clerk to call for the vote.

Ms. Mead asked that the question be asked again.

Mr. Claffey moved that City Council adopt the proposed resolution regarding the litigation related to continued zoning and building code violations and direct and authorize the Mayor to execute the resolution with such modifications and in the final form as approved by legal counsel.

The motion carried as follows:

Ms. Mead	aye	Ms. Darby	aye
Mr. Holmes	aye	Mayor Oakes	no
Mr. Claffey	aye	Vice Mayor Robertson	no
Ms. Dull	no		

(SEE ATTACHMENT 2)

MATTERS FROM THE CITY MANAGER

Mr. Rosenberg provided Council and the public with an update concerning the City's storm preparation efforts from Hurricane Laura. He noted the area was predicted to receive 1-2" of rain and flash flooding was marginal. He stated the first planning meeting was held yesterday with staff members from multiple departments. Mr. Rosenberg stated preparations were underway, but with also with continuation of certain work from that the City had been doing since August 8, 2020. He noted distribution of sandbag materials had resumed. He noted storm drain inlets, pipes, and culverts had been cleaned as well as debris from creeks. Public Works crews had repaired or replaced asphalt berms that were damaged from the two earlier events. Mr. Rosenberg stated tomorrow the Parks and Recreation Department would begin a slow release of water from Lake Tams. He noted free parking would be provided in both parking garages through Monday to encourage individuals not to park in the Wharf lot or other low-lying areas in the event flooding

did occur. He explained public safety personnel were on standby and that public communications have been issued to the public and businesses.

Mr. Rosenberg expressed his thanks to the community and all City employees.

MATTERS FROM THE PUBLIC

Speaking in person were:

Ron Gilbert, 408 Lancelot Lane, stated giving back to the city and the community was important to him. He noted his family held a raffle to raise money for the City. He and his family presented a check in the amount of \$1,050 to be used towards damages to the Gypsy Hill Park playground. He noted they would be holding another fundraiser in the future.

Callers on the line included:

Nitch Narduzzi, 130 S. Jefferson Street, voiced support for the My Brother's and Sister's Keepers and Marcus Alert initiatives presented during the Work Session. Regarding Item E on the Regular agenda, she noted this was about the rule of law was worth and was disappointed that Mr. Guynn was not able to answer question posed by Ms. Dull for clarification. She noted the City did have an obligation to stand up for the rule of law and asked that Council separate those two issues.

Deborah Kushner, 1311 N. Augusta Street, stated she recently moved to the area. She noted the community wide efforts after the recent floods was inspirational. She noted she was involved with a local mutual aid group. She noted she was troubled that the new City Council had started out on a very divisive note and mentioned issues regarding the July 4th parade, Gypsy Hill Park Golf Course, and hiring security for ambiguous reasons. She noted those actions weren't the best for the community. She stated focusing on the Second Amendment sanctuary city wasn't only a waste, but it was detrimental and asked that the issue be dropped. She asked that Council work on commons needs for the greater good. She asked if Zoom could be made available to the public.

Karen Kennedy, 826 N. Augusta Street, voiced support for the city becoming a My Brother's and Sister's Keeper community as well as implementing the Marcus Alert.

Alison Profeta, 402 Farrier Court, voiced support for the city becoming a My Brother's and Sister's Keeper community as well as implementing the Marcus Alert.

Carter (inaudible), 16 S. Madison, voiced support for the city becoming a My Brother's and Sister's Keeper community as well as implementing the Marcus Alert.

Those wishing to speak in person included:

Todd Dickerson, 206 Rolla Mill Road, stated he was with the Staunton Equity Coalition, voiced support for proposed the Marcus Alert concept.

James Burnett, 100 Audubon Street, spoke on the Queen City Rucking event recently held. He noted approximately 22 veterans committed suicide every day. He noted one woman organizing that event suffered catastrophic damage to her house from the recent floods and thanked the Mayor for her help. He noted some parents had been forced to take alternative schooling options and proposed that personal property taxes be waived for people that were being forced to go that route.

He asked that Council put the bickering regarding the wall on N. Augusta Street to a rest and suggested that the City go tear it down. He asked that Council revisit the Second Amendment Sanctuary resolution.

Baldwin Jennings, 332 Sharon Lane, stated the N. Augusta Street wall issue should be put to rest.

Yvonne Wilson, 2017 First Street, stated the method in which to achieve the My Brother's and Sister's Keepers initiatives was where she differed and had her misgivings about them and proposed a different approach. She stated she would be presenting a model of her initiative to the School Board at a later date.

Robert Clemmer, 302 Audubon Street, spoke about a recent parking violation that he received and asked that parking enforcement in the downtown area be reexamined.

Aaron Barmer, 312 Fayette Street, expressed support for measures such as My Brother's and Sister's Keeper community as well as implementing the Marcus Alert. He noted the last time he spoke there was some confusion about whether protected speech was taking place and that Council was being paid attention to. He stated it was nice to see people helping out their neighbors. He noted the Stonewall Jackson Hotel sign was starting to be dismantled and thanked City staff and Council members who were in touch.

Jazmine Brooks, 19 ½ Fayette Street, stated she was in support of the My Brother's and Sister's Keeper initiative and wanted to respond to the comments from Ms. Wilson. She clarified that the My Brother's Keeper initiative that was started in 2014 was no longer federally funded; therefore, had the flexibility to shape the program in the way that they would like to see it happen in their earlier request for sanction a committee.

Yvonne Wilson, 2017 First Street, noted one of her concerns was to have more African American representation in City Council and stated she was officially announcing her candidacy for Council in the next election. She also spoke on the Second Amendment.

There was no one else wishing to speak.

ADJOURNMENT

There being no further business to come before Council, the meeting adjourned at 9:25 p.m.

Suzanne F. Simmons
Clerk of Council

Ordinance No. 2020-22
AN ORDINANCE TO AMEND
THE FY 2021 BUDGET ORDINANCE
FOR THE CITY OF STAUNTON
BY ADDING BUDGET AMENDMENT NUMBER TWO

BE IT ORDAINED, by the City Council of the City of Staunton, Virginia, that the FY2021 Budget is amended as follows:

GENERAL FUND		
<u>Anticipated Revenue</u>		
Miscellaneous Revenue - CARES Act Funding	\$	500,000
Total Revenue	\$	500,000
<u>Appropriations</u>		
Community Development		500,000
Total Appropriations	\$	500,000
GRAND TOTAL BUDGET AMENDMENT NO 2.	\$	500,000

INTRODUCED: August 27, 2020

Approved this _____ day of _____ 2020

Effective Date: _____

CERTIFIED: _____

ATTEST: _____

Suzanne F. Simmons
Clerk of Council

Andrea W. Oakes
Mayor of Council

FY 2021 BUDGET AMENDMENT NO. 2

GENERAL FUND		AMOUNT	
	LEDGER CODE	REVENUE	EXPENDITURE
COMMUNITY DEVELOPMENT			
<u>ECONOMIC DEVELOPMENT</u>			
Miscellaneous Federal Revenue	11001-46250-COVID	\$ 500,000	
Transfer to the EDA	11088150-59371		\$ 500,000
TOTAL GENERAL FUND		\$ 500,000	\$ 500,000

FY 2021 BUDGET AMENDMENT NO. 2

GENERAL FUND		AMOUNT	
	LEDGER CODE	REVENUE	EXPENDITURE

BUDGET AMENDMENT NO. 2 GENERAL FUND SUMMARY

GENERAL FUND EXPENDITURE SUMMARY

Community Development	500,000
Total General Fund Expenditures	\$ 500,000

FY 2021 BUDGET AMENDMENT NO. 2

CITY GOVERNMENT FUNDS	
GENERAL FUND	\$ 500,000
TOTAL CITY GOVERNMENT FUNDS	\$ 500,000
FY 2021 BUDGET AMENDMENT NO. 2	\$ 500,000

**RESOLUTION
OF THE
COUNCIL OF THE CITY OF STAUNTON, VIRGINIA,
REGARDING LITIGATION RELATED TO CONTINUED
ZONING AND BUILDING CODE VIOLATIONS**

Recitals

A. The City and its Zoning Administrator have been involved in proceedings for more than 10 years related to walls on property in a residential zone on North Augusta Street, in the City of Staunton, that have been found to violate the City's Zoning laws and were also required to have but lacked a City building permit, being constructed without such permit. Current litigation involves two proceedings: the City's appeal of the 2018 decision, by a 3-2 vote of the Staunton Board of Zoning Appeals, which now has been reversed by the Circuit Court yet another time as to the same walls, in granting the property owner a variance from zoning requirements applicable to others in the City, styled *City of Staunton, Virginia v. Chilton-Belloni*, CL18000404-00; and the City's enforcement action through an injunction proceeding, styled *Angle v. Chilton-Belloni*, CL14000311-00, which remains stayed pending further proceedings. These cases (the Litigation) have also consumed extensive judicial resources, because of the erroneous, unlawful decisions of the Staunton Board of Zoning Appeals.

B. Annexed and incorporated by reference as **Exhibit A** is a copy of the Circuit Court's final order, entered May 19, 2020, reversing the Staunton Board of Zoning Appeals for the second time as to the walls, which represents the fourth straight time that the Staunton Board of Zoning Appeals has been reversed in granting variances for the property owner and two other property owners as to height and location restrictions under Chapter 18.120 of the Staunton City Code.

C. Annexed and incorporated by reference as **Exhibit B** is a copy of the Circuit Court's December 2, 2019 letter opinion referenced and incorporated in the May 19, 2020 final order.

D. The property owner filed a notice of appeal from the Circuit Court's May 19, 2020 final order, a copy of which is annexed and incorporated as **Exhibit C**.

E. Because of the erroneous decision-making by the Staunton Board of Zoning Appeals, the City has had to commit and expend substantial resources, including funds totaling more than \$95,000.00 for legal fees in the Litigation so as to defend its zoning laws and the rule of law.

F. Soon after the entry of the Circuit Court's May 19, 2020 final order, which had been delayed by actions on behalf of the property owner, the City filed on June 9, 2020 a motion for referral to the judicial settlement-mediation process; a copy of the motion is annexed and incorporated as **Exhibit D**. In essence, the City sought to have the ongoing dispute referred to the mediation process under Virginia Supreme Court's judicial settlement program. With the

agreement of counsel for the parties, the Circuit Court entered an order making the referral. A copy of the Circuit Court's referral order is annexed and incorporated as **Exhibit E**.

G. Because of the appellate timeline under the Rules of the Virginia Supreme Court, it appears likely or possible that the mediation process may not be concluded before the City may have to expend further substantial resources in seeking affirmatively further to uphold its zoning laws and the rule of law in the Litigation. The City, through its Litigation counsel by letter dated July 20, 2020, a copy of which is annexed and incorporated as **Exhibit F**, sought the cooperation of the property owner's counsel to seek jointly from the Virginia Supreme Court an enlargement of time for appeal processes. The City Council understands that the Virginia Supreme Court has recognized the extraordinary circumstances already occasioned by the COVID-19 crisis and emergency, entering nine different orders that have enlarged or deferred various other court litigation timelines.

H. Instead of working with the City's Litigation counsel to seek enlargement of the appellate timeline, the property owner's counsel now has filed a petition for appeal on August 17, 2020.

I. The City desires to expend no further substantial resources at this time in the Litigation, especially with having prevailed on every substantive issue in the Litigation and in related litigation in a total of four cases over the years. The Council of the City of Staunton adopts this resolution to memorialize its desire and its respectful, deliberative decision accordingly and its direction to the City's legal counsel, including Litigation counsel, to forego at this time any more substantial expenditure of legal time and financial and other resources in the Litigation, except such necessary time and other resources for mediation and for protection of the integrity of the court record. At this moment and in the foreseeable future, the City of Staunton, as with all localities, continues to have extraordinary demands being placed on its financial and other resources because of the COVID-19 pandemic emergency and crisis situation and most recently for the City of Staunton the added devastating flooding effects suffered on and after August 8 that occasioned the declaration by the local director of emergency management and affirmed by City Council by its resolution adopted August 13, 2020, a copy of which is annexed and incorporated as **Exhibit G**, preliminarily estimated to implicate damages totaling \$3 million dollars and making its decision and direction to its legal counsel through this resolution an even greater imperative.

J. These recitals are an integral part of this resolution.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Staunton, Virginia, that particularly at this time of the COVID-19 crisis and emergency, with extraordinary demands on the financial and other resources of all localities, including the City of Staunton, and the added emergency of the devastating flooding effects suffered by the City of Staunton itself, businesses, and citizens, it respectfully **DIRECTS** its legal counsel, including Litigation counsel, to forego any more substantial expenditure of time and other resources in the Litigation, except for mediation and for protection of the integrity of the court record, and respectfully **DIRECTS** that, even though the property owner has filed a petition for appeal, Litigation counsel shall not prepare and shall not file a brief in opposition to the petition for appeal, provided, however, that Litigation counsel shall respectfully inform the Supreme Court of Virginia of City Council's decision and

directive and that the City and Zoning Administrator are relying upon the complete record and authorities cited, the arguments previously made, the rulings of the Circuit Court, and the Circuit Court's final order, also providing to the Virginia Supreme Court a copy of this adopted resolution.

Adopted this 27th day of August, 2020.



Andrea W. Oakes, Mayor

Attest: Suzanne F. Simmons
Suzanne F. Simmons, Clerk of Council

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF STAUNTON

IN RE: JUNE 12, 2018 DECISION OF THE BOARD OF ZONING APPEALS OF THE
CITY OF STAUNTON, VIRGINIA

CITY OF STAUNTON, VIRGINIA, et al.

Petitioners,

v.

CASE NO. CL18000404-00

DEBRA CHILTON-BELLONI,

Respondent.

FINAL ORDER

This matter is before the Court on the Petition (the Petition) filed by the City of Staunton, Virginia, the City Council of the City of Staunton, Virginia and Rodney S. Rhodes, Zoning Administrator, all by counsel, appealing the June 12, 2018 decision of the Board of Zoning Appeals of the City of Staunton (that Board being herein referenced as the BZA) granting the application of Debra Chilton-Belloni (Ms. Chilton-Belloni) for a variance concerning her real estate identified as 1403 North Augusta Street (the Property) in the City of Staunton, as well as on the Motion to Dismiss Writ of Certiorari and Appeal (the Motion) filed by Ms. Chilton-Belloni, by counsel.

On September 3, 2019 the parties and counsel appeared before the Court for oral argument on the Motion. Upon consideration of the arguments of counsel, both oral and written, the Court issued a letter opinion on September 17, 2019. That letter opinion, which is incorporated herein by reference, ruled upon the Motion in part, but refrained upon a full ruling on the merits of the Motion until further evidence could be heard.

On October 8, 2019 the parties and counsel came before the Court again on the Motion and also upon the Appeal of the award of a variance by the BZA. A hearing was conducted, at which time the Court took evidence from the parties and heard argument of counsel.

The Motion is DENIED for the reasons stated in this Court's letter opinion of December 2, 2019, which opinion is incorporated herein by reference.

Upon the Petition, the Court finds that on the grounds and for the reasons stated in the aforementioned December 2, 2019 letter opinion, the BZA erred in granting the variance to Ms. Chilton-Belloni.

Whereupon, having considered the record of the BZA, all evidence submitted by the parties, the written legal memoranda and oral arguments of counsel, and for the reasons set forth in the aforesaid December 2, 2019 letter opinion, the Court ADJUDGES, ORDERS and DECREES that the Petition is GRANTED, the June 12, 2018 decision of the BZA granting Ms. Chilton-Belloni a variance is hereby REVERSED and Ms. Chilton-Belloni's application for such a variance is DENIED.

All objections to entry of this Order and related arguments, including but not limited to those legal points and arguments reflected in any pleading or other document filed in this case or otherwise stated in oral argument, are noted and reserved by the parties.

In the exercise of its discretion, the Court dispenses with compliance with Rule 1:13 of the Rules of the Supreme Court of Virginia with respect to this Final Order, but counsel for Petitioners and counsel for Respondent may note any objections to it within ten (10) days following entry of this Final Order.

Nothing further to be done, this case is closed.

Entered this 19th day of May, 2020.


Judge

TWENTY-FIFTH JUDICIAL CIRCUIT OF VIRGINIA

CHARLES L. RICKETS, III
~~CHIEF JUDGE~~
GEORGE M. COCHRAN JUDICIAL CENTER
113 EAST BEVERLEY STREET
STAUNTON, VIRGINIA 24401



STAUNTON
PHONE (540) 332-3870
FAX (540) 332-3873
WAYNESBORO
PHONE (540) 942-6616
FAX (540) 942-6774

COUNTIES
ALLEGANY, AUGUSTA, BATH
BOTETOURT, CRAIG, HIGHLAND ROCKBRIDGE

CITIES
BUENA VISTA, COVINGTON
LEXINGTON, STAUNTON AND WAYNESBORO

December 2, 2019

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In re: June 12, 2018, Decision of the Board of Zoning Appeals of the City of Staunton
City of Staunton, Virginia, *et al.* v. Debra Chilton-Belloni
CL18000404-00

Gentlemen:

This matter came before the Court on the City of Staunton's appeal of the June 12, 2018, decision of the Board of Zoning Appeals of the City of Staunton ("BZA") and Debra Chilton-Belloni's Motion to Dismiss Writ of Certiorari and Appeal ("the Motion"). Oral argument on the Motion was held on September 3, 2019. The Court issued a letter opinion on September 17, 2019, addressing part of the Motion. The rest of the Motion was taken under advisement until further evidence could be heard. The Motion was grounded on the passing of HB 2420 ("the Uncodified Act") in the 2019 Session of the Virginia General Assembly, which, if applicable, would cause the issue in this case to be moot. A hearing on the City's appeal was held on October 8, 2019, at which evidence regarding the Motion was also heard.

