

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

**PETITIONERS' RESPONSE TO RESPONDENT'S FURTHER MOTION AND NOTICE
OF CONTINUANCE PURSUANT TO VIRGINIA CODE § 30-5**

Petitioners, City of Staunton, Virginia, a municipal corporation, City Council of the City of Staunton, Virginia and Rodney Rhodes, Zoning Administrator of and for the City of Staunton, Virginia file this response and state as follows:

1. Petitioners filed a Petition for Writ of Certiorari on July 3, 2018, challenging the decision of the Board of Zoning Appeals of the City of Staunton (the BZA) to grant to the Respondent a variance from the zoning laws of the City of Staunton.
2. Based on information obtained from the online Judicial Information System, Respondent, Debra Chilton-Belloni, was served by posting on July 10, 2018.
3. As of August 6, 2018, no responsive pleading had been filed on behalf of Respondent and, under Rule 3:8, the Respondent was in default.
4. The current motion is at least the sixth time that Respondent's counsel has filed a Motion and Notice of Continuance Pursuant to Virginia Code § 30-5 in these proceedings.
5. Upon information and belief, the Senate of Virginia last met in Special Session I

on June 11, 2018 and has not reconvened in that Session since that date. A copy of the daily minutes of the Senate of Virginia is attached hereto and incorporated herein as Exhibit A. The Exhibit indicates that on that date “the Senate adjourned at 9:48 a.m. pursuant to HJ 5002.”

6. Upon information and belief, the Senate of Virginia convened and adjourned in Special Session II on August 30, 2018 and has not reconvened since that date. A copy of the daily minutes of the Senate of Virginia is attached hereto and incorporated herein as Exhibit B. The Exhibit indicates that on that date “the Senate adjourned in memory of John S. McCain, III, at 1:33 p.m. pursuant to HJ 7001.”

7. Respondent and her co-counsel, who is a member of the General Assembly, fully participated in the extended proceedings before the BZA on June 12, 2018, the day after the last day when the Senate of Virginia conducted any business prior to August 30, 2018, but apparently was still in session under the Respondent’s reasoning.

8. Respondent is represented by two attorneys in the same law firm, and the other attorney does not assert he is a member of the General Assembly. It remains unclear why co-counsel could not participate in the scheduling of further proceedings, even if the General Assembly were conducting business.

9. As requested by the Court at a previous motions day hearing in this case, counsel for Petitioners has repeatedly suggested, both personally and in writing, to Respondent’s counsel that the trial date be scheduled through the Court’s secretary, as doing so would avoid the necessity of a motions day appearance for that purpose, but Respondent’s counsel has not cooperated to do so. Indeed, on September 11, 2018 Respondent’s counsel was in Staunton, and indicated in conversation with counsel for Petitioners that he will not consent to schedule the

case for a trial to take place this year. If counsel for Respondent will not cooperate to set the case for trial through the Court's secretary, then Petitioners' only known option to schedule the case is to do so via a Praecipe, as they have done.

10. Certiorari proceedings are intended to be reasonably prompt and are essentially decided on the record made before the BZA. Consistent with the Court's July 11, 2018 Order, the record was assembled and filed with the Court in an expeditious manner so that proceedings would not be delayed.

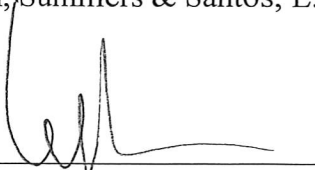
11. Petitioners desire to resolve this matter as promptly as possible, and the latest motion is yet another example of a pattern of protracted delay by Respondent. It serves simply to frustrate and impede even further the enforcement of the zoning laws of the City of Staunton and also escalates the costs. It would not materially inconvenience Respondent or impede the work of the Virginia General Assembly for the Respondent's co-counsel to appear at motions day, or for Respondent or a representative of his office to provide the Court's secretary with his avoid dates so that a trial could be scheduled over the phone.

