

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.

DEBRA CHILTON-BELLONI

Address: 161 Seclusion Manor
Mineral, VA 23117

Respondent

Serve also:

BOARD OF ZONING APPEALS OF STAUNTON, VIRGINIA

Addresses for Service:

Paul Vames, Chair
1600 N. Coalter Street, Suite 19
Staunton, VA 24401

Hal Sharp
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Staunton, VA 24401

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Judith Wiegand
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Bradley G. Bryant
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PETITION FOR WRIT OF CERTIORARI

Petitioners, 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, file this Petition and state as follows:

1. Petitioner City of Staunton, Virginia is a Virginia municipal corporation.
2. Petitioner City Council of the City of Staunton, Virginia is the governing body for the City of Staunton, Virginia.
3. Petitioner Rodney S. Rhodes, Zoning Administrator, is the duly appointed Zoning Administrator of and for the City of Staunton, Virginia.
4. Defendant Debra Chilton-Belloni (Ms. Chilton-Belloni) is a resident of Louisa County, Virginia who owns real estate located in Staunton at 1403 North Augusta Street ("the Property"), with frontage on more than one street.
5. The Property continues to be owned exclusively by Ms. Chilton-Belloni, to whom it passed by survivorship upon the death of Frank Belloni in 2013.
6. By letter dated November 21, 2007, John W. Glover, at that time Zoning Administrator for the City of Staunton, advised Mr. Belloni and Ms. Chilton-Belloni that the wall ("the Wall") being constructed at the Property violated the Staunton Zoning Ordinance, specifically citing Staunton City Code §§ 18.120.010 (2) (a) and (b), which

have now been renumbered with minor revisions in the Staunton Zoning Ordinance as §§ 18.120.010 (2) and (3) (b). A copy of § 18.120.010 of the Staunton Zoning Ordinance is attached hereto as Exhibit A.

7. The Wall was not permitted under the Staunton Zoning Ordinance as it existed when the Wall was constructed, and is not so permitted under the existing terms of the Staunton Zoning Ordinance.

8. The Wall is located in a required front yard.

9. The Wall is not a retaining wall on a lot with a grade in excess of fifteen (15) percent.

10. The Wall is located on a corner lot where a front and side yard is required.

11. The Wall is taller than 3 ½ feet in height.

12. The Wall materially impedes vision across the required front yard above the height of 3 ½ feet.

13. The Wall obstructs sight lines at elevations between 2 ½ feet and 10 feet above the crown of the adjacent roadway.

14. Part of the Wall was placed and is maintained within a triangle formed by measuring from the point of intersection of the front and exterior side lot lines a distance of 15 feet along the front and side lot lines and connecting the points so established to form a right triangle on the area of the lot adjacent to the street intersections.

15. The Wall was, and is, constructed, placed and/or used for residential purposes.

16. The Wall is not set back at least half the required front setback for the lot

on which it is placed, and specifically is not set back from the street right-of-way lines at least 12 ½ feet.

17. The Wall unlawfully obstructs the line of sight on the Property at the intersection of Augusta Street and Ridgeview Road in Staunton.

18. On June 5, 2014 Ms. Chilton-Belloni applied to the Board of Zoning Appeals of the City of Staunton, Virginia (“the BZA”), seeking a variance from various provisions of the Code of the City of Staunton, Virginia. The application submitted by or for Ms. Chilton-Belloni is referenced herein as “the Application”.

19. In the Application, Ms. Chilton-Belloni seeks a variance from Zoning Ordinance Sec. 18.120.010(3) “with respect to the size, height, location or features of a structure - a wall” constructed on the Property. She further asserts that application of the aforesaid ordinance as sought by the City of Staunton would subject her to “an undue hardship warranting a variance.” However, she cites no hardship at all.

20. On June 12, 2018, the BZA conducted a hearing, at which time it, by a 3-2 vote, unlawfully purported to grant Ms. Chilton-Belloni a variance.

21. Ms. Chilton-Belloni incorrectly asserted before the BZA that consideration of her Application should be governed by the provisions of the law as they existed in 2014, when the Application was filed. Petitioners do not agree with that contention, but, regardless, Ms. Chilton-Belloni is not entitled to a variance under the law as it existed in 2014, on June 12, 2018 or today. In issuing its ruling the BZA neither explained why it did so nor on which version of the law – that applicable in 2014 or that applicable at the time of the hearing – it based its decision. Taking the statutory framework from 2014

through today into account, however, Petitioners are specifically aggrieved by the BZA's decision for the following reasons:

A. No evidence was introduced, or otherwise before the BZA, which justified the granting of a variance to Ms. Chilton-Belloni pursuant to applicable law.

B. The variance sought by Ms. Chilton-Belloni was not a reasonable deviation from those provisions of the Zoning Ordinance regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure.

C. Strict application of the Zoning Ordinance would not result in Ms. Chilton-Belloni's sustaining unnecessary or unreasonable hardship.