This letter opinion addresses the remaining issues from the Motion as well as the City's appeal. For the following reasons, this Court finds that the Uncodified Act does not apply to the

wall at issue in this case. Ms. Chilton-Belloni's Motion to Dismiss is denied. The Court also finds that the BZA did not apply erroneous principles of law. However, the Court finds that the City of Staunton has rebutted the presumption of Virginia Code Ann. § 15.2-2314, and the BZA erred in its decision to grant a variance in this case.

MS. CHILTON-BELLONI'S MOTION TO DISMISS

The Motion's remaining issue is whether the Uncodified Act applies to the wall at issue in this case. For the following reasons, the Uncodified Act does not apply in this case, and the Motion is denied.

ANALYSIS

The Uncodified Act was passed in the 2019 Session of the Virginia General Assembly. The Uncodified Act states:

A wall built on residential property shall be grandfathered as a valid nonconforming use, and the wall shall not be subject to removal solely due to such nonconformity, in any instance where (i) a residential property owner sought local government approval prior to 2008 for construction of a wall on the owner's property, (ii) the property owner was informed by a local official that such wall required no permit and that the structure would comply with the zoning ordinance, (iii) the wall was thereafter constructed, (iv) the locality subsequently informed the property owner that the wall was illegal, and (v) such a wall, had it been constructed as described in clauses (ii) and (iii) after 2017, would be considered a valid nonconforming use not subject to removal.

Ms. Chilton-Belloni must meet these five requirements for the Uncodified Act to apply to the wall at issue. Requirements (i), (ii), (iii), and (iv) of the Uncodified Act are easily met or uncontested. Accordingly, the Court will briefly discuss these elements together. Requirement (v) will be discussed separately below.

Uncodified Act Requirements (i), (ii), (iii), and (iv)

The evidence in this case establishes that the Bellonis were residential property owners of the home located at 1403 North Augusta Street, Staunton, Virginia ("the Property"), prior to 2008. The wall at issue in this case was constructed in 2007, and the events that form the focus of this dispute occurred between 2006 and 2007. While the parties dispute exactly who the Bellonis did or did not speak with regarding approval to build the wall, it is undisputed that they sought approval from the City of Staunton prior to 2008. Accordingly, Ms. Chilton-Belloni has shown that she and her husband were residential property owners and sought local government approval prior to 2008 for construction of the wall on their property.

The record reflects that the Bellonis met with Earl Thompson, a deputy building official, prior to construction of the wall. In a 2008 BZA hearing regarding the wall, Dr. Belloni testified that he met with Mr. Thompson at the Property sometime in the fall of 2006. At that time, Mr. Thompson walked the property along Ridgeview Road and North Augusta Street. According to Mr. Thompson, wall construction had not begun at that time.

Regarding construction of the wall, Dr. Belloni testified that Mr. Thompson told the Bellonis that they could “have at it.” In an October 12, 2011, criminal proceeding against the Bellonis regarding the wall, Mr. Thompson testified that he told the Bellonis that he “felt it would be okay” to build the wall behind the existing hedge. Mr. Thompson further stated that his “intent was that they could build a wall no taller than the hedge where the hedge was existing.”

While Mr. Thompson may not have explicitly told the Bellonis that a permit was not required, the evidence establishes that he met with the Bellonis, reviewed their property, and informed them that, in his opinion, they could build the wall to the height of the existing hedge without any type of approval. The evidence shows that Ms. Chilton-Belloni and her husband were informed by a local official that their wall required no permit and that the wall would comply with the zoning ordinance if it was built no taller than the existing hedge.

The Bellonis received a notice of violation from the City of Staunton in late September 2007, after construction of the wall had begun and was near completion, and well after Mr. Thompson had met and discussed the wall with the Bellonis. Given the above, the Court finds that Ms. Chilton-Belloni has met requirements (i) through (iv) of the Uncodified Act.

Uncodified Act Requirement (v)

The fifth requirement of the Uncodified Act states that, “such a wall, had it been constructed as described in clauses (ii) and (iii) after 2017, would be considered a valid nonconforming use not subject to removal.”

The reference to the year 2017 is important because Virginia Code Ann. § 15.2-2307, governing nonconforming uses, was amended in 2017. The amendment to subsection (D) added the following language:

If the structure is one that requires no permit, and an authorized local government official informs the property owner that the structure will comply with the zoning ordinance, and the improvement was thereafter constructed, a zoning ordinance

may provide that the structure is nonconforming but shall not provide that such structure is illegal and subject to removal solely due to such nonconformity.

Va. Code Ann. § 15.2-2307(D). Accordingly, § 15.2-2307 sets the standard for a “valid nonconforming use not subject to removal” that is required by the Uncodified Act. The relevant part of § 15.2-2307(D) in this case is whether the wall at issue was a structure that required no permit. Thus, the Court must look to the Staunton City Code to determine whether a permit was required for the wall.

Nothing in the Staunton City Code states that a permit is required for a wall. However, Section 15.10.010 provides that the “Virginia Uniform Statewide Building Code . . . is hereby adopted and incorporated herein as fully as if set forth at length herein and the provisions thereof shall be controlling in the construction and maintenance of buildings and structures within the area of jurisdiction of the city.” Because the Staunton City Code incorporates the Virginia Uniform Statewide Building Code (VUSBC), the Court must review the VUSBC to determine if it requires a permit for the construction of a wall.

Ms. Chilton-Belloni argues that the 2000 edition of the VUSBC applies because the 2003 edition, which went into effect on November 16, 2005, allows a *permit applicant* during the one-year period after November 16, 2005, to “choose whether to comply with the provisions of this code or the provisions of the code in effect immediately prior to November 16, 2005.” VUSBC, § 103.2. The 2000 edition was in effect immediately prior to November 16, 2005.

Ms. Chilton-Belloni cannot choose to comply with the 2000 edition because she is not a permit applicant. Section 103.2 of the VUSBC states that, “[c]onstruction for which a *permit application* is submitted to the local building department after November 16, 2005, shall comply with the provisions of this code, except for *permit applications*” that are submitted during the one-year period following November 16, 2005 (emphasis added). Only construction for which a permit application was submitted is entitled to comply with the 2000 edition of the VUSBC. Ms. Chilton-Belloni did not apply for a building permit for the wall, so she was not a permit applicant. Accordingly, the Court finds that the 2003 edition of the VUSBC applies to this case because Ms. Chilton-Belloni was not a permit applicant and the 2003 edition was in effect when the wall was constructed in 2007.

Section 108.1 of the 2003 edition of the VUSBC states that, “[a]pplication for a permit shall be made to the building official and a permit shall be obtained prior to the commencement of any of the following activities . . . 1. Construction or demolition of a building or structure” Section 108.2 of the 2003 edition exempts from application for permit, “fences and privacy walls not part of a building, structure or of the barrier for

a swimming pool, provided such fences and privacy walls do not exceed six feet in height above the finished grade.”

Here, the best evidence regarding the height of the wall is that the wall varies in height between six (6) and seven (7) feet. Tim Hartless has testified several times that he is 6 feet 4 inches tall and that the wall is taller than he is. In addition, photos from the record and hearings on these matters indicate that the wall is taller than Mr. Hartless.

The Court finds that a permit was required before construction of the Bellonis’ wall because the 2003 edition of the VUSBC applies in this case; the wall is a structure for which a permit would be required under the 2003 edition; and the City of Staunton has fully incorporated the VUSBC into their city code. In addition, because the wall required a permit, the Court finds that the wall is not a valid nonconforming use not subject to removal under § 15.2-2307(D). Ms. Chilton-Belloni cannot meet the final requirement of the Uncodified Act.

The Uncodified Act does not apply to the wall in this case, and Ms. Chilton-Belloni’s motion to dismiss is denied.

CITY OF STAUNTON’S APPEAL OF THE JUNE 12, 2018, DECISION OF THE STAUNTON BOARD OF ZONING APPEALS

STANDARD

Virginia Code Ann. § 15.2-2314 provides that a circuit court “may reverse or affirm, wholly or partly, or may modify the decision brought up for review.” The board of zoning appeal’s decision denying or granting a variance application is presumed to be correct. Va. Code Ann. § 15.2-2314. The petitioner must show, by a preponderance of the evidence, that the board of zoning appeals erred in its decision. *Id.*

ANALYSIS

Variance Requirements

The parties have disagreed about the proper version of the statutes applicable in this case. The relevant statutes are Va. Code Ann. § 15.2-2201 (defining variance) and § 15.2-2309 (providing boards of zoning appeals the power to grant variances). The parties argued this variance under the 2014 versions at the BZA as well as before this Court during the City’s appeal of the BZA’s decision. Accordingly, the Court will examine this case under the 2014 versions.

A variance is defined as

[A] reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done.

Va. Code Ann. § 15.2-2201. Boards of zoning appeals have the power to grant variance applications when, because of special conditions, literal enforcement of an ordinance will result in unnecessary hardship, provided that the ordinance's spirit is observed and substantial justice done. Va. Code Ann. § 15.2-2309(2).

In observing an ordinance's spirit and ensuring that substantial justice is done, the power to grant a variance under § 15.2-2309(2) requires that:

[A] property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

Finally, § 15.2-2309(2) limits the power of the board by listing specific findings that must be made before a variance may be granted. A board must find:

[1] [T]hat the strict application of the ordinance would produce undue hardship relating to the property . . . [2] that the hardship is not generally shared by other properties in the same zoning district and the same vicinity[, and] [3] that the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

The board must also find “that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.” *Id.*

Hardship

While the Virginia Code contains several requirements before a board may grant a variance, the most litigated issue, and the primary issue in this case, is whether the hardship requirement has been met.

Here, the City argues that the BZA erred in its decision because the hardship presented by Ms. Chilton-Belloni is not one which is contemplated by the Virginia Code. Ms. Chilton-Belloni argues that it would be a hardship to require her to bring her wall into compliance for a combination of two reasons. First, Mr. Thompson represented that the wall could be built without a permit, and the Bellonis relied on that representation. According to Ms. Chilton-Belloni, requiring that the wall be taken down after being told to build it is a hardship. June 12, 2018, Tr. at 105. Second, compliance with the ordinance would create a financial hardship because the costs in building and removing the wall would be burdensome. *Id.* at 108–09. Thus, the costs of building and removing the wall combined with the Mr. Thompson’s representation that a permit was not needed creates a hardship which requires a variance.

Before addressing whether the hardships advanced by Ms. Chilton-Belloni are those contemplated by the Virginia Code, the Court notes that the BZA failed to make specific findings required by the Virginia Code. As noted above, a board is required to make specific findings before granting a variance. In this case, the BZA failed to make these findings. While Ms. Chilton-Belloni submitted proposed findings, the BZA failed to adopt them. For purposes of this appeal, the Court assumes that the BZA’s votes in favor of granting the variance means that the BZA made the findings required in § 15.2-2309(2).

The Supreme Court of Virginia, as well as the General Assembly, have addressed whether erroneous decisions by building officials confer any rights on the affected individual. In *Segaloff v. City of Newport News*, the Court stated that “a building permit . . . issued in violation of law . . . confers no greater rights upon a permittee than an ordinance itself, for the permit cannot in effect amend or repeal an ordinance, or authorize a structure at a location prohibited by the ordinance.” 209 Va. 259, 261 (1968).

In 1995, the General Assembly enacted a vested rights provision to eliminate the hardship property owners may have suffered from their reliance on erroneous or void zoning decisions. See Va. Code Ann. § 15.2-2311(C); *Bd. of Sup’rs of Richmond Cty v. Rhoads*, 294 Va. 43, 51 (2017). The vested rights provision “manifestly creates a legislatively-mandated limited exception to the judicially-created general principle that a building permit issued in violation of applicable zoning ordinances is void.” *Rhoads*, 294 Va. at 52.

Although this case does not involve an erroneously issued building permit, the general principle still applies. According to the evidence, Mr. Thompson, a building official, represented to the Bellonis that a permit was not needed for the construction of the wall. However, as discussed above regarding the Uncodified Act, a permit was required for construction of the wall.

Mr. Thompson, although perhaps meaning well, did not have the authority to grant the Bellonis permission to build the wall in violation of the City's zoning ordinances. Granting a building permit is preceded by the application for and consideration of such permit. It is a process that can take some time. If the general principle is that an erroneously issued building permit does not confer rights upon the applicant, the same can be said for the erroneously delivered verbal statements of a building official. Furthermore, the vested rights exception to the general principle does not apply in this case. This is not a hardship contemplated by the Virginia Code.

The Supreme Court of Virginia has also addressed whether financial considerations create the type of hardship contemplated by the Virginia Code. The Court has made clear that financial considerations alone do not create the type of hardship required by the code.

The Supreme Court of Virginia has held that financial loss alone cannot establish an exceptional hardship approaching confiscation, but that it "is a factor or an element to be taken into consideration and should not be ignored." *Natrella v. Bd. of Sup'rs of Arlington Cty*, 231 Va. 451, 458 (1986). In *Baum v. Lunsford*, the Supreme Court held that financial loss alone cannot establish a hardship, even under a lesser burden of proof of an "undue hardship." 235 Va. 5, 8 (1988).

It is clear, then, that the financial loss Ms. Chilton-Belloni faces if her variance application is denied is, standing alone, not enough to establish a hardship under Virginia Code, but it should be considered. Considering both financial loss and the reliance on Mr. Thompson's statements together, Ms. Chilton-Belloni has failed to establish a hardship contemplated by the Virginia Code. Each of the two hardships claimed by Ms. Chilton-Belloni are hardships that have been held to not meet the requirements for granting a variance.

While this Court sympathizes with Ms. Chilton-Belloni, and without expressing an opinion as to whether the wall should be removed, this Court finds that the City of Staunton has met their burden of showing, by a preponderance of the evidence, that the BZA erred in its decision granting Ms. Chilton-Belloni a variance. No hardship exists which would require or allow the granting of a variance in this case.

CONCLUSION

Ms. Chilton-Belloni's Motion is denied, and the Court finds that the BZA erred in its June 12, 2018, decision granting Ms. Chilton-Belloni a variance. The Court would respectfully

request that Mr. Santos prepare an order consistent with and incorporating this letter opinion and circulate the same for entry.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles L. Ricketts, III', with a stylized flourish extending to the right.

Charles L. Ricketts, III

CLR,III/epl

Cc: Clerk of Court

EXHIBIT C

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF STAUNTON

IN RE: JUNE 12, 2018 DECISION OF THE BOARD OF ZONING APPEALS OF THE CITY
OF STAUNTON, VIRGINIA

CITY OF STAUNTON, VIRGINIA, a municipal corporation

CITY COUNCIL OF THE CITY OF STAUNTON, VIRGINIA

and

RODNEY S. RHODES, Zoning Administrator, of and for the City of Staunton, Virginia

Petitioners,

v.

CASE NO. CL18000404-00

DEBRA CHILTON-BELLONI,

Respondent.

NOTICE OF APPEAL

The Respondent, Debra Chilton-Belloni, by counsel, hereby gives notice of appeal to the Supreme Court of Virginia from the Final Order entered in this case on the 19th day of May, 2020, and from all other adverse rulings entered in the cause, and further gives notice that a transcript or statement of facts, testimony, and other incidents of the case will be filed.

Respectfully submitted this 2nd day of June, 2020.

DEBRA CHILTON-BELLONI
By Counsel

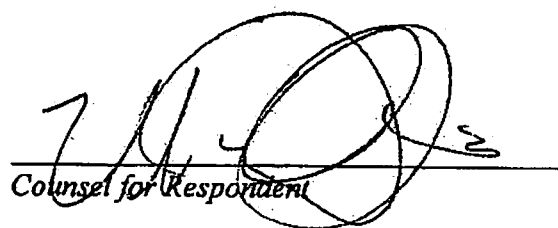


MARK D. OBENSHAIN (VSB #27476)
JUSTIN M. WOLCOTT (VSB #83367)
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420 Neff Avenue, Suite 130
Harrisonburg, Virginia 22801
Tel: (540) 208-0727
Fax: (540) 266-3568
mdo@obenshainlaw.com
jmw@obenshainlaw.com
Counsel for Respondent

CERTIFICATE

I hereby certify that a true copy of the foregoing pleading was sent by facsimile and regular mail this 2nd day of June, 2020 to:

Victor M. Santos, Esquire
John C. Wirth, Esquire
Nelson, McPherson, Summers & Santos, L.C.
P.O. Box 1287
Staunton, VA 24402-1287
Facsimile: (540) 885-2039
Counsel for Petitioners


Counsel for Respondent

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF STAUNTON

**ZONING ADMINISTRATOR FOR AND ON BEHALF
OF THE CITY OF STAUNTON, VIRGINIA, A
MUNICIPAL CORPORATION**
Plaintiff

v.

Case No.: CL14000311-00

DEBRA CHILTON-BELLONI
Defendant

MOTION FOR REFERRAL TO A JUDICIAL SETTLEMENT CONFERENCE

Petitioner, Zoning Administrator for and on behalf of the City of Staunton, by counsel, respectfully moves that the Court, to the fullest extent necessary, refer the parties to mediation by a retired circuit court judge, based on the following:

1. Disagreement between the parties has continued for an extended time and involved numerous proceedings before the Staunton Board of Zoning Appeals (the BZA), the Circuit Court, and the Supreme Court of Virginia regarding the Respondent's claim to a variance from generally applicable City of Staunton zoning laws of which all other Staunton citizens are obliged to follow.

