

**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

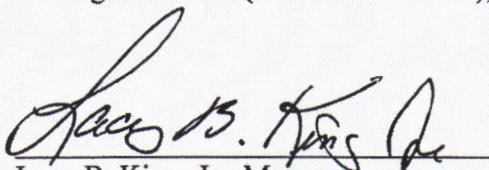
Administrator declined, concluding that the Zoning Administrator had no authority to do so and so notified the Property Owner's legal counsel, as reflected in the Zoning Administrator's May 30, 2014 letter annexed and incorporated by reference as **Exhibit A** into this Resolution. Prior to this letter, 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.

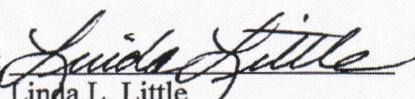
7. It appears now, beyond any doubt whatsoever, that the Property Owner will not comply with the Code and will continue to seek further inappropriate delay through the BZA. Accordingly, the Zoning Administrator and the City of Staunton have no choice but to pursue formal civil enforcement through the 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