12. Contrary to Respondent's assertion in her recent Motion, Petitioners' filings do not demonstrate "their acknowledgment that their actions are not warranted by existing law and that they are interposed for improper purposes." As stated previously, Petitioners understand the Court is constrained by the applicable statute. They do not ask the Court to disregard it, but given that the Senate of Virginia has not convened in either Special Session since August 30, 2018 and that they only ask that the case be *scheduled* for trial, not that the Court conduct a hearing for the purpose of taking evidence or considering legal argument, this Response, and Petitioners' prayer that a trial date be scheduled, are appropriate.

Respectfully Submitted,

CITY OF STAUNTON, VIRGINIA, et al.
By Counsel

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

By: 

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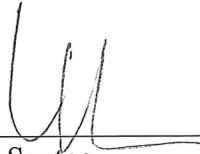
Counsel for Petitioners

CERTIFICATE

I certify that a true and correct copy of the foregoing Response was faxed and mailed this

15th day of November, 2018 to Mark D. Obenshain, Esq. and Justin Wolcott, Esq.,

Obenshain Law Group, 420 Neff Avenue, Suite 130, Harrisonburg, VA 22801



Victor M. Santos

2018 SPECIAL SESSION I

Minute Book
2018 Special Session I
Senate of Virginia
JUSTIN E. FAIRFAX, PRESIDENT OF THE SENATE
SUSAN CLARKE SCHAAR, CLERK
Monday, June 11, 2018

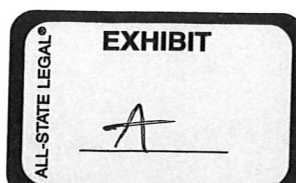
Called to order at 9:45 a.m. by acting President pro tempore Emmett W. Hanger, Jr.

Prayer offered in silence

ROLL CALL OF MEMBERS: Five Senators Present

Motions of Senator Ruff dispensed with the reading of the Journal (5-Y 0-N)

On motion of Senator McDougle, the Senate adjourned at 9:48 a.m. pursuant to HJ 5002



2018 SPECIAL SESSION II

Minute Book
2018 Special Session II
Senate of Virginia
JUSTIN E. FAIRFAX, PRESIDENT OF THE SENATE
SUSAN CLARKE SCHAAR, CLERK
Thursday, August 30, 2018

Called to order at 12 m. by Lt. Governor Justin E. Fairfax

Prayer offered by The Reverend Benjamin P. Campbell, Pastor emeritus, Richmond Hill

ROLL CALL OF MEMBERS: quorum present

COMMUNICATION FROM GOVERNOR - Proclamation

Leaves of Absence granted: Senators Black, Deeds, Dunnavant, Howell, Locke and McDougle

SR 701 - offered by Senator Norment (2018 Special Session II Operating Resolution)

SR 701 - Rules suspended, committee discharged, readings and engrossment waived, taken up for immediate consideration (34-Y 0-N), Agreed to by Senate (34-Y 0-N)

House informed that the Senate is duly organized and ready to proceed

SJ 7001 - offered by Senator Obenshain (Limiting legislation to be considered by the 2018 Special Session II of the General Assembly)

SJ 7001 - Rules suspended, committee discharged, readings and engrossment waived, taken up for immediate consideration (33-Y 0-N), Agreed to by Senate (34-Y 0-N), House informed

MESSAGE FROM HOUSE: House is duly organized and ready to proceed

MESSAGE FROM HOUSE: House agreed to HJ 7001 (Limiting legislation to be considered by the 2018 Special Session II of the General Assembly and establishing conduct of business)

HJ 7001 - Rules suspended, committee discharged, readings waived, taken up for immediate consideration (34-Y 0-N), Agreed to by Senate (34-Y 0-N), House informed

On motion of Senator Norment, the Senate recessed at 1:00 p.m. to reconvene at 1:10 p.m.

The Senate reconvened at 1:10 p.m.

Resolutions laid on the Clerk's Desk under Senate Rules 11(b), (26)g and HJ 7001

SR 702 - Rules suspended, taken up for immediate consideration (32-Y 0-N), Agreed to by Senate (voice vote)

SR 703 - Rules suspended, taken up for immediate consideration (33-Y 0-N), Agreed to by Senate (voice vote)

On motion of Senator Newman, the Senate adjourned in memory of John S. McCain III, at 1:33 p.m. pursuant to HJ 7001.