2. Counting the original three cases appealed from the BZA, including one involving the Respondent, and now the latest case, the BZA has been reversed by the Circuit Court in each of the four instances.

3. The unlawful decisions of the BZA and the protracted delays, and special legislation proposed in the General Assembly, caused the City of Staunton to have to incur substantial expense of time and other resources in the City of Staunton's defense of its zoning laws, the integrity of local public body decision-making by the BZA, and the rule of law. It

also has taken substantial time of the judicial system.

4. Now, with the latest rulings again in favor of the City of Staunton and its Zoning Administrator by the Circuit Court last December, memorialized in the Circuit Court's recently entered Final Order, the Respondent has indicated that she intends to cause the City of Staunton and its Zoning Administrator more burden through litigation in the proceedings that reversed the BZA, if not also in this injunction proceeding. Moreover, given the history of the disagreement, it is possible if not likely that the City of Staunton and its Zoning Administrator will be caused added expense as to any further effort to push through the General Assembly yet another piece of legislation that is specifically intended to favor only the Respondent and no one else in the City of Staunton.

5. The City of Staunton and its Zoning Administrator, through counsel, previously proposed a substantial compromise resolution several years ago to the Respondent, who declined to engage in compromise discussions and declined even to propose an counter-alternative to find a basis for compromise resolution.

6. At this juncture, it seems especially timely to ask the Court to refer the parties to mediation and have mediation by a retired circuit court judge occur so that further expense to the City of Staunton, its Zoning Administrator, and the judicial system are avoided.

7. The City of Staunton and its Zoning Administrator remain committed to engage in good-faith, serious mediation proceedings.

**ZONING ADMINISTRATOR
CITY OF STAUNTON, VIRGINIA**
By Counsel

Requested:

Nelson, McPherson, Summers & Santos, L.C.



By: _____

Victor M. Santos (VSB No. 16233)

✓ John C. Wirth (VSB No. 37334)

Courtney A. Dymond (VSB No. 88227)

P.O. Box 1287

Staunton, VA 24402-1287

Tel.: 540-885-0346

Fax: 540-885-2039

CERTIFICATE

I certify that a true copy of this Motion was mailed and faxed on this 9th day of June, 2020 to:

Mark D. Obenshain, Esq.
Justin M. Wolcott, Esq.
Obenshain Law Group
420 Neff Avenue, Suite 130
Harrisonburg, VA 22801



John C. Wirth

**ORDER OF DESIGNATION AND REFERRAL TO
SETTLEMENT CONFERENCE**
COMMONWEALTH OF VIRGINIA Rule 1:19

Case No.

CL14000311-00

In the Circuit Court of the [x] City [] County of

City of Staunton

Sharon E. Angle, Zoning Administrator
PLAINTIFF

v.

Debra Chilton-Belloni
DEFENDANT

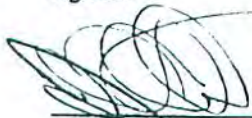
The Court has determined that this matter, which is currently before the Court as a contested civil matter, is appropriate for referral to a Settlement Conference. It is hereby ORDERED that:

1. The matter is referred to a Settlement Conference, for which there will be no cost to the parties.
2. Pursuant to Code Section 17.1-105, the Honorable Paul M. Peatross, Jr., Retired Judge for the Sixteenth Judicial Circuit, and a qualified Judicial Settlement Conference judge, is designated to conduct a Settlement Conference only, to assist the judges of the Twenty-Fifth Judicial Circuit in the performance of their duties.
3. Counsel will schedule a pre-Settlement phone conference with the Settlement Judge, in order to verify the date, time, and location of the Settlement Conference, no later than one week prior to the Settlement Conference.
4. Counsel must submit a confidential pre-Conference brief, of no longer than 5 pages, to the Settlement Judge no later than 5 days before the Settlement Conference.
5. Each party must provide a representative in person or by telephone who shall have final authority to settle the case.
6. Irrespective of this referral, this case has been set for return to the Court in accordance with the Court's normal docketing procedures on October 13, 2020 at 9:00 am
7. The Court must be informed in writing if the dispute is resolved prior to the return date. Otherwise, the parties shall appear in court at that time.

ENTER: 7/15/2020

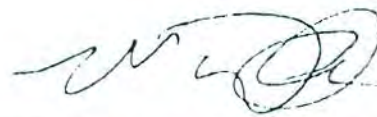

JUDGE

Agreed:



John C. Wirth (VSB No. 37334)

Nelson, McPherson, Summers & Santos, L.C.
P.O. Box 1287
Staunton, VA 24401
Telephone: (540) 885-0346
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Mark D. Obenshain (VSB No. 27476)

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Telephone: (540) 208-0727
Facsimile: (540) 266-3568

A COPY

TESTE

Circuit Court, Staunton, VA

CLERK

NELSON, McPHERSON, SUMMERS & SANTOS, L.C.

ATTORNEYS AT LAW

P.O. BOX 1287

STAUNTON, VIRGINIA 24402-1287

THOMAS R. NELSON (1899-1980)
RICHARD F. McPHERSON (1925-2002)
FRANK L. SUMMERS (1930-2018)
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12 NORTH NEW STREET

JESSICA L. ROBINSON
DANIEL E. MOWRY
COURTNEY A. DYMOND

July 20, 2020

**Via Fax (540) 266-3568
and U.S. Mail**

Mark D. Obenshain, Esq.
Obenshain Law Group
420 Neff Avenue, Suite 130
Harrisonburg, VA 22801

Re: *Angle, Zoning Administrator v. Chilton-Belloni*

Dear Mark:

Following up on your email to John of last week, and for clarification, yes, my understanding from direct discussion with City Council is that it declines your client's suggestion that it immediately discontinue its efforts to enforce Ms. Chilton-Belloni's compliance with the zoning ordinance in return for her promise to use her "best efforts" to "maintain the wall...in good repair" and to "care for and maintain" the existing hedge. As stated previously, however, the City remains committed to good faith negotiations in an effort to resolve the dispute, as the City offered before and has renewed in June more formally through a motion for referral to the Virginia Supreme Court's judicial mediation process.

I'd note that the second paragraph of your email evinces a misunderstanding concerning the practicality of the City's settlement proposal. The engineer with whom I met at the site made clear that, despite the fact that some of the block within the wall is reinforced with concrete and rebar, it is entirely possible for the wall to be reduced to a mortar line of block, with cap re-installed, that would approach substantial compliance, though there may still be a slight deviation. The City previously proposed that it would provide a front-end loader and operator for a limited duration at its own expense, to allow Ms. Chilton-Belloni's contractor to load the debris which would then be moved off site in a dump truck supplied by the City. We never received a response, so it seemed obvious your client rejected the City's good-faith compromise offer then. We'd hope that with the Circuit Court's final ruling, now reversing the BZA yet another time in the Belloni matter, not to count the other two original companion matters, Ms. Chilton-Belloni would be willing to seriously explore a prompt resolution.

Mark D. Obenshain, Esq.
July 20, 2020
Page 2

We're prepared to have a mediation session within days, even during a weekend, if necessary. If you know of another settlement judge who will offer us such a quick date, we're ready and willing. Judge Peatross, the settlement judge, proposed initially the date of August 28, which still seemingly would give us time to reach a resolution before any further filings are due. Understanding from your email that you tell us you're unavailable on August 28, I'd appreciate your confirming for us whether you will be available on the next available date Judge Peatross supplied, that being September 25. In the meantime, I will also check to confirm whether an earlier mediation date might be or becomes available. Also, would you join us in a motion that would seek to stay any filing deadlines to afford the parties to use the mediation process, given your apparent lack of availability for so long?

Many thanks.

With best wishes and awaiting your reply, I remain

Sincerely yours,

A handwritten signature in black ink, appearing to be 'V. Santos', written in a cursive style.

Victor M. Santos

VMS:lsj

**RESOLUTION
OF THE
COUNCIL OF THE CITY OF STAUNTON, VIRGINIA
CONSENTING TO AND CONFIRMING DECLARATION OF A LOCAL
EMERGENCY BEGINNING AUGUST 8, 2020**

Recitals

- A. Virginia Code § 44-146.21 authorizes the declaration of a local emergency;
- B. Section 11 of the Charter of the City of Staunton also grants broad powers to City Council;
- C. Retroactive to August 8, 2020, Steven L. Rosenberg, City Manager and Emergency Management Director of the City of Staunton, Virginia did find and declare:

C.1. That due to a significant weather event (and necessarily the effects from it), involving sudden, sustained torrential rainfall and flooding, and real and personal property damage suffered by businesses and individuals, the City of Staunton, Virginia faced dangerous conditions of sufficient scope, severity and magnitude to merit coordinated local government emergency management action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused, especially given the continued existence also of the COVID-19 crisis, emergency and disaster, most recently reaffirmed by City Council in Ordinance No. 2020-04; and

C.2. That due to the significant weather event a condition of extreme peril to life and property necessitated and merited such declaration or proclamation of the existence of a local emergency beginning August 8, 2020 and such circumstances continue, with some citizens and local business owners reportedly dealing with continuing conditions of sufficient severity and magnitude to merit coordinated local government emergency management action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused or being caused; and

- D. These recitals are an integral part of this resolution.

NOW, THEREFORE, the Council of the City of Staunton, Virginia:

1. CONFIRMS, RESOLVES, AND DECLARES, pursuant to Virginia Code § 44-146.21 and such other applicable laws, including, but not limited to, the powers granted by the Charter of the City of Staunton, Virginia, that on August 8, 2020, the Council of the City of Staunton, Virginia, could not and did not convene due to the exigent circumstances and that a local emergency did exist throughout the City of Staunton, Virginia, and continues; and

2. CONFIRMS, RESOLVES, DECLARES AND ORDERS that during the existence of such emergency, the powers, functions, and duties of the Local Emergency Management Director and local emergency services planning organization or committee and City staff shall be those prescribed by Virginia law and the ordinances, resolutions, and approved plans

of the City of Staunton in order to mitigate and otherwise address the effects of such emergency;
and

3. **RESOLVES** that now and retroactively to and including August 8, 2020, Council **CONSENTS** to and **CONFIRMS** such declaration of local emergency, and **RATIFIES** and **AFFIRMS** that all City officials are granted such authority, pursuant to extant law, in such circumstances to take all actions, to the fullest extent permitted by law, to prevent or alleviate the damage, loss, hardship or suffering threatened or caused or being caused by such local emergency;
and

4. **RESOLVES** that, under the unique circumstances, to the extent necessary, the City Manager or designee is authorized to waive any building permit fees under Staunton City Code Section 15.10.120 as to any construction and demolition for property damaged as a result of the August 8, 2020 weather event and necessarily the effects from it for any person, including a corporate entity, current with payment of all obligations otherwise to the City.

Introduced: August 13, 2020

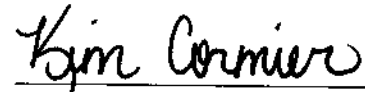
Adopted: August 13, 2020

Effective: Retroactively as provided



Andrea W. Oakes, Mayor

Attest:



Kim Cormier, Acting Clerk of Council

CITY COUNCIL



AGENDA BRIEFING

Staunton, VA

Meeting Date:	September 10, 2020	Staff Members: Rodney Rhodes Tim Hartless
Item #	A	
Ordinance #		
Department:	Community Development — Planning and Zoning	
Council Vision:	Built Environment	
Subject:	Public Hearing and Consideration of a Request by David Morgan for a Special Use Permit for 271 N. Lewis Street (PID# 1340) for the Construction of an Accessory Residential Structure on Property Zoned B-2, General Business District	

Background: Dr. David Morgan, owner of 271 N. Lewis Street, requests a Special Use Permit to add an accessory structure to the property. The property has a single-family dwelling, is located adjacent to the Howard Johnson Express Inn and is in close proximity to the intersection of N. Lewis Street and Pump Street. The principal structure was originally constructed as a single-family dwelling but, at some point, was converted into multi-family dwelling units. In 2012, Dr. Morgan was granted a Special Use Permit to reestablish the use of the property as a single-family dwelling.

The City's records do not indicate the age of the home, but it appears on the 1921 Sanborn Maps. The property is zoned B-2, General Business District, and single-family dwellings are only permitted by Special Use Permit. Although the original request for this Special Use Permit was to place two accessory buildings on the property, Dr. Morgan is now amending his application to eliminate the larger building and is requesting the SUP for only the smaller 12' x 16' shed.

Review: Staff reviewed the request and determined that the property is located in a FEMA designated floodplain and floodway. While a building permit is not required for a 12' x 16' shed, the provisions for construction in the floodplain will apply. Dr. Morgan is working with Building Services Division staff to learn about the applicable requirements.

The proposed accessory structure is a prefabricated residential style shed constructed and sold by Helmuth Builders. Helmuth Builders has a sales facility located in Staunton on Richmond Avenue. The building has already been constructed (last photograph in Attachment 1) and is being stored on the Helmuth Builders lot. Dr. Morgan has indicated that Council members are welcome to view the building in person.

As illustrated on the attached map (Attachment 3), zoning to the north, south, and east is B-2, General Business District, while zoning to the west is P-1, Professional District. In the B-2, General Business District, residential uses are permitted on floors above the ground and basement levels. In the P-1, Professional District, residential uses are permitted on every level of a building and single-family dwelling is a permitted use.

The *City of Staunton, Virginia, Comprehensive Plan 2018-2040*, Future Land Use Map, designates this area (the east side of Lewis Street) as Commercial. Across Lewis Street (the west side) the Future Land Use Map land use designation is Professional.

The property is subject to a 2010 conservation easement. The conservation easement requires a 30-foot buffer strip be maintained along the edge of Peyton Creek as measured from the centerline of the creek. The placement of the proposed shed will comply with this requirement.

Generally, staff is reluctant to support Special Use Permit requests for residential uses on the ground floor in a business district; however, the residential use of this property is a long-standing use. While the property is not located in any City designated historic district, it is evident from the Sanborn Maps that the home has existed for at least 100 years.

Both N. Lewis Street and N. Central Avenue are designated as Entrance Corridors into the City. Typically, staff would review any new construction to determine if design and materials were in keeping with Entrance Corridor Overlay District requirements; however, single-family dwellings are exempt from this review.

Planning Commission Recommendation: At its meeting of August 20, 2020, the Planning Commission conducted a public hearing and considered the request. During the public hearing, no one spoke in opposition to the request. On a 5-0 vote, the Commission voted unanimously to recommend approval of the Special Use Permit with the following condition, concurring with staff's recommendation:

1. The location as well as construction of the building must comply with the provisions of the Virginia Uniform Statewide Building Code as well as SCC 18.170, Floodplain Districts and Regulations.

Attachments:

Attachment 1—Application for Special Use Permit and Documents Supplied by the Applicant
Attachment 2—Vicinity Map – 271 N. Lewis Street
Attachment 3—Current Zoning – 271 N. Lewis Street
Attachment 4—Future Land Use – 271 N. Lewis Street
Attachment 5—Land Use Code – 271 N. Lewis Street

Suggested Motions (to be made after the public hearing is conducted): I move that Council approve the Special Use Permit for 271 N. Lewis Street, as recommended by the Planning Commission.

City Manager: Steven L. Rosenberg



DEPARTMENT OF PLANNING &
INSPECTIONS
116 W. BEVERLEY STREET | P.O. BOX
58 | STAUNTON, VA 24402
540.332.3862 (OFFICE)
540.332.3807 (FAX)

APPLICATION FOR SPECIAL USE PERMIT

DATE: 7/16/2020

NAME OF APPLICANT: DAVID MORGAN

ADDRESS OF APPLICANT: 271 N. Lewis St, Staunton, VA 24401

PHONE #: 540 416-4752 (H) 540 421-7371 (C)

E-MAIL ADDRESS: Imorgancrew@gmail.com

IF APPLICANT IS **NOT** THE OWNER OF THE PROPERTY IN QUESTION, EXPLAIN. A COPY OF A PENDING CONTRACT OR OPTION AGREEMENT MUST BE ATTACHED HERETO AND MADE A PART OF THIS APPLICATION.

LOCATION OF PROPERTY: 271 N. Lewis St.

MAP PROVIDED: YES ☒ NO ☐ SITE PLAN PROVIDED: YES ☒ NO ☐

FEE PAID: YES ☒ NO ☐ *check or cash only

PRESENT ZONING OF THE PROPERTY: B2

APPLICABLE SECTION OF ZONING CODE STATING USE IS PERMITTED ON REVIEW:
Chapter 18.110.030 Accessory uses (1)(h)

ARE PUBLIC UTILITIES AVAILABLE AND ADEQUATE FOR PROPOSED USE? IF **NO**, EXPLAIN HOW UTILITIES WILL BE PROVIDED:

Not applicable - no utilities required for shed.

