

- **When did this matter begin?**

In 2008, the Staunton Board of Zoning Appeals (BZA) erroneously and unlawfully in three cases granted property owners (what are called) variances, or special treatment, contrary to longstanding zoning provisions 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 BZA had issued variances for two illegal fences, and also a variance for an illegal wall. As to the wall, no other property owner in the neighborhood had such a wall. As a result of the BZA's unlawful decisions—and flouting of controlling law—the City sought judicial review and intervention by the Staunton Circuit Court to correct and reverse the decisions of the BZA to grant special treatment in those cases.

The Circuit Court invalidated the BZA's actions in all three cases, concluding 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." The City Zoning Code restrictions on walls and fences are valid.

City staff endeavored to work cooperatively with the owners of the illegal wall and the two other property owners of illegal fences after the 2009 circuit court ruling. The owners of the illegal fences worked cooperatively with City zoning staff and voluntarily undertook to bring their fences into compliance with the City's zoning law.

- **What purposes do the height and location restrictions really have?**

There are valid and obvious public safety and neighborhood reasons for wall and fence height and location restrictions, such as safe sight distance for motorists and pedestrians, the safety of police and other first responders when approaching property—or perpetrators—hidden or shielded behind a high wall, and preservation of the open residential character of the neighborhood that residents count on.

- **Why has the City continued to pursue legal action about the illegal wall over the last 12 years?**

The City actually has repeatedly tried to reach a conclusion long before now, as the City Council resolutions reflect.

The BZA even gave the property owner yet another hearing in 2018 and on a 3-2 vote granted another illegal variance for the wall. The City's Zoning Administrator, the City of Staunton, and the Council of the City of Staunton believed that as before the BZA's action to grant a variance on June 12, 2018, was unlawful—and once again, the BZA's action merited judicial review, as recommended by the City's legal counsel. In December 2019, after repeated delays, which essentially were tactics by the property owner's lawyer, the Circuit Court ruled that the BZA's grant of a variance was wrong yet again. That makes 4 out of 4 times that the BZA failed to follow the law—4 out of 4 times the City was found correct against granting variances.

Keep in mind, too, that the wall's property owner was required to apply for a building permit, as ruled by the Circuit Court in 2019. The City does not know whether the wall was built in accordance with standards of Virginia's Uniform Statewide Building Code. Even since this ruling by the Circuit Court, the property owner has not applied for issuance of a building permit.

Uniform enforcement of the zoning provisions of the Staunton City Code is important. It is the City's obligation and firm conviction that zoning laws should be applied consistently to all citizens of the City, regardless of where the property may be located, regardless of the standing or identity of the property owner, and regardless of who may represent the property owner—even if a powerful state legislator. The City's commitment to the consistent application of the law and, necessary integrity in public body decision-making has not changed.

- **Has the City actively tried to resolve this issue outside of court?**

Yes. Even with the Circuit Court's 2009 ruling that reversed the original three unlawful BZA's decisions, the City patiently—perhaps too patiently and flexibly—has sought voluntary compliance by the wall's property owner numerous times. The City has repeatedly expressed a desire to work cooperatively with the property owner to achieve substantial compliance through compromise and has continued to seek compliance by communications through at least 10 letters over an extended period of years—all to no avail.

The City also offered a specific compromise to the wall's owner: the property owner could lower the hollow cinderblock wall at the mortar joint just above the legally allowed maximum height of 3 ½ feet, and the City would have its employees load the removed pieces with City equipment and dispose of the pieces and other debris at no charge. The property owner refused the compromise offer.

It appeared beyond any reasonable doubt to