

**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.

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45 4. The Property Owner also sought to have the Zoning Administrator, in
46 effect, modify the law under the City Code so that the Property Owner would not be
47 required to comply with provisions that generally have applied to other properties in the
48 City of Staunton in similar situations. The Zoning Administrator properly declined,
49 concluding that the Zoning Administrator had no authority to override laws enacted by the
50 City Council and so notified the Property Owner's legal counsel.
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52 5. The Property Owner continued in violation of the City Code for
53 approximately 10 years despite the City's efforts to achieve compliance.
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55 6. It appeared beyond reasonable doubt to the respected City staff that despite
56 the efforts to get voluntary compliance, the Property Owner ultimately would not comply
57 with the City Code and would continue to seek further delay. Accordingly, the Zoning
58 Administrator and the City of Staunton had no choice but to pursue Council-authorized
59 formal civil injunctive enforcement proceedings through the Circuit Court to assure
60 substantial compliance. Largely to avoid the City's enforcement through injunction
61 proceedings, the Property Owner waited over five years to file yet a second application for
62 a variance with the BZA in 2014, seeking once again another variance from the BZA even
63 though no facts had changed, including that the Property Owner failed to appeal the Circuit
64 Court's 2009 decision to reverse the BZA and invalidate the variance granted to the
65 Property Owner. The City even offered a compromise resolution before injunction
66 proceedings were further pursued, but the Property Owner refused the compromise
67 opportunity simply to lower the wall, choosing instead essentially to continue with the
68 ensuing injunction litigation and now the latest variance proceedings.
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70 7. Following the further judicial proceedings in the Circuit Court, the Supreme
71 Court of Virginia issued a decision that authorized the Property Owner to have yet another
72 hearing before the BZA despite the extensive prior proceedings and the Circuit Court's
73 reversal of the BZA unlawful variance actions in 2009 in all three cases, including that of
74 the Property Owner.
75

76 8. The Zoning Administrator properly opposed the latest variance request of the
77 Property Owner, asserting before the BZA in a supplemental briefing, annexed and
78 incorporated as **Exhibit 2**, that the Property Owner, even under the version of the law in
79 2014 as preferred by the Property Owner, could not establish entitlement to a variance
80 under the facts and the law.
81

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

87 believed to be an unlawful variance, two of the three were also members of the BZA who
88 voted for the unlawful variance in 2008—as reversed and invalidated by the Circuit Court.
89 Also, two of the current three bare-majority members also have essentially declined
90 repeatedly to take the statewide BZA training despite the City of Staunton, through the
91 Zoning Administrator, having offered over various years to have the City pay for the costs
92 related to such training—and despite the Circuit Court, in its May 10, 2017 Order provided
93 to all BZA members, placing emphasis on the value and importance of such training, a
94 copy of which Order is annexed and incorporated as **Exhibit 4**.
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96 10. The Zoning Administrator, the City of Staunton, and the Council of the City of
97 Staunton believe that once again the BZA’s action to grant a variance was unlawful—and
98 once again the BZA’s action merits judicial review, as recommended by the City’s legal
99 counsel and, yet once again, the BZA’s actions will cause the City to incur expense to
100 uphold what are believed to be the reasonable provisions of the City Code.
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102 11. Absent an appeal of the BZA’s actions believed to be unlawful under the facts
103 and the law, the bare-majority’s decision to grant the variance will likely be cited as
104 precedent to justify similar variances and, in effect, potentially change the character of
105 residential neighborhoods in the City. It also would be tantamount to sanctioning of the
106 rewriting provisions of the City Code by the BZA, an unelected bare majority of three
107 people. Again, two of those members have repeatedly declined BZA training, and two were
108 part of the BZA whose actions were previously found to be unlawful by the Circuit Court
109 in 2009, one of whom even made the motion—without any reasoning offered under the
110 facts and the law—to grant the variance in the most recent proceedings conducted on June
111 12, 2018 (**Exhibit 3**). If that state of matters prevails, the BZA’s bare-majority actions,
112 taken utterly without public explanation, would essentially operate to trump City Code
113 zoning provisions that were enacted by the democratically elected members of City
114 Council.
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116 12. City Council realizes that additional expense will be incurred, but it is believed
117 that the expense has been occasioned substantially by the patently erroneous actions of the
118 BZA which originally took unlawful actions in 2008 that had to be reversed by the Circuit
119 Court and, once more, has now taken further action by a bare 3-2 majority to grant a
120 variance without any explanation and public discussion by such majority as to the
121 reasoning based upon the facts and the law. Some of the expense also could have been
122 avoided had the Property Owner not refused the City of Staunton’s effort at compromise
123 which would have simply reduced the height of the wall.
124

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

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

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138 **ADOPTED UNANIMOUSLY** this 14th day of June 2018.

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142 _____
Carolyn W. Dull, Mayor

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144 ATTEST: _____
145 Suzanne F. Simmons
146 Clerk of Council
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