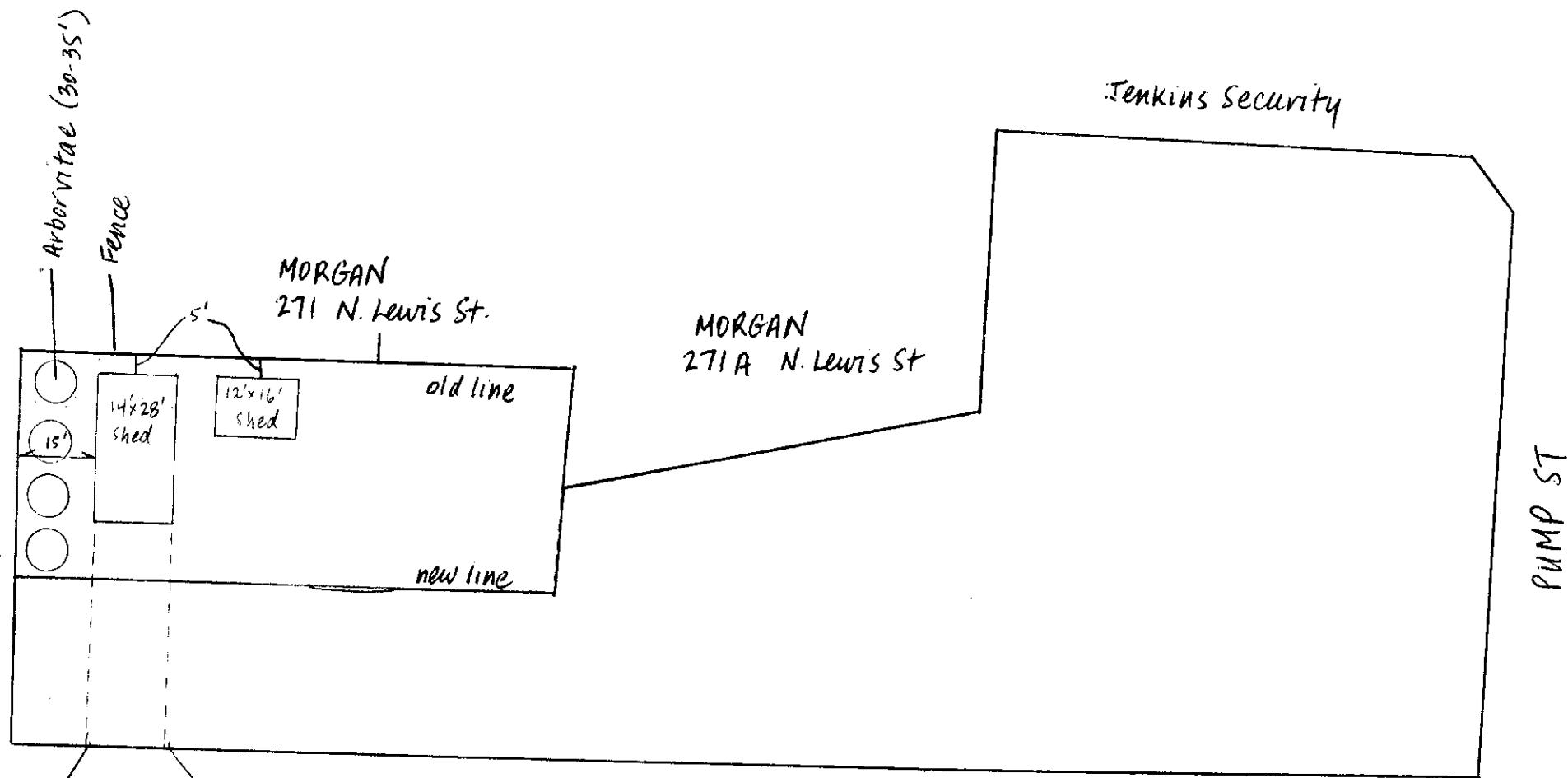
LEGAL DESCRIPTION OF PROPERTY: PID #1340, Lot 8A & 9, Block I

DETAILED DESCRIPTION OF PROPOSED USE (DRAWINGS MUST BE INCLUDED IF NEW CONSTRUCTION, ADDITIONS, OR CHANGES TO THE EXTERIOR OF THE PROPERTY ARE PROPOSED).

Allow 2 sheds to support a residence on B2-zoned property without a primary business structure. (residential accessory building in B2 General Business District)

SIGNATURE: David Morgan

Howard Johnson Hotel



280 N CENTRAL AVE

Parcel ID: 10662

SCALE: 1" = 30'

NORTH LEWIS STREET

N 15°38'39" E 68.61'

PRIVATE ALLEY
(D.B. 55, PG. 49)

17,607 SQ. FT.
INSTRUMENT No. 080002517 (THIRD)
INSTRUMENT No. 120001431
PROPERTY #1340

EXISTING
DWELLING

DAVID BRIAN MORGAN
INSTRUMENT No. 080002517
(FOURTH)
INSTRUMENT No. 120001431
PROPERTY #5328

N 74°14'14" W 75.20'

N 16°16'28" E
35.40'

EXISTING
GARAGE

LOT A
22,040 SQ. FT.

S 74°18'12" E 235.20'

DAVID BRIAN MORGAN
INSTRUMENT No. 080002517
THIRD
PROPERTY #1334

EXISTING
PERGOLA

ZONE X
FLOOD ZONE X

SCALED
FLOODPLAIN

121.89'

192.50'

268 CENTRAL, LLC
INSTRUMENT No. 040001007
PROPERTY No. 4731

N 74°13'59" W 133.5'

FLOOD ZONE X
FLOODWAY
ZONE AE

EXISTING POOL
APRON

EXISTING POOL

FLOOD ZONE X
FLOOD
ZONE AE

SCALED
FLOODPLAIN

FLOOD ZONE AE
FLOODWAY ZONE AE

DAVID BRIAN MORGAN
INSTRUMENT No. 080002517
THIRD
PROPERTY #1334

N 01°55'30" E 79.69'

* Gazebo -
10' octagonal

FENCE

N 13°20'17" E 104.33'

BOUNDARY LINE HEREBY VACATED

SHED
12' x 16'

4,433 SQ. FT.
PORTION OF

INSTRUMENT No. 080002517 (THIRD)
INSTRUMENT No. 100002652
PROPERTY #10662

26 1/2'

GRAVEL

S 13°20'17" W 103.17'

SEE INSTRUMENT No. 100002652
FOR CONSERVATION AND
OPEN-SPACE EASEMENT

20' SANITARY SEWER
EASEMENT
INSTRUMENT
No. 100000823

S 13°20'17" W 276.57'

NORTH CENTRAL AVENUE

Arborvitae

N 76°28'14" W 63.39'

29.11'

31.05'

32.34'

14'

14'

22.48'

20.22'

PROPERTY No. 4731

N 74°13'59" W
11.62'

N 76°28'14" W
63.39'

8,792 SQ. FT.
0.202 ACRES
INSTRUMENT No.
080002517
SECOND
PROPERTY No. 2991

EXISTING
BLOCK
BUILDING

PEYTON CREEK

CULVERT

142.07'

N 74°18'11" W

22.48'

N 74°18'11" W
30.89'

2,391 SQ. FT. 0.055 ACRES
PORTION OF
INSTRUMENT No. 080002517
THIRD
PROPERTY No. 1334

S 01°55'30" W
41.89'

N 73°09'46" W
30.02'

S 13°20'17" W 276.57'

S 01°55'30" W 79.69'

S 74°22'44"

4.5'

53.08'

S 74°22'44" E
30.88'

EXISTING
BLOCK
BUILDING

N 15°48'46" E 89.90'

17.7'

12,839 SQ. FT.
0.295 ACRES
INSTRUMENT No.
080002517
FIRST
PROPERTY No. 10662

24,022 SQ. FT.
0.551 ACRES
NEW AREA

37.84'

79.73'

CREEK

134.50'

S 73°56'14" E 107.25'

N 67°18'20"
12.78'

PUMP STREET

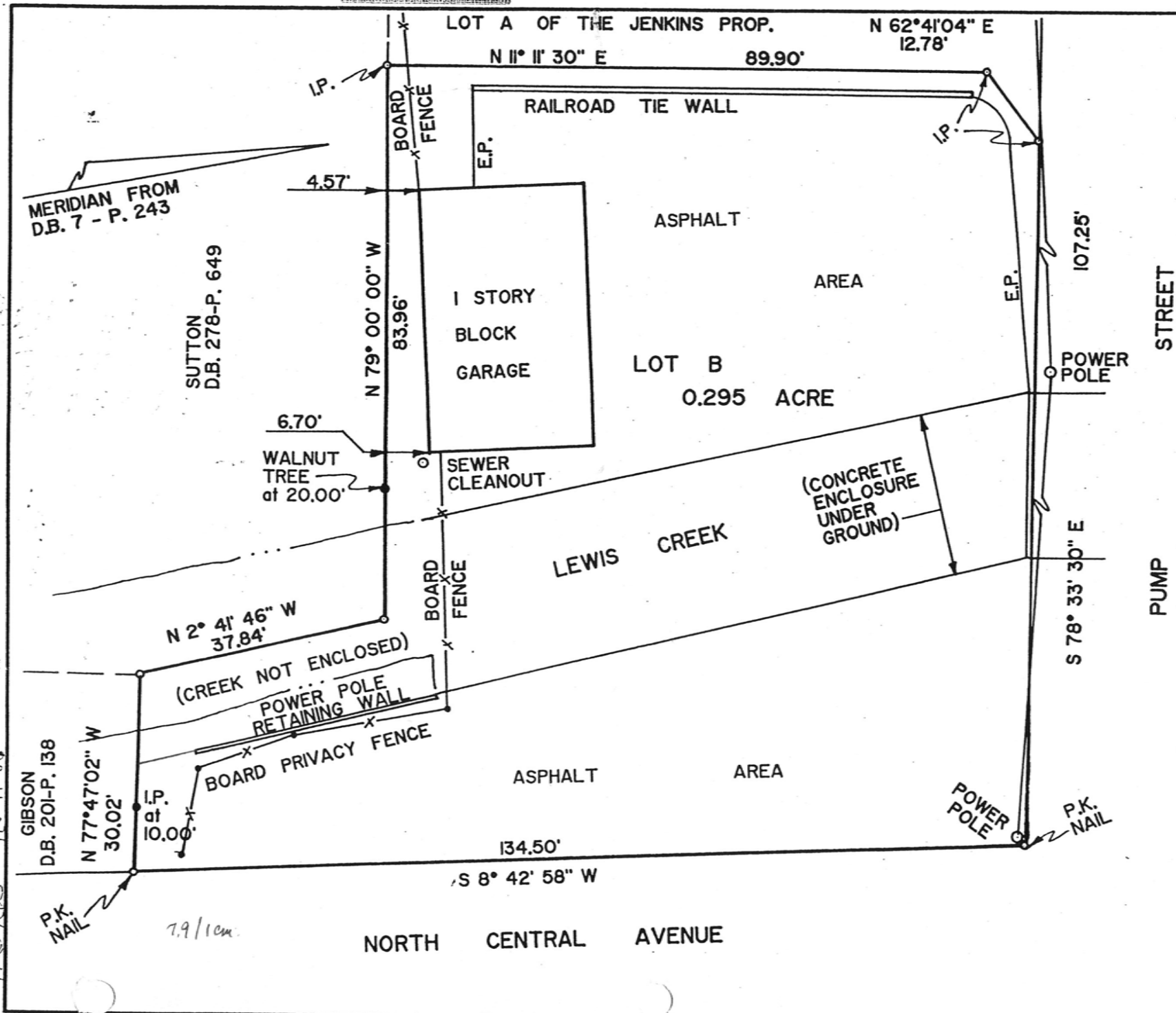
NORTH CENTRAL AVENUE
(VARIABLE WIDTH RIGHT-OF-WAY)

*

CITY OF STAUNTON
20' SANITARY SEWER
EASEMENT
INSTRUMENT No.
100000823

#5965 12-11-88

#5965



NOTE :
THIS LOT IS
FLOOD PLAIN AS
COMMUNITY - PAN

RUSSELL
ST.
SCALE 1" =
R. E. FU
19 TERR

NOTES:

- DATUM AS SHOWN HEREON IS ACCORDING TO RECORDED INFORMATION AND A CURRENT FIELD SURVEY.
- THIS PROPERTY IS SHOWN ON TAX MAP 342.
- BEARINGS ARE ROTATED TO PLAT RECORDED AT INSTRUMENT NUMBER 120001431.
- ANY EASEMENT SHOWN HEREON IS BASED ON RECORDED INFORMATION. THIS PROPERTY MAY BE EXPRESSLY SUBJECT TO EASEMENTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS CONTAINED IN DULY RECORDED DEEDS, PLATS AND OTHER INSTRUMENTS CONSTITUTING CONSTRUCTIVE NOTICE IN THE CHAIN OF TITLE TO THE PROPERTY HEREBY SURVEYED THAT ARE NOT SHOWN. THIS PROPERTY MAY BE SUBJECT TO OTHER EASEMENTS NOT OF PUBLIC RECORD.
- NO TITLE REPORT HAS BEEN FURNISHED.
- PLAT MUST BE RECORDED WITHIN 6 MONTHS OF FINAL APPROVAL OR SAID APPROVAL BECOMES NULL AND VOID.
- PORTIONS OF THE SURVEY PREMISES IS LOCATED WITHIN ZONE X, FLOOD ZONE X, FLOOD ZONE AE, AND FLOODWAY ZONE AE ACCORDING TO FLOOD INSURANCE RATE MAP FOR THE COUNTY OF AUGUSTA, VIRGINIA AND INCORPORATED AREAS. COMMUNITY NUMBER PANEL: 510155-0339E, MAP NUMBER: 510150339E - EFFECTIVE DATE: JANUARY 8, 2010.
- THERE WAS NO EVIDENCE OF ANY GRAVE, OBJECT OR STRUCTURE MARKING A PLACE OF BURIAL OBSERVED.
- THE 4,433 SQ. FT. AS SHOWN HEREON (PORTION OF PROPERTY #10662) IS TO BE COMBINED WITH THE 17,607 SQ. FT. (PROPERTY #1349) AND TREATED AS ONE LOT OR PARCEL OF LAND. (LOT A - 22,040 SQ. FT.)

LEGEND

- IRON PIN FOUND
- IRON PIN SET
- ▲ MAG NAIL SET
- NAIL FOUND IN WALL
- ⊙ POINT
- DRILL HOLE SET

SURVEYOR'S CERTIFICATE
I, BRANDON TRUMP, A LAND SURVEYOR DULY LICENSED BY THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT THIS "PLAT SHOWING A BOUNDARY LINE ADJUSTMENT BETWEEN THE LANDS OF DAVID BRIAN MORGAN" IS THE PROPERTY ACQUIRED BY DAVID BRIAN MORGAN BY DEEDS RECORDED AT INSTRUMENT NUMBER 080002517 AND INSTRUMENT NUMBER 100002652 IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT FOR THE CITY OF STAUNTON, VIRGINIA.

PLAT SHOWING A BOUNDARY LINE ADJUSTMENT BETWEEN THE LANDS OF DAVID BRIAN MORGAN

CITY OF STAUNTON, VIRGINIA
SCALE: 1" = 30'
FEBRUARY 25, 2020

Lotts & Associates, P.C.
Land Surveying - Land Planning
21 Cambridge Drive • P.O. Box 1167
Staunton, Virginia 24477
Phone: (540) 337-4012 Fax: (540) 337-1455



CITY OF STAUNTON SUBDIVISION AGENT DATE

NORTH LEWIS STREET
N 15°38'39" E 68.61'

17,607 SQ. FT.
INSTRUMENT No. 080002517 (THIRD)
INSTRUMENT No. 120001431
PROPERTY #1340

DAVID BRIAN MORGAN
INSTRUMENT No. 080002517
(FOURTH)
INSTRUMENT No. 120001431
PROPERTY #5528

N 74°14'14" W 75.20'

N 16°16'28" E
35.40'

LOT A
22,040 SQ. FT.