D. Ms. Chilton-Belloni did not assert, nor did the evidence establish, a need for a variance which the law would recognize as justification for one, and which would not be shared generally by other properties.

E. Granting the variance requested by Ms. Chilton-Belloni is contrary to the intended spirit and purpose of the Zoning Ordinance.

F. Granting the variance requested by Ms. Chilton-Belloni is contrary to the public interest.

G. There are no special conditions in this matter which would cause a literal enforcement of the provisions of the Zoning Ordinance to result in unnecessary hardship.

H. Granting the variance requested by Ms. Chilton-Belloni fails to

observe the spirit of the Zoning Ordinance.

I. Substantial justice is not done by granting the variance requested by Ms. Chilton-Belloni.

J. There is (and was) no exceptional narrowness, shallowness, size of shape of the Property at the time of the effective date of the Zoning Ordinance, or exceptional topographic conditions or other extraordinary situation or condition of the Property, or of the condition, situation, or development of property immediately adjacent thereto, and the strict application of the Zoning Ordinance would not effectively prohibit or unreasonably restrict the utilization of the Property.

K. Granting the variance requested by Ms. Chilton-Belloni does not alleviate a clearly demonstrable hardship.

L. Granting the variance requested by Ms. Chilton-Belloni amounts to a special privilege or convenience sought by Ms. Chilton-Belloni.

M. Strict application of the Zoning Ordinance would not produce undue hardship relating to the Property.

N. Ms. Chilton-Belloni failed to demonstrate the existence of a hardship which would not be shared generally by other properties in the same zoning district and in the same vicinity.

O. Ms. Chilton-Belloni failed to demonstrate that authorization of the variance she seeks would not be of substantial detriment to adjacent property, nor

that it would not be of substantial detriment to nearby properties in the proximity of that geographical area.

P. The character of the district would be changed by the granting of the variance sought by Ms. Chilton-Belloni.

Q. Ms. Chilton-Belloni has not demonstrated that the condition or situation of the Property 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 Zoning Ordinance.

R. Ms. Chilton-Belloni failed to meet her burden to prove that her application for a variance meets the standard for a variance as defined in Va. Code (1950) § 15.2-2201 and the criteria set out in Va. Code (1950) § 15.2-2309, and specifically Va. Code (1950) § 15.2-2309 (2).

S. Granting the relief requested by Ms. Chilton-Belloni would not be a reasonable deviation from those provisions regulating the shape, size or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure.

T. Strict application of the Zoning Ordinance would not unreasonably restrict utilization of the Property.

U. Granting the variance requested by Ms. Chilton-Belloni is contrary to the purpose of the Zoning Ordinance.

V. Granting the variance requested by Ms. Chilton-Belloni would not

alleviate a hardship due to a physical condition relating to the Property or improvements thereon at the time of the effective date of the Zoning Ordinance.

W. Ms. Chilton-Belloni did not assert, nor did the evidence establish, a hardship which would not have been created by herself, as the applicant for the variance.

X. In purporting to grant Ms. Chilton-Belloni a variance, the BZA erred in failing to apply the law.

Y. In purporting to grant Ms. Chilton-Belloni a variance, the BZA erred in failing to make any findings of fact and/or law to support its grant of such a variance, and in failing to make those findings of fact and/or law required by statute and/or other applicable law.

Z. Applicable law does not permit Ms. Chilton-Belloni to be granted the variance she requests in the Application.

AA. The decision of the BZA was plainly wrong and in violation of the provisions of the Code of Virginia, the Code of the City of Staunton and/or other applicable law, much as this same Court found in 2009 with respect to the BZA's grant of a variance with respect to the Wall.

22. On June 14, 2018, the City Council for the City of Staunton authorized Petitioners to appeal to this Court the BZA's purported grant of a variance to Ms. Chilton-Belloni. That Resolution, and the Exhibits attached thereto, are collectively attached hereto as Exhibit B.

WHEREFORE, pursuant to Va. Code (1950) § 15.2-2314, and all other applicable provisions of law, Petitioners, 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, pray that this Court grant a Writ of Certiorari to review the aforesaid decision of the Board of Zoning Appeals of the City of Staunton, Virginia in this matter; that the Writ require that, within the time period permitted by the Court, the BZA make a verified return consisting of the originals or certified copies of all papers and other materials, the entire record, pertaining to this matter, including but not limited to any recordings and accurate transcripts of the proceedings before the BZA of June 12, 2018 and such other facts as are required pursuant to Va. Code §15.2-2314 and other applicable law; that the Court hold a hearing upon the review of the record, and any other testimony and evidence as may be necessary and appropriate for the proper disposition of this matter; that the Court reverse the decision of the BZA granting the variance in this matter, enter judgment for Petitioners, deny the Application and grant Petitioners such other and further relief as is appropriate.

Respectfully submitted,

CITY OF STAUNTON, VIRGINIA

CITY COUNCIL OF STAUNTON, VIRGINIA

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

By Counsel

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



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