S 74°18'12" E 235.20'
DAVID BRIAN MORGAN
INSTRUMENT No. 080002517
THIRD
PROPERTY #1334

PUMP STREET LLC
INSTRUMENT No. 010003797
PROPERTY #4135

N 15°48'46" E 89.90'

N 07°18'20" E
12.76'

EXISTING GREENHOUSE

LOT B
19,589 SQ. FT.
REMAINING PORTION OF
INSTRUMENT No. 080002517 (FIRST, SECOND & THIRD)
INSTRUMENT No. 100002652
PROPERTY #10662

DAVID BRIAN MORGAN
INSTRUMENT No. 080002517
THIRD
PROPERTY #1334

20' SANITARY SEWER
EASEMENT
INSTRUMENT
No. 100000823

4,433 SQ. FT.
PORTION OF
INSTRUMENT No. 080002517 (THIRD)
INSTRUMENT No. 100002652
PROPERTY #10662

S 13°20'17" W 103.17'

SEE INSTRUMENT No. 100002652
FOR CONSERVATION AND
OPEN-SPACE EASEMENT

S 13°20'17" W 276.57'

NORTH CENTRAL AVENUE

PUMP STREET
S 73°56'14" E 107.25'





















Vicinity Map - 271 N Lewis St

Attachment 2



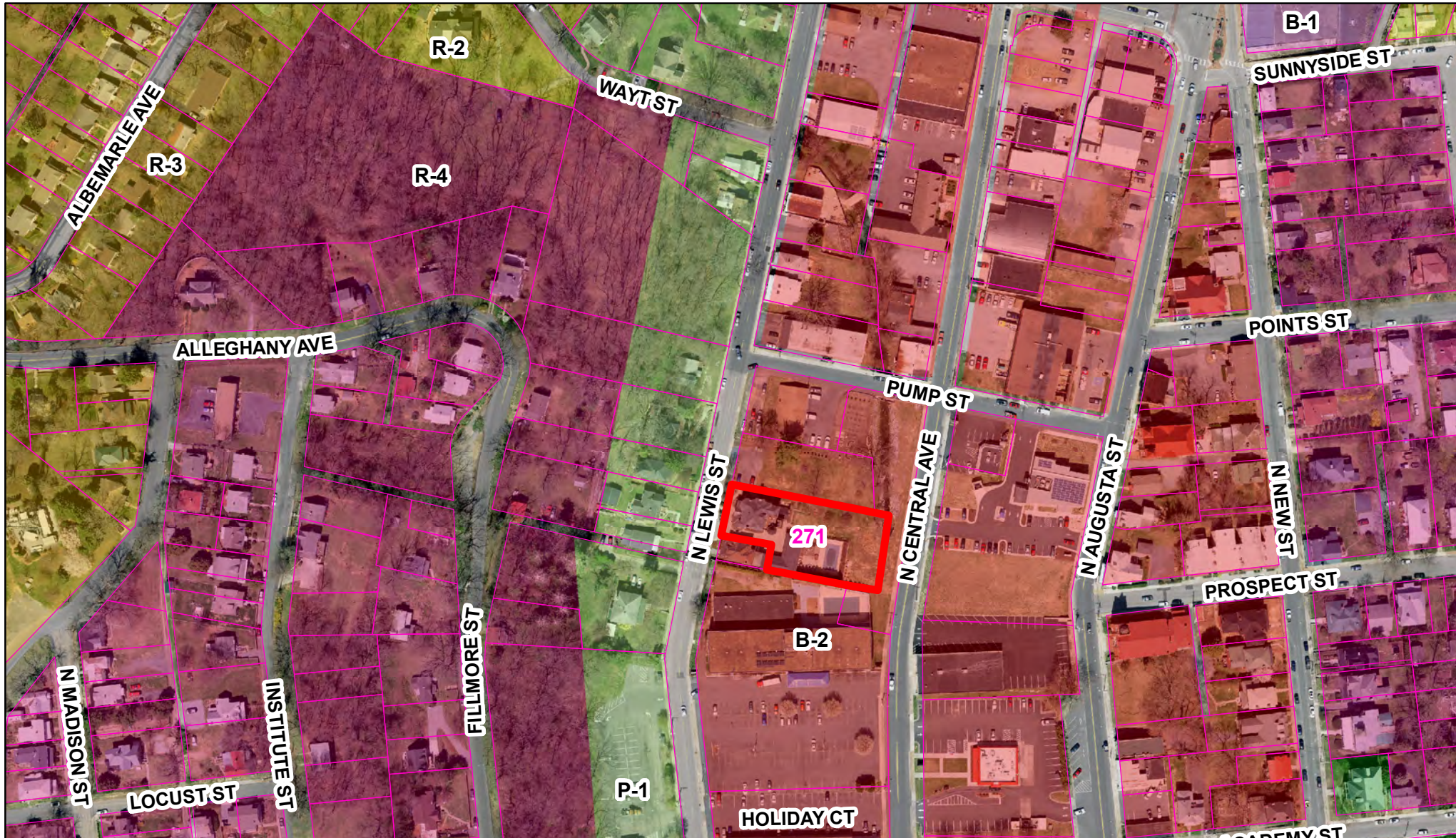
0 100 200 400 ft

Additional Layers

-  Selected Properties
-  Parcels

Current Zoning - 271 N Lewis St

Attachment 3



0 100 200 400 ft

Zoning

	B-1
	B-1(conditional)
	B-2
	B-2(conditional)

	B-3
	HE-1
	I-1
	I-1(conditional)
	I-2

	I-2(conditional)
	I-3(conditional)
	P-1
	P-1(conditional)
	R-1

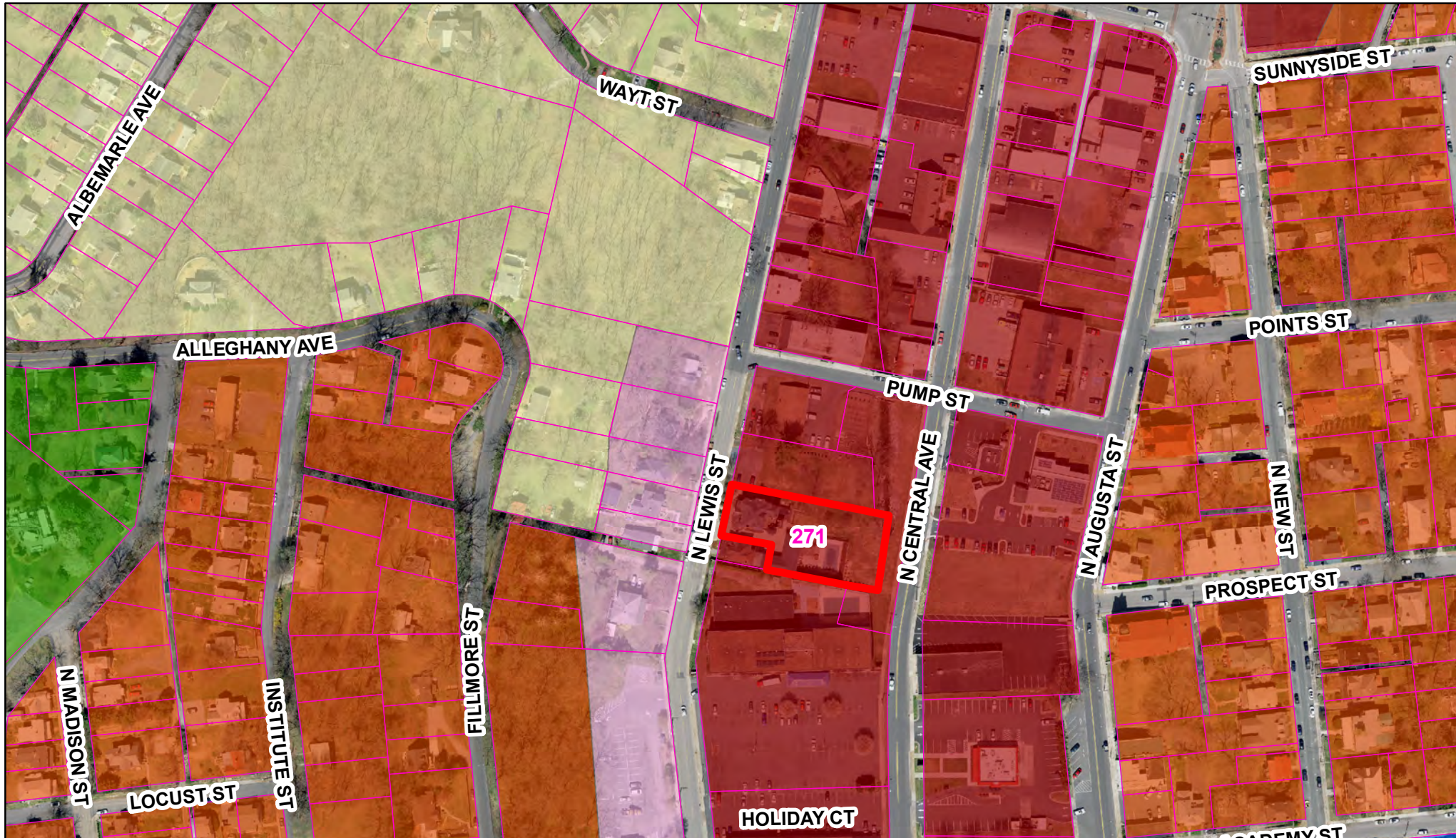
	R-2
	R-2(conditional)
	R-3
	R-3(conditional)
	R-4

Additional Layers

	Selected Properties
	Parcels

Future Land Use - 271 N Lewis St

Attachment 4



Future Land Use



- CONSERVATION/RECREATION/OPEN SPACE
- PLANNED FARM DEVELOPMENT
- PUBLIC/SEMI-PUBLIC

- LOW DENSITY RESIDENTIAL
- MEDIUM DENSITY RESIDENTIAL
- MEDIUM DENSITY PLANNED RESIDENTIAL
- HIGH DENSITY RESIDENTIAL

- TRADITIONAL NEIGHBORHOOD DEVELOPMENT
- LOW DENSITY PLANNED RESIDENTIAL
- NEIGHBORHOOD RESIDENTIAL
- PROFESSIONAL

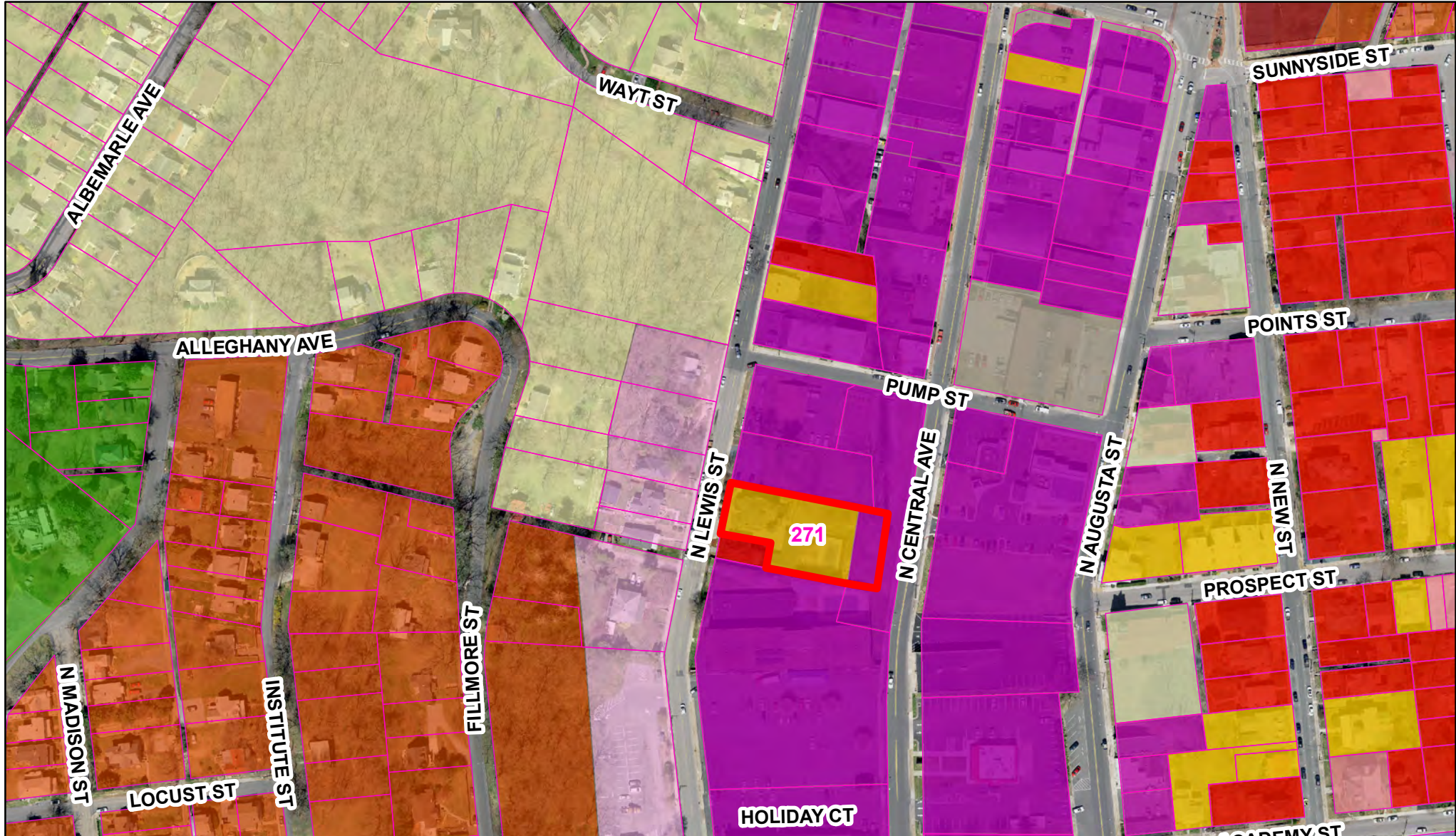
- PLANNED BUSINESS
- BUSINESS
- PLANNED INDUSTRIAL
- LIGHT INDUSTRIAL
- HEAVY INDUSTRIAL

Additional Layers

- Selected Properties
- Parcels

0 100 200 400 ft

Land Use Code – 271 N Lewis St

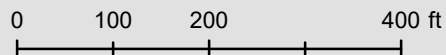


Parcel Land Use

■ SINGLE FAMILY	■ CITY OF STAUNTON	■ MARY BALDWIN COLLEGE	■ CHURCH/MANSE
■ MULTI-FAMILY	■ AUGUSTA COUNTY	■ PRIVATE SCHOOLS	■ MISCELLANEOUS EXEMPT
■ COMMERCIAL/INDUSTRIAL	■ STATE	■ CHARITABLE	■ RECREATIONAL/RESIDENTIAL LAND

Additional Layers

- Selected Properties
- Parcels





Staunton, VA

Meeting Date:	September 10, 2020	Staff Members: Phil Trayer Chad Horvat
Item #	C	
Ordinance #		
Department:	Finance	
Council Vision:	Responsive, Efficient Government	
Subject:	Virginia Risk Sharing Association (VRSA) Risk Management Grant	

Background: The mission of the Staunton Safety Committee is to promote the safety and well-being of City of Staunton employees and citizens. The Safety Committee relies on grants from the City's insurer, Virginia Risk Sharing Association (VRSA), to initiate the City's purchase of safety equipment and to conduct safety instruction within the City. Upon the recommendation of the Safety Committee, the City of Staunton applied to VRSA for a Virginia Risk Sharing Association Risk Management Grant in an amount not to exceed \$5,000 to fund the acquisition of three confined air space monitors for use by Public Works employees whose jobs require them to enter confined spaces where air quality may be suspect, and two automated external defibrillators (AEDs) for the Cochran Judicial Center, where the equipment will benefit both the employees and the public. The City has received notice of grant award in the amount of \$4,806.60, fully funding the City's request.

Fiscal Impact: None. Grant funds in the amount of \$4,806.60 will be used to purchase the following items:

- Three Industrial Scientific Ventis MX4 Confined Space Monitors for \$2,704.20
- Two Philips HeartStart Onsite AED for \$2,102.40

Attachments:

Attachment 1—Grant Application

Attachment 2—National Safety Supply Inc. Quote/Invoice #00253498

Attachment 3—General Medical Devices, Inc. Companies Quote #71205

City Manager's Recommendation: Recommend that Council authorize staff to apply for and accept the VRSA Risk Management Grant through the Virginia Risk Management Association.

Suggested Motion: I move that City Council authorize application for and acceptance of a grant from the Virginia Risk Management Association to fund two confined air space monitors for use by Public Works employees and two automated external defibrillators for the Cochran Judicial Center, retroactively to August 12, 2020, as proposed.

City Manager: Steven L. Rosenberg

Grant Request Summary (#919)

[BACK TO GRANT REQUESTS](#)

Member Info

Member Name:
City of Staunton

Member Number:
#631

Applicant Info

Department requesting funds:

Courts & PW

Applicant name:
Chad Horvat

Applicant title:
Finance Business Manager

Applicant email:
horvatcm@ci.staunton.va.us

Applicant phone:
(540) 332-3819

Mailing address:
**PO Box 58
Staunton, VA 24402-0058**

Request Details

Provide a brief description of this grant request.:

AED's for court house; Air monitors for PW

How will this grant be used to help reduce the probability of claims and enhance your risk management effort?

If awarded the grant will allow the City Court House to have AED's. This award can potentially assist citizens and staff in the case of medical emergency. Air monitors will increase the safety of PW utility crews during confined space work.

Coverages:

General Liability, Law Enforcement Liability, Public Officials, Workers' Compensation

DESCRIPTION	ESTIMATED COST
Quote for two AED's for the City Courthouse	\$2,102.40
Quote for air monitors for PW Utility Crews	\$2,704.20
	TOTAL COST: \$4,806.60

Supporting Documentation**Inv00253498.pdf**

Comment:

Confined space air monitors quote.**Quote_2020-08-07.pdf**

Comment:

Court house AED quote.**Finalize**

CAO Name:

Steve Rosenberg

CAO Phone:

(540) 332-3812

Signature:

Chad Horvat

CAO Email:

RosenbergsI@ci.staunton.va.us

CAO Title:

City Manager

Additional Emails to Notify:

trayerpm@ci.staunton.va.us

Quote

National Safety Supply, Inc.

P.O. Box 608
Jefferson, MD 21755

Invoice #: 00253498

(301)668-3230 (301) 668-3232 Fax

Bill To:

Staunton Water Treatment Plant
Attn: Accounts Payable
P.O. Box 58
Staunton, VA 24402

Ship To:

Staunton Water Treatment Plant
Attn: Nathan Simmons
1907 Craigmont Road
Staunton, VA 24401

REP/CODE		CUST. P.O. #	SHIP VIA	PAYMENT	SHIP DATE	TERMS	DATE	PG.
Robert Andrew		Ventis MX4's	UPS Ground			Net 30	8/10/20	1
QTY.	ITEM NO.	DESCRIPTION			PRICE	UOM	TOTAL	TX.
3	VTS-K1232111101	Industrial Scientific Ventis MX4 - Oxygen(O2), LEL(Pentane), Carbon Monoxide(CO), & Hydrogen Sulfide(H2S) Sensors Installed, Sampling Pump, Color: Hi-Viz Orange, Li-Ion ER Battey, Desktop 120V Charger			\$896.40	ea	\$2,689.20	
Please remit payment to the above address. Thank You.					SALE AMOUNT		\$2,689.20	
					FREIGHT		\$15.00	
					SALES TAX		\$0.00	
					TOTAL AMOUNT		\$2,704.20	
					PAID TODAY		\$0.00	
					BALANCE DUE		\$2,704.20	


AED Professionals™
ECG Professionals™
AEDS - Automated External Defibrillators

Diagnostic Cardiology, Imaging & ECG / EKG Medical Equipment

Emergency Oxygen, AED / CPR Training & Supplies

Quote

Date	Quote #	Customer #
08/07/2020	71205	44135

General Medical Devices, Inc.
 348 W. Colfax Street, Palatine, IL, 60067 USA
 Toll Free: 888-541-2337
 Phone: 847-202-3233
 Fax: 866-879-7795
 www.aedprofessionals.com

Bill To:

City of Staunton
 Attn: Mr. Chad Horvat
 116 West Beverley Street
 Staunton, VA 24401
 horvatcm@ci.staunton.va.us
 Phone: (540) 332-3819

Fax:
Ship To:

City of Staunton
 Attn: Mr. Chad Horvat
 116 W. Beverley Street
 3rd Floor
 Staunton, VA 24401
 horvatcm@ci.staunton.va.us
 Phone: (540) 332-3819

Fax:
P.O. #
TERMS
Net 30

Item	Description	Qty	Discounted Price	List Price	Total
M5066A	Brand New Philips HeartStart Onsite AED w/8-Year Warranty 1 set HeartStart Adult SMART Pads Cartridge 1 Long-life Battery Pack 1 Instruction Manual 1 Quick Reference Card 1 Training DVD Review Express Software (available on-line).	2	\$ 832.78	\$ 1,275.00	\$ 1,665.56
M5066A-OPTC02	Philips, Slim Carry Case, OnSite	2	\$ 0.00	\$ 35.00	\$ 0.00
147SM-1	Surface Mount AED Cabinet, Alarmed	2	\$ 149.92	\$ 198.00	\$ 299.84
M5072A	Philips, Infant/Child SMART Pads Cartridge, HS1	2	\$ 68.50	\$ 108.00	\$ 137.00
AP-PCHAT	AED RESCUE KIT Includes: 1 pair clothing shears, 2 sterile gauze pads, 1 professional 1 way valve mask, bio hazard bag, 2 antiseptic towelett, 1 chest razor, 2 pairs non-allergenic nitrile gloves, 2 Paper towels, 2 anit-microbial hand wipes. Carry case with belt loops and carabiner clip.	2	\$ 0.00	\$ 41.00	\$ 0.00
AP-3DWS-PLA	Premium High Visibility 3D Wall Sign Plastic	2	\$ 0.00	\$ 27.00	\$ 0.00
AP-INSPTAG	AED Inspection/Maintenance Tag	2	\$ 0.00	\$ 2.00	\$ 0.00
AP-DECAL	AED Equipped Facility Window Decal	2	\$ 0.00	\$ 1.00	\$ 0.00

SUBTOTAL: USD \$ 2,102.40

SALES TAX (0.00%): USD \$ 0.00

GRAND TOTAL: USD \$ 2,102.40

Item	Description	Qty	Discounted Price	List Price	Total
Shipping	FREE SHIPPING	1	\$ 0.00	\$ 0.00	\$ 0.00
SUBTOTAL:					USD \$ 2,102.40
SALES TAX (0.00%):					USD \$ 0.00
GRAND TOTAL:					USD \$ 2,102.40

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CITY COUNCIL



AGENDA BRIEFING

Staunton, VA

Meeting Date:	September 10, 2020	Staff Member: Sheryl Wagner
Item #	D	
Ordinance #		
Department:	Tourism	
Council Vision:	Economic Development Culture	
Subject:	Virginia Tourism Corporation's Recovery Marketing Leverage Program	

Background: The mission of the Tourism Department is to promote the City of Staunton as a destination for leisure travelers, meetings and conferences, as well as adult and student group tours through a combination of digital marketing, advertising and public relations. The Tourism Department relies on grants to provide additional marketing support to promote the City of Staunton and its partners which include Staunton-based attractions, lodging properties, restaurants, and retailers. The Tourism Department would like permission to apply for the Virginia Tourism Corporation (VTC) Recovery Marketing Leverage Program grant. The application deadline is September 17, 2020.

Virginia Tourism Corporation Recovery Marketing Leverage Program Grant: The coronavirus has had a devastating impact on the tourism and hospitality industries in Virginia. As the Commonwealth slowly reopens for business, VTC is offering these grant funds as a first step to re-entry into the marketplace to spur economic activity and travel across the Commonwealth.

This application cycle for the VTC Recovery Marketing Leverage Program differs from past VTC Marketing Leverage Program applications. Below is a quick overview of the changes:

- One funding level with a maximum award of \$20,000.
- No requirement for a cash match; however, an in-kind match value is required.
- Partner Requirement – The Tourism Department will need to identify two other partners to leverage our marketing dollars.

Competition for this grant program will be very strong. Due to the anticipated number of applications, and to expedite application approval, a draft review of applications will not be possible.

Fiscal Impact: There is no additional fiscal impact to the city by accepting these grant funds as all in-kind funds are already included in the department's FY2021 budget and marketing plan.

Attachment:

Grant Application

City Manager's Recommendation: Recommend that Council authorize staff to apply for and accept, if awarded, the Virginia Tourism Corporation Recovery Marketing Leverage Program Grant.

Suggested Motion: I move that City Council authorize application for and acceptance of, if awarded, the Virginia Tourism Corporation Recovery Marketing Leverage Program Grant for marketing support to promote the City of Staunton.

City Manager: Steven L. Rosenberg

VTC RECOVERY MARKETING LEVERAGE PROGRAM

This Word Document contains the questions and information within the online application for the VTC Recovery Marketing Leverage Program. This document allows you to see the entire series of questions in the application. You may want to enter your answers in the Word Document, then copy and paste into the online application. This document also contains additional “Helpful Tips” that can assist with answering the questions to strengthen your application.

NOTE: ONLY ONLINE APPLICATIONS WILL BE ACCEPTED.

OVERVIEW:

The Virginia Tourism Corporation (VTC) is pleased to announce that applications are now open for the Virginia Tourism Corporation (VTC) Recovery Marketing Leverage Program.

The coronavirus has had a devastating impact on the tourism and hospitality industries in Virginia. As the Commonwealth slowly reopens for business, Virginia Tourism is offering these grant funds as a first step to re-entry into the marketplace to spur economic activity and travel across the Commonwealth.

PLEASE NOTE: This application cycle for the VTC Recovery Marketing Leverage Program differs from past VTC Marketing Leverage Program applications. Below is a quick overview of the changes:

- Different online application process than in the past.
- One funding level with a maximum award of \$20,000.
- Unless additional funds are available through CARES Act, this will be the only round of marketing leverage grants in this fiscal year.
- No requirement for a cash match; however, an in-kind match value is required.
- Partner Requirement – You will need to identify two other partners who you can work with to leverage your marketing dollars.
- State / Federal agencies may not apply.
- DMO approval is not required for this application; however, applicant should reach out to their local DMO to let them know you are submitting this application.
- Bonus Points if you incorporate a VTC Brand campaign into your marketing plan.
- **COMPETITION FOR THIS GRANT PROGRAM WILL BE STRONG.** The more complete your application, the better you will score. Please follow ALL directions and answer as completely as possible.
- Due to the anticipated number of applications, and to expedite application approval, a draft review of applications will not be possible.
- Only online applications will be accepted.
- Do **NOT** send – via email or regular mail – any attachments or supplemental materials. These materials will NOT be reviewed. Only submit the requested and required information via this online application!

APPLICATION INSTRUCTIONS

Read the [VTC Recovery Marketing Leverage Program Terms & Conditions](#). The Terms & Conditions contain information on eligible expenses under the VTC Recovery Marketing Leverage Program.

Download the [VTC Recovery Marketing Leverage Program Word Document](#) (this document) to see the questions you will answer in the application, as well as HELPFUL TIPS. Refer to the HELPFUL TIPS for pointers on what the VTC Grant Review Team will look for in a competitive application.

You may want to complete the narrative sections, and then cut and paste into the online application.

You will complete the following sections in your application:

- Contact Information
- Completion Date of Your Campaign
- Amount Requested
- Partner Hub & Spoke
- Feeder Markets and Research
- In-Kind Match
- Marketing Plan
- Program Performance Measures
- BONUS SECTION: Virginia is for Lovers Brand Campaign Tie-in

VTC RECOVERY MARKETING LEVERAGE PROGRAM GRANT APPLICATION

IMPORTANT: Your application information is saved on our server as you enter it. If you need to leave the application, scroll to the bottom of the application and click “Save and Continue Later”. You will receive a unique URL that will allow you to go back into the application to make edits. **BE SURE TO COPY THIS URL SO THAT YOU CAN GO BACK TO EDIT YOUR APPLICATION!** You also can enter your email address and have the link sent to you. **YOU WILL NEED TO FOLLOW THIS PROCEDURE EACH TIME YOU LEAVE THE APPLICATION IN ORDER TO SAVE YOUR WORK.**

Once you are ready to submit the **Final Version**, you will acknowledge the Acceptance of Terms. A SUBMIT button will appear. At that point you may submit your application. **Please note** that once you submit, you will **NOT** be able to make any revisions to your application.

DEADLINE INFORMATION:

- Applications open Monday, August 17, 2020
- Applications close Thursday, September 17, 2020; **no extensions will be possible.**
- Award announcements by October 30, 2020.

CONTACT INFORMATION

HELPFUL TIPS for Contact Information; Completion Date, and Requested Funds

- Be sure to complete ALL sections of the Contact Information, including your Federal Employer Identification Number (FEI#)
- Indicate when you anticipate the completion of your marketing program. All programs should be completed within 18 months of award notification.
- Indicate the amount of funding you are requesting. This amount should equal the amount of your total Marketing Plan Budget, if you are requesting less than \$20,000. Note that \$20,000 is the maximum potential award for this grant.

Business/Organization Name	
FEI#	
Name of Marketing Program	
Contact First Name	
Contact Last Name	
Contact Title	
Mailing Address	
City	
State	
Zip Code	
Phone	
Email	

Anticipated Date of Completion	
--------------------------------	--

REQUESTED FUNDS

What amount of VTC Recovery MLP Funding are you requesting?	
---	--

NOTE: Maximum amount of funding per application is \$20,000. Funds will be available upon supplying documentation of **implementation** of your indicated marketing plan items and documentation of payments for those items. Your request should equal at least to the total of your Marketing Plan Budget.

DMO INFORMATION

HELPFUL TIPS for DMO Information

- Your local DMO can assist with your business or organization marketing. The DMO is the principal organization that works to attract visitors to your area.
- You should engage with your DMO on a regular basis. For this grant application, please indicate by selecting from the drop-down list who is your local DMO.
- If you are a DMO applicant for this grant program, please select your office from the drop-down list.

If you are not a recognized Virginia Destination Marketing Organization (DMO), please indicate from the drop-down menu below, who is your local DMO. You are encouraged to engage your local DMO by informing them of your project and marketing plan. Your DMO can be a good resource for assisting with promoting your business or organization. For a list of recognized Virginia DMOs, please visit <https://www.vatc.org/wp-content/uploads/2020/02/DMOlist.pdf>.

PARTNER HUB AND SPOKE (20 POINTS)

HELPFUL TIPS for Partner Hub and Spoke

- For this section, you will describe through a Hub and Spoke method, what you will promote, with whom you can partner, and what supporting attractions or activities can make a visit to your area better.
- Avoid general statements such as downtown, shopping, concerts. Instead use specific examples of actual local businesses, events, etc.
- Use this approach to develop an itinerary for your destination. Telling the visitor the “story” as to why they should visit is an effective way to encourage visitation.
- Refer to the Hub and Spoke Graphic below.

The Hub and Spoke model is the perfect tool for planning out an itinerary. Use the template below to build a trip in your destination that highlights fun and unexpected experiences for visitors. Start by thinking about your destination and/or your business as the “Hub” and listing out different experiences for visitors to drive to or experience in the “Spokes”.

Partners should be included to make your trip even stronger. Think about ways to include other businesses, destinations or major attractions that could make a great partner for your campaign.

Think about some unexpected and “hidden gems” in your destination that travelers will enjoy as additional spokes.

Themed itineraries are a great way to highlight the best of what your destination has to offer. For example, if your destination is an outdoor-lovers haven, create a trip that will cater to the outdoor enthusiasts!

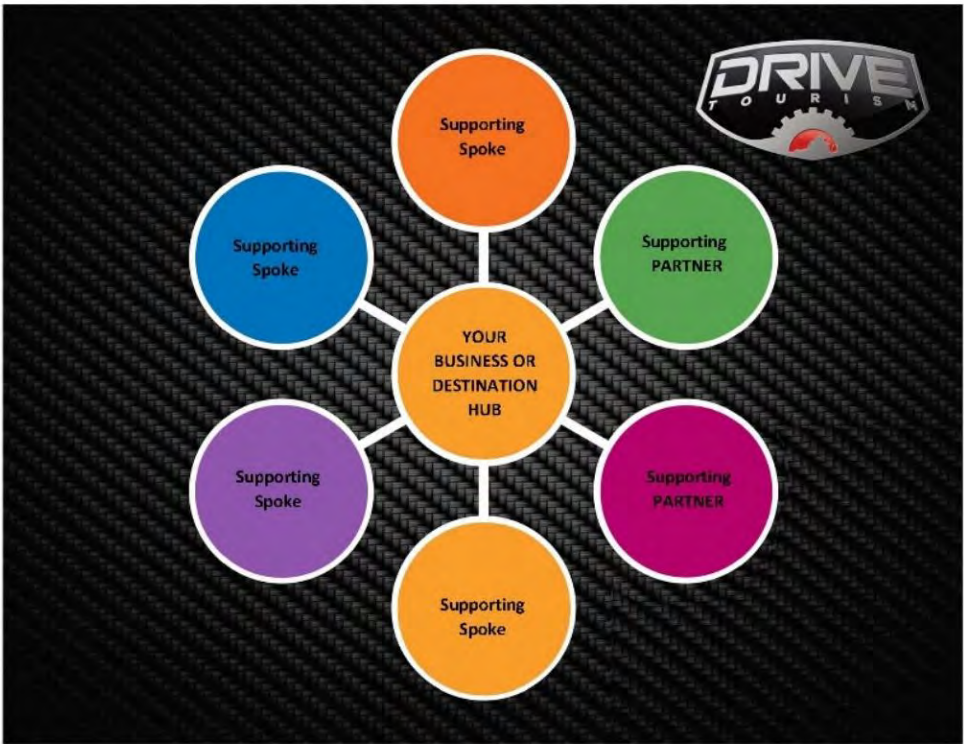
WHAT IS YOUR STRONGEST LURE – YOUR HUB? This can be your business, destination or an attraction. This will be the center of a visit to your area.

HELPFUL TIPS for your HUB

- For the **HUB**: This will be the strongest lure, or reason a visitor should come to your area. This can be your business, an attraction, event, etc.
- Most important is the explanation as to why this is your Hub.
- Briefly explain why this is your Hub. What makes this the center of a visit to your area?

HUB	Explain why this is your Hub?

WHAT ARE YOUR SIX SPOKES?



TWO of your spokes should be other businesses or organizations that you can partner with to help leverage your marketing. In the Description Field below, briefly explain those partners roles in your marketing program.

HELPFUL TIPS for your two PARTNER SPOKES

- These two spokes should be two other businesses, attractions, events, etc. with which you can partner to encourage an increased length of stay in your community.
- You should reach out to those partners to confirm they will work with you.
- List the names of your two partners
- Describe what role they will play in your program and marketing and how they will work with you. Please be brief but specific in your description.
- Answer yes or no regarding your contact with these two partners.

Partners	Partner Name	Describe your partners' roles in your marketing campaign	Have you contacted this partner?
Partner Spoke One			
Partner Spoke Two			

The OTHER FOUR SPOKES should be attractions, events, or other activities for visitors to your area to experience. In the description field, briefly explain how these spokes support the overall visitor experience to your area.

HELPFUL TIPS for your FOUR SUPPORTING SPOKES

- The FOUR SUPPORTING SPOKES are businesses, events, attractions, etc. that complete a visit to your area.
- Think about what makes a great itinerary for your area and include the top four as your SUPPORTING SPOKES.
- Be specific with your spokes. Avoid broad items such as outdoor recreation. Instead, state a specific activity such as "Rent kayak at Acme Outfitters for a trip on New River."
- Briefly describe how these SUPPORTING SPOKES compliment your marketing campaign.

Supporting Spokes	Spoke Name	Describe how these spokes compliment your marketing campaign.
Spoke Three		
Spoke Four		
Spoke Five		
Spoke Six		

TOP THREE FEEDER MARKETS AND RESEARCH (15 POINTS)

Who is most likely to visit your destination or business? Who would you like to visit? Tell us briefly who your campaign will reach by including your top three feeder markets and indicate how you know this is your feeder market (i.e. what research do you have that validates your market?).

HELPFUL TIPS for your FEEDER MARKETS

- You are, or should be, keeping track of who visits your area, and/or who are your customers.
- For this section, we are looking for the geographic area from where your visitors/customers originate.
- Please list a specific location for your top three FEEDER MARKETS. Avoid broad statements such as “Everyone on the East Coast,” or “History Lovers.”
- In order to validate your feeder marketing, indicate how you know this is your feeder market. This can be as simple as stating that you capture zip codes, you use visitor logs, sales reports, etc.
- For example
 - o Market One Greensboro, NC We capture zip codes and this zip code is our top market
 - o Market Two Knoxville, TN Source: Visitor logs at visitor center

	Feeder Market Location/Description	What research do you have to validate this as your feeder market?
Feeder Market One		
Feeder Market Two		
Feeder Market Three		

YOUR IN-KIND MATCH VALUE (20 POINTS)

For this round of the VTC Recovery Marketing Leverage Grant, you do NOT need a cash match (although you may use a cash match from your existing marketing budgets if applicable). However, we do require an in-kind match value. Please briefly describe your in-kind match for these funds. Your in-kind match can include the estimated value of your owned and earned media; value of current ad placements, etc.

HELPFUL TIPS for YOUR IN-KIND MATCH VALUE

- You may use your existing, paid marketing budget items as match value for this section.
 - For example, if you place a ¼ page ad in Blue Ridge Outdoors four times a year and the total cost is \$5,200, you can list this as an in-kind match with a value of \$5,200.
- You may also use the estimated value of your Owned and Earned media placements.
 - For example, if you received media coverage (an article) in Blue Ridge Outdoors you may use the Earned Media ad-equivalency value of that article as your estimated value of in-kind match.
- Be specific with your in-kind match items, provide a brief description of each, and provided an estimated dollar amount of the value of each item.
- Prior awards from other VTC grant programs cannot be used as match.
- The system will allow you to add additional items, and will total the Estimated Value of In-Kind Match
- **NOTE:** When entering the dollar value of your In-Kind Match, enter as a whole number, without the dollar sign, and without a comma. Example: 1535.19

In-Kind Match Item	Description of in-Kind match	Estimated Value of In-Kind Match
Total Value of In-Kind Match		\$

MARKETING PLAN, CALENDAR AND BUDGET AMOUNTS (25 POINTS)

Your marketing plan will help bring your idea to life. In this section, we want to hear how you will promote your campaign through strategic marketing efforts. Show us an integrated approach to promoting your campaign by thinking about the best places to amplify your message and reach your intended audiences. Please list specific media placements, date of placement and cost. Be as detailed as possible.

HELPFUL TIPS for your MARKETING PLAN, CALENDAR AND BUDGET ITEMS

- In this section, you will tell us what your marketing plan is.
- For media placements, list the specific media placement, a brief description of the item, date of the placement or activity, and your budget amount.
- For example:
 - Blue Ridge Outdoors Magazine – ¼ page color ad – March 2020 - \$1,300.00
 - Avoid general items such as “newspaper advertising.” Rather list the individual newspapers with specific dates and budget amounts.
- For non-media placements, such as brochure printing or web development, follow the same format as for media placements above:
- For example:
 - My Town Outdoor Brochure – Printing of 5000 brochures – Feb 2020 - \$1,200.00
- You can continue to add items to your Marketing Plan as needed.
- The system will total your Budget Amount.
- **NOTE: When entering the dollar amount of your budget items, enter as a whole number, without the dollar sign, and without a comma. Example: 1535.19**
- The total Budget Amount should at least equal your Requested Funds. It is okay if your Total Budget Amount exceeds your Requested Amount, but the maximum award for this grant will be \$20,000.
- VTC realizes that due to the COVID-19 Pandemic, you may need to make changes to your marketing program in the future. Such changes are allowed upon sending a request to VTC, as detailed in the VTC Recovery Marketing Leverage Program Terms & Conditions.
- **VTC Industry Advertising Co-Op Program**
 - You are encouraged to use the VTC Co-ops to further leverage your marketing dollars.
 - The **FY21 Industry Advertising Co-Op Program** offers simple, affordable and flexible advertising opportunities so our industry partners can participate in impactful media campaigns, available July 1, 2020 – June 30, 2021.
 - We have streamlined the FY21 program to provide a more substantial investment in the programs that are the most impactful and easy to use in order for our partners to enter the market as quickly and successfully as possible.
 - If you are unsure of how to start planning your Paid Media plan or have any questions, please contact **Lindsey Norment**.
- More information on the VTC Co-Ops – including a Zoom Webinar Co-op Overview is available at <https://www.vatc.org/marketing/advertising/partneradvertising/>

NOTE: Do NOT send via email or regular mail any attachments including existing marketing plans or other materials. You MUST complete the marketing plan using the format below. Any email attachments or supplemental information sent via email or regular mail will NOT be reviewed.

Marketing Plan Item	Description of Marketing Plan Item	Date of Placement or Activity	Budget Amount
Total Budget Amount			\$

- You may continue to add items to your Marketing Plan, as needed.
- NOTE: Your total budget amount should at least equal the amount of your requested funds.

PERFORMANCE MEASURES (20 POINTS)

In this section you will tell us how you will know if you are successful. Please state at least three ways you will measure the success of your program, where those numbers are today, and where those numbers should be in one year. This section will be used when you submit your final report at the end of your program. You may add applicable Performance Measures as needed.

HELPFUL TIPS for your PERFORMANCE MEASURES

- In order to know if you are successful, you need to establish ways to measure your success.
- The hope is that your marketing program will generate more visitation, occupancy and/or revenue.
- This can be as simple as identifying a few items to keep track of (your metrics); identify what those numbers are today (your baselines), and where you hope to be in the future (your goals).
- In this section you will let us know how you will measure your success.
- A couple of examples are:

☐ <u>Metric</u>	<u>Baseline</u>	<u>Goal</u>
☐ Attraction Visitation	2,500	3,000
☐ Gift Shop Sales	\$10,000	\$17,500
☐ Occupancy	30%	54%
- Complete the section below with your Performance Measures
- The system will allow you to add additional Performance Measures as needed.

Measure Metric	Where are you today? Baseline	Where do you want to be in one year? Goal

BONUS POINTS: Virginia is for Lovers Brand Campaign Tie-In: WanderLove ; and Share What You Love (5 bonus points)

HELPFUL TIPS to receive up to 5 BONUS POINTS

- The VTC Brand Department oversees paid marketing initiatives, including advertising, brand activations, sponsorships and promotions. Working closely with The Martin Agency, the Brand Department implements high-level brand awareness campaigns to attract new, repeat and high-yield visitors to Virginia.
- The Brand Department also manages the Industry Advertising Co-op plan, aimed at providing affordable and flexible advertising opportunities for the Virginia Tourism industry to attract new visitors.
- You can receive up to 5 Bonus Points added to your grant score by indicating below how you will integrate aspects of the Virginia is for Lovers campaigns into your marketing.
- **If you chose VTC Co-Ops as part of your marketing plan, then be sure to list those again in the section below.**
- If you will integrate aspects of the VTC WanderLove campaign into your fall marketing, list and briefly describe how you will do so below.
- If you plan to integrate aspects of the Spring 2021 Share What You Love campaign in your future marketing, list and briefly describe how you will do so below.
- More information on the Virginia is for Lovers campaigns is available at <https://www.vatc.org/marketing/advertising/brandinitiatives/>, and below:

VTC Brand Campaigns

VTC will implement the following campaigns over the next year. Based on your timing and marketing goals, you may choose which campaign would be most beneficial for you to join our efforts. Both campaigns offer opportunities for our partners to participate by providing a partner toolkits, logo treatments, creative templates and sample messaging.

Disclaimer: *VTC will continue to monitor the current situation with COVID-19. VTC will notify partners and provide guidance on next steps should plans with the campaigns below change.*

WanderLove – July 2020 – November 2020

Wanderlust is defined as a strong desire to travel, but here in Virginia, we call that feeling **WanderLove**. And while travel doesn't look quite the same this year, you can still explore Virginia's endless beauty with an epic road trip!

WanderLove will leverage Virginia's many road trip adventures to inspire travel throughout the state this summer and fall. We will position **road trips** as a safe and accessible re-entry into travel, highlighting additional low-risk experiences – **outdoor recreation, hidden gems, small towns** and **LOVEworks** – along each route.

We invite you to join the WanderLove campaign by positioning your community as a Road Trip destination. VTC created customizable templates, logo treatments and messaging that you may use to encourage travelers to embrace their WanderLove and explore Virginia.

Timing

- July 2020- November 2020

Audience

- In-State and Neighboring Drive Markets; Families, Couples and Unattached

Goal

- Drive immediate economic impact in Virginia communities by inspiring travel among in-state and drive market audiences.

Partner Participation

- Creative templates and messaging are available at <https://www.vatc.org/coronavirus/brand-response-marketing/campaign-wanderlove/>

Share What You Love – March 2021 – June 2021

LOVE is the catalyst for doing amazing things that make us feel human – and see the humanity in each other. It connects and reconnects us to the things that are real— ourselves, our relationships, our roots and our world.

We've never been so digitally and virtually connected yet so disconnected to the world around us— specifically the things, places, and people we love most. Next year, we aim to position Virginia as *the* place to connect on a family vacation. While we are leading with a TV spot featuring a family with young kids at Virginia Beach, the campaign will highlight all the amazing family-fun experiences throughout Virginia-- for *any* type of family.

Timing

- Launch March 2021 and run through June 2021

Audience

- Out of state, Tier One Markets, with a focus on families (more detailed information on audience to come)

Goals

- Increase awareness and consideration of Virginia as a premier vacation destination for families
- Increase website traffic to Virginia.org
- Show measured increase in bookings and arrivals

Partner Participation

- If you want to join the Share What You Love campaign, we encourage you to think of ways your destination, business or attraction can position as a place for families to disconnect from their chaotic lives and connect with each other while visiting you. Creative templates and messaging will be available early 2021.

In the section below, indicate in broad terms how you will integrate the VTC Brand Campaigns. Specific details are not needed for this section.

VTC Campaign Name	Description of Tie-in to YOUR campaign

SUBMITTING YOUR APPLICATION

VERY IMPORTANT:

- Your application information is saved on our server as you enter it.
- If you need to leave the application, scroll to the bottom of the application and click “**Save and Continue Later**”.
- You will receive a unique URL that will allow you to go back into the application to make edits.
BE SURE TO COPY THIS URL SO THAT YOU CAN GO BACK TO EDIT YOUR APPLICATION!
- You also can enter your email address and have the link sent to you.
- **YOU WILL NEED TO FOLLOW THIS PROCEDURE EACH TIME YOU LEAVE THE APPLICATION IN ORDER TO SAVE YOUR WORK.**

Once you are ready to submit the **Final Version**, you will acknowledge the Acceptance of Terms.

- A SUBMIT button will appear
- At that point you may submit your application.
- **Please note** that once you submit, you will NOT be able to make any revisions to your application.

DEADLINE INFORMATION:

- Applications open Monday, August 17, 2020
- Applications close Thursday, September 17, 2020; **no extensions will be possible.**
- Award announcements by October 30, 2020.

CITY COUNCIL



AGENDA BRIEFING

Staunton, VA

Meeting Date:	September 10, 2020	Staff Member: Rodney Rhodes
Item #	E	
Ordinance #		
Department:	Community Development – Planning and Zoning	
Council Vision:	Built Environment	
Subject:	Staunton Bicycle and Pedestrian Advisory Committee Work Plan	

Background: With the encouragement of City Council, the Staunton Ad Hoc Bicycle Advisory Committee was established in July 2013. The establishment of the advisory committee followed an enthusiastic presentation in 2013 by Ride Staunton to City Council. Between July 2013 and February 2014, the advisory committee's 16 members met every three weeks to consider ways in which the City can better accommodate bicyclists.

The advisory committee issued its final report, including recommendations, and presented the report to City Council at a work session in May 2014. In July 2014, City Council accepted the report and recommendations as presented and authorized staff to proceed with implementation of recommendations, including establishment of a permanent bicycle and pedestrian advisory committee, all subject to the City's budget process.

In January 2015, City Council adopted a resolution establishing the Staunton Bicycle and Pedestrian Advisory Committee (BPAC), a copy of which is attached (Attachment 1). One of the duties of the committee, as provided in the resolution, is "to prepare a bicycle and pedestrian program work plan setting forth goals and objectives, subject to approval by City Council." The committee prepared a work plan which was reviewed and approved by Council in 2016 (Attachment 2). The plan provided direction for the BPAC for several years; however, the committee has determined that an updated work plan would be helpful moving forward. The committee prepared the attached draft work plan (Attachment 3), adopted it at its August 11, 2020 meeting, and is prepared to present it to Council for its consideration. Trafford McRae, member of the BPAC, will attend Council's regular meeting to present the plan.

Attachments:

Attachment 1—Resolution Establishing the Staunton Bicycle and Pedestrian Advisory Committee

Attachment 2—Staunton Bicycle Pedestrian Advisory Committee Annual Work Plan 2016

Attachment 3—Draft BPAC Work Plan – August 2020

City Manager's Recommendation: Receive presentation of the work plan proposed by the Staunton Bicycle and Pedestrian Advisory Committee and approve the work plan.

Suggested Motion: I move that City Council approve the work plan proposed by the Staunton Bicycle and Pedestrian Advisory Committee, as presented.

City Manager: Steven L. Rosenberg

**RESOLUTION OF THE
COUNCIL OF THE CITY OF STAUNTON, VIRGINIA
ESTABLISHING THE STAUNTON BICYCLE
AND PEDESTRIAN ADVISORY COMMITTEE**

WHEREAS, in 2013, Ride Staunton, a bicycle advocacy group, made a presentation to Staunton City Council, during which the group requested the City of Staunton's support for various "cycling friendly" actions, including the establishment of a cyclist and pedestrian advisory board; and

WHEREAS, following Ride Staunton's presentation, which was received with appreciation by City Council, and with Council's encouragement, the City Manager convened the Staunton Ad Hoc Bicycle Advisory Committee, to advise him concerning ways in which the City can better accommodate bicyclists; and

WHEREAS, the Ad Hoc Committee completed its efforts in March 2014, with the issuance of a final report, including recommendations, to the City Manager; and

WHEREAS, in May 2014, the Committee presented its report to Council at a work session; and

WHEREAS, in July 2014, Council accepted the report and recommendations as presented and authorized staff to proceed with implementation of recommendations, including establishment of a permanent bicycle and pedestrian advisory committee, all subject to the City's budget process; and

WHEREAS, Council now desires to establish the Staunton Bicycle and Pedestrian Advisory Committee, as a permanent committee of the City.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Staunton, Virginia, that:

1. There is hereby established the Staunton Bicycle and Pedestrian Advisory Committee to advise the City Council, City Manager and all departments and offices of the City with respect to the impact that City actions may have upon bicycling or walking.

2. The Staunton Bicycle and Pedestrian Advisory Committee shall have the following duties:

a. to prepare a bicycle and pedestrian program work plan setting forth goals and objectives, subject to approval by City Council;

b. to review the work plan annually and propose updates to it, as needed, with such updates subject to approval by City Council;

- c. to review data inventories on walking and biking in the City; and
- d. to make an annual report to City Council concerning the activities of the committee and the fulfillment of the goals and objectives set forth in the work plan.

3. The Staunton Bicycle and Pedestrian Advisory Committee shall generally have the following additional duties, to the extent requested by the City Council or City Manager or designee as to specific matters:

- a. to advise city staff on bicycle and pedestrian related matters;
- b. to assist in implementation, and achievement of the goals, of any bicycle and pedestrian plan that may be adopted by the City;
- c. to work with the City to achieve safe bicycle and pedestrian connectivity for all citizens;
- d. to solicit input and feedback from community members and local advocates on bicycling and pedestrian matters; and
- e. to perform such additional functions or duties as may be so identified as to specific matters by the City Council or City Manager or designee.

4. The Staunton Bicycle and Pedestrian Advisory Committee shall consist of six members to be appointed by City Council, at least one of whom shall be a sworn law enforcement officer of the Staunton Police Department. Each of the remaining five members of the committee, in the discretion of City Council, shall be:

- a. a representative of a bicycle advocacy group;
- b. a representative of a bicycle dealer;
- c. a representative of an organization concerned with education and safety, such as a parent teacher student association;
- d. a representative of a business organization, such as Staunton Downtown Development Association; or
- e. an interested private citizen concerned with non-motorized transportation issues, such as a bicycle commuter, recreational bicyclist, person with disabilities, senior, or high school student.

5. Each committee member shall be appointed by City Council for a two (2) year term. For purposes of establishing staggered terms, initial appointments of three committee members may be for terms of one (1) year, if City Council so determines. One of the committee

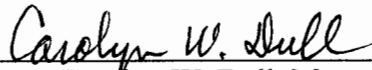
members shall be selected annually by a majority of a quorum of the committee as chair, to serve as presiding officer.

6. The director of planning and inspections shall be responsible for the assignment of staff support to the committee in the exercise of its functions, powers and duties.

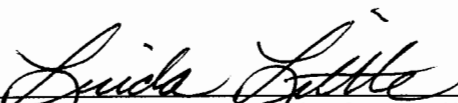
7. All meetings of the committee shall be open to the public and otherwise held in accordance with the Virginia Freedom of Information Act.

8. Nothing in this resolution shall modify or curtail the functions, duties or authority of other public bodies, including the Planning Commission and Historic Preservation Commission.

Adopted this 8th day of January, 2015.


Carolyn W. Dull, Mayor

Attest:


Linda Little, Clerk of Council

Staunton Bicycle Pedestrian Advisory Committee
Annual Work Plan 2016





Staunton Bicycle Pedestrian Advisory Committee (BPAC) Members

VOTING MEMBERS

JENNIFER CAMPFIELD
CITIZEN MEMBER

SOPHIE LAMBERT
CITIZEN MEMBER

JAMES DUNGAN
CITIZEN MEMBER

MARK HARLOW
STAUNTON POLICE DEPARTMENT

JOEL HODSON
CITIZEN MEMBER

MARK RUSSELL
CITIZEN MEMBER

NON-VOTING MEMBERS

SHARON ANGLE
CITY OF STAUNTON

TIM HARTLESS
CITY OF STAUNTON

ANN CUNDY
CENTRAL SHENANDOAH PLANNING
DISTRICT COMMISSION

DEPARTMENT OF PLANNING & INSPECTIONS

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Background

On May 23, 2013, over 100 people attended the meeting of Staunton City Council in support of a presentation given by Ride Staunton on the need for better bicycle infrastructure in Staunton. City Council asked City Manager Steve Owen to examine ways to make Staunton more bike-friendly. He formed an ad hoc bicycle advisory committee, chaired by then Assistant City manager Steve Rosenberg, and comprised of representatives of City departments and community cycling and advocacy organizations.

The ad hoc committee met every three weeks for seven months in 2013 and 2014 to develop a report to submit to the City Manager. The report provided recommendations to the City organized under the 5 Es of the *Bike Friendly* program of The League of American Bicyclists (The League): Education, Encouragement, Enforcement, Engineering and Evaluation and Planning. The report was formally accepted by City Council in July, 2014.

On January 8, 2015, Council formed the Bicycle and Pedestrian Advisory Committee (BPAC) via a resolution that requires this Work Plan to direct the Committee's activities. The BPAC began meeting in May, 2015.

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Intent of the Work Plan

The Work Plan has a two-year scope, and serves as a Council-approved guide for BPAC projects and activities. It will be updated annually. The guiding principle of the Work Plan is the BPAC's mission statement.

BPAC Mission

To foster a more bicycle and pedestrian friendly community by advising the City of Staunton on behalf of its residents and visitors.

Work Plan Structure

In order to meet the BPAC's mission of fostering a more bicycle and pedestrian friendly community, the Work Plan is structured around the Five Es of creating a Bicycle Friendly Community, as defined by The League. The Five Es are:

- Education
- Encouragement
- Engineering
- Enforcement
- Evaluation and Planning

The over-arching goal of the BPAC is to be recognized as a Bike Friendly Community by The League, and as a Walk Friendly Community by the Pedestrian and Bicycle Information Center (PBIC) within the next five years. The work elements detailed in the Work Plan will help the City of Staunton achieve this dual goal.

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Annual and On-Going Committee Activities

Annual and on-going committee activities are proposed to begin immediately and follow the City's annual schedule for developing the budget and CIP. These activities will require close coordination and collaboration with City staff.

Work Plan Item A.1: Review and submit formal comments on the Capital Improvements Program (CIP) (Engineering)

Each fall, the BPAC will review the transportation infrastructure portion of the CIP and make formal comment to City staff and the City Council regarding projects with bike and pedestrian components, or request the addition of new bike and pedestrian projects for consideration of future funding.

Title	Committee Lead and Commitment	Staff Commitment	Schedule	Budget Implications
CIP Review and Comment	All Committee members to participate in review	Sharon Angle: 1 hour to provide BPAC with the draft document	Fall: Review draft CIP December: Submit formal comments	None

Work Plan Item A.2: Review and submit formal comments on the proposed annual paving schedule (Engineering)

The BPAC will review the proposed paving schedule for the coming construction season, and make formal comment to City staff regarding established projects with existing or potential bike and pedestrian facilities. Comments would eventually be based on the bike and pedestrian network defined in the Bike and Pedestrian Plan.

Title	Committee Lead and Commitment	Staff Commitment	Schedule	Budget Implications
Proposed Paving Schedule Review and Comment	All Committee members to participate in review	Sharon Angle: 1 hour to provide BPAC with the draft document	Fall: Review draft schedule December: Submit formal comments	None

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Work Plan Item A.3: Establish relationship with The News Leader for consistent coverage of bicycling and pedestrian issues (Education)

Educate cyclists, pedestrians and drivers about the rules of the road and encourage civility and “Share the Road” principles, as well as let the community know about upcoming events through a regular column in The News Leader.

Title	Committee Lead and Commitment	Staff Commitment	Schedule	Budget Implications
News Leader Cycling Column	James Dungan: 1 hour	None.	N/A	None.

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Projects to Be Initiated in Year One

Projects to be initiated in Year One are expected to take anywhere from a few hours to a few years, while other projects are expected to be ongoing. Time indicated for each Work Plan Item is for overall time required for the project.

Work Plan Item 1.1: Develop a Complete Streets Policy for Adoption by City Council (Engineering)

A Complete Streets Policy for the City of Staunton will set the standard for future transportation projects, including new construction, reconstruction and retrofits. Adopted by City Council resolution, it will require all transportation projects to provide complete facilities for pedestrians and cyclists, as well as vehicles, and will include the concept of proportionality—i.e. the scope of work required to make the street complete should not be excessive in relation to the scope of the overall project. The Policy would reference a federally-endorsed design guide for bicycle and pedestrian facilities.

Estimated Percent of Overall Committee Effort: 20%

Title	Committee Lead and Commitment	Staff Commitment	Timeline	Budget Implications
Complete Streets Policy	Mark Russell (L): 1 hour Joel Hodson: 1 hour	Ann Cundy: 5 hours Sharon Angle: 1 hour	Winter 2016: Policy drafting Spring/Summer 2016: Present to City Council	None.

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Work Plan Item 1.2 – Host Bike/Walk to Work Day 2016 (Encouragement)

Bike/Walk to Work Day 2016 on May 20 will be an inaugural event for Staunton as part of National Bike Month. The event will take place at a central location Downtown, will encourage participants to stop by, log their commutes either online or in person, and work with local employers and business to promote themselves as bike- and walk-friendly.

Estimated Percent of Overall Committee Effort: 40%

Title	Committee Lead and Commitment	Staff Commitment	Timeline	Budget Implications
Bike/Walk to Work Day 2016	Jennifer Campfield: 2 hours	Sharon Angle: 5 hours Ann Cundy: 30 hours	January 2016—May 2016 Winter 2015/2016: Begin event promotion, build online survey tool Spring 2016: Finalize central event plans and volunteers, promotion blitz, event day.	None. DRPT funding through CSPDC

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Work Plan Item 1.3 – Begin Bicycle and Pedestrian Plan Processes (Evaluation and Planning)

The City does not yet have a plan for creating a network of bike routes and facilities. While the BPAC members agree that preparing a City Bicycle and Pedestrian Plan (the “Plan”) is one of its highest priorities, they understand that the commencement of work on the Plan is dependent upon significant resources being in place. For this reason, the Plan is a project for a future year. However, a Year 1 goal is to draft a scope of work and identify appropriate funding sources for the project. If funding sources for the Plan are identified, the BPAC members encourage the City Council to accelerate the commencement of the Plan.

Upon adoption of the Plan, review or recommendation of new infrastructure, or alterations to existing infrastructure, that might affect bicyclists and pedestrians, whether by City staff, the BPAC, or other City boards or commissions, will be based on and conducted to determine consistency with the adopted Plan. Until adoption of the Plan, such review or recommendation, including reviews or recommendations contemplated by Items A.1, A.2, 1.1, 1.2, 2.1 and 2.2 in this Work Plan, will be based on and conducted to determine consistency with then current local, state, and federal/national standards, including consideration of best practices.

Estimated Percent of Overall Committee Effort: 40%

Title	Committee Lead and Commitment	Staff Commitment	Schedule	Budget Implications
Scope Bicycle and Pedestrian Plan	Sophie Lambert (L): 2 hours James Dungan: 1 hour Mark Harlow: 1 hour Mark Russell: 1 hour	Ann Cundy: 4 hours Sharon Angle: 4 hours	January 2016 – September 2016	TBD.

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Projects to Be Initiated in Year Two

Projects to be initiated in Year Two could also take anywhere from a few hours to a few years, while other projects are expected to be ongoing. Year Two projects focus on critical infrastructure projects for improving pedestrian and cyclist safety. Time indicated for each Work Plan Item is for overall time required for the project. The timeline to implement improvements will be budget-dependent.

Work Plan Item 2.1 — Address Pedestrian Safety at Select Downtown Intersections (Engineering)

Heavily used intersections along Beverley and Johnson streets would benefit from improved pedestrian safety measures. Work with City Engineering and Public Works staff to identify near-term, cost-effective improvements and long-term solutions. This Work Plan item will evolve based on the outcome of negotiations over the Courthouse renovations, and potential future planning activities of the Staunton Downtown Development Association.

Estimated Percent of Overall Committee Effort: 50%

Title	Committee Lead and Commitment	Staff Commitment	Schedule	Budget Implications
Pedestrian Safety at Downtown Intersections	Mark Harlow (L): 1 hour Joel Hodson: 1 hour Sophie Lambert: 1 hour	Ann Cundy: 4 hours Sharon Angle: 4 hours James Davis: 2 hours Tom Sliwoski /Steve Yancey: 4 hours	January—December 2017	TBD

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Work Plan Item 2.2—Storm Drain Retrofits (Engineering)

The City has many storm drains aligned parallel to the direction of traffic, which can be hazardous to cyclists. Work with the Public Works Department to identify a dedicated source of funding, priority routes, cost-effective retrofits, and pavement markings to improve cyclist safety.

Estimated Percent of Overall Committee Effort: 50%

Title	Committee Lead and Commitment	Staff Commitment	Schedule	Budget Implications
Storm Drain Retrofits	Mark Russell	Ann Cundy: 4 hours Sharon Angle: 4 hours James Davis: 2 hours Tom Sliwoski /Steve Yancey: 4 hours	January—December 2017	TBD

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Longer Term Projects

Longer term projects do not have specific timelines or committee/staff hours assigned, but were identified by the BPAC, and will be revisited each year to identify which to prioritize for Year One and Year Two Committee work.

Education

- Bike/Walk to School Day
- National Park(ing) Day

Encouragement

- Bike Movie Night in Gypsy Hill Park
- Seek out sponsorships for projects and events
- Create a Wayfinding system for walking and biking trips around Staunton
- Promote and support bike events like tours and race series
- Create a map of walking and biking routes in Staunton

Engineering

- Install a model “Complete Street” in Downtown
- Improve and expand the pedestrian signals Downtown
- Prioritize connections to existing pedestrian and bike facilities near schools

Enforcement

- Public safety announcement and extra enforcement of yield to pedestrian signs Downtown

Evaluation and Planning

- Complete the Greenways Plan
- Complete the Staunton Bicycle and Pedestrian Plan

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Draft BPAC Work Plan – August 2020

This updated Staunton Bicycle & Pedestrian Committee (BPAC) Work Plan states the Mission and the Vision of the group and builds on that foundation to identify linkages with other groups and organizations; identify resources; and define a task list of short-term, long-term, and annual Goals and Objectives. A review of the 2016 plan showed that many of the goals identified in that document were initiated and even completed such as writing the Staunton Bicycle and Pedestrian Plan (SBPP) and Greenways Plan, but that many of these tasks need to be revisited every 1-2 years. While both of these plans were being developed significant public input was received. The SBPP process provided several opportunities for the public to provide input and the Greenways Plan received nearly 100 responses to a November 2019 online survey. Since updates to this work plan were started, the COVID-19 pandemic has resulted in large changes to almost everyone's life. The importance of a strong network of bicycle and pedestrian infrastructure that already had strong public support has become more apparent as people are asked to stay at home and have been using local resources more for exercise and recreation, especially urban parks such as Gypsy Hill, Montgomery Hall and Betsy Bell. Additionally, employees of essential businesses often rely on bicycle and pedestrian transportation to travel to and from work and many local businesses rely on foot traffic from residents and visitors who walk to the downtown area.

BPAC Mission

- To foster a more bicycle and pedestrian friendly community by advising the City of Staunton on behalf of its residents and visitors.

BPAC Vision

- To help the community achieve the many benefits of a safe, robust bicycle and pedestrian system and help implement well-designed and cost-effective investments in bicycle and pedestrian infrastructure.

Linkages

The BPAC has seen strong community support in several areas such as public participation in developing the SBPP and Greenways plan. The committee has other linkages or connections to many groups where it could hopefully provide insight on bike and pedestrian initiatives or help leverage resources to complete meaningful projects.

- City Departments
 - o Community Development
 - o Parks and Recreation
 - o Public Works
 - o Schools
 - o Police
 - o Economic Development and Tourism
- VA Department of Transportation (VDOT)
- Central Shenandoah Planning District Commission (CSPDC)
 - o Staunton Augusta Waynesboro MPO
 - o BRITE Bus System
- Community Groups
 - o Churches and other Faith Based Organizations
 - o Neighborhood Groups (Newtown, West End)
- Events
 - o Farmers Market
 - o Earth Day
 - o Kids Matter Day
 - o Fall kid's run in GHP
 - o Other GHP races (July 4, SPCA 5K)

- o Regional Walk/ Bike Summit
- Organizations
 - o Shenandoah Valley Bicycle Coalition (SVBC)
 - o Augusta Health
 - o Mary Baldwin University
 - o SDDA (Staunton Downtown Development Association)
 - o Staunton Innovation Hub
- Businesses
 - o Black Dog Bikes
 - o Sole Focus Running
- Property Owners

Resources

The BPAC has limited resources as a volunteer committee that reports to the Community Development Department and the Planning Commission.

- Planning Department
- Strong Community Support
- VDOT
- CSPDC
- Augusta Health
- SVBC

Goals and Objectives

The Goals and Objectives listed below are a broad set of activities the group can undertake in the near and long-term as well as annual events or actions. Achieving many of these goals will require several smaller steps. The 2016 BPAC work-plan was based on the 5 E's from the American League of Cyclists. These include Education (ED), Encouragement (ENC), Engineering (ENG), Enforcement (ENF), and Evaluation and Planning (E&P). Many of the tasks listed below fall into these same categories with the most notable change being that Enforcement is now considered to be a sub-category under Education. This decision was based on feedback from the Staunton Police Department (SPD) representative on the committee. SPD has found that what is most effective from a law enforcement standpoint is to assist with educating motorists, bicyclists, and pedestrians on the best ways to safely interact with others using different forms of transportation.

Goal	Next Steps (Objectives)	Timeframe	5 E's Categories
Support Greenways	• Present Greenways Plan to City Council • Support implementation	1-5 Years	ED, E&P
Coordinate with linkage groups	• Prepare some basic, easily disseminated materials on the group's mission and vision and first ask how can we help you? • Meetings (virtual) in summer / fall 2020	6 months through annual exercise	ED, ENC, ENG, ENF, E&P
Define Outreach Activities and seek partners & sponsorships for projects and events	• Define high priority events • Identify existing or upcoming events to participate in with linkage groups • 2021 Earth Day • Walk/Bike event • Consistent web presence to highlight natural partnerships such as with Parks and Recreation	Ongoing	ED, ENC, ENF, E&P

Support implementation of SBPP	• Meetings with linkage groups • Identify low-cost, low-risk pilot projects - o Gypsy Hill Park entrance & loop - o Wayfinding System - o Restriping of Commerce Ave to create bike lanes • Prioritize connections to existing pedestrian and bike facilities near schools • Seek support and guidance (Va Dept Conservation & Recreation, VDOT, and other resources) Meet with Public Works on paving and marking schedules	Ongoing	ED, ENC, ENG, ENF, E&P
Evaluate SBPP for ways to enhance understanding by general public	• Develop a Walkability Plan with key Principles (as in Greenways Plan) • Develop an FAQ summary and map of Bike Routes and recommendations	6-18 Months	ED, ENG, E&P
Support improvements to urban trails	• Maintain MHP trails and signage - specifically better way finding signage and targeted maintenance of areas prone to erosion • Assist with pursuing a master plan and funding for design and construction of Betsy Bell trails • Hold MHP Bike/Run Biathlon Fall 2021	6-12 Months	ENC, ENG, E&P
Encourage policies to work with private entities to improve bicycle and pedestrian connectivity	• Identify opportunities to work with landowners and developers • Serve as an advocate for bicycle and pedestrian travel as needed	Ongoing	ENG, E&P
Install a model “Complete Street” in or near Downtown	• Identify possible locations for a Complete Street • Evaluate locations for best fit	3-5 years	ENG, E&P

Priorities

The following projects have been identified as priorities by the BPAC. They will build on the Goals and Objectives of the work plan and are included in the SBPP, Greenways Plan, or other transportation plans. BPAC members are putting these projects forward as priorities because they can be put into place quickly and cost effectively but also incrementally as opportunities to partner with linkage groups come about. While these projects are beginning, BPAC members will continue to try and meet with linkage groups and find other ways to advocate for improved bicycle and pedestrian safety and infrastructure in Staunton.

The BPAC has been working with the Parks and Recreation Commission to define and implement safety improvements in and around GHP with an initial focus on educational messaging and signage for the primary bicycle and pedestrian loop, Constitution Drive. Additionally, the two groups recommend installing way-finding signage to highlight the Wharf to GHP route from the Greenways Plan.

The BPAC also views installation of bicycle route striping on Churchville Avenue (from SBBP) and potential marking of bicycle and pedestrian lanes on the first section of Commerce Road north of Coalter Street from the Draft Greenways Plan as worthwhile projects to pursue.

Lastly, the BPAC will work to advance educational programs and policies to enhance Bicyclist and Pedestrian safety such as increasing driver awareness and drawing from lessons learned with the GHP safety improvements. (multiple city departments and goals)

Conclusion

The City has consistently received feedback that the public desires safe places to walk, run, and ride bicycles. Beyond recreation, these modes of travel are important to residents and visitors that walk to services and destinations throughout the City, employees (especially of essential businesses) that rely on non-motorized transportation, and students that want an independent way to travel to school. The BPAC developed this work plan to build on its Mission and Vision to make bicycle and pedestrian travel safer and more accessible in Staunton. It establishes linkages and defines important and achievable Goals and Objectives for improving bicycle and pedestrian infrastructure. We look forward to working with our community to put this plan in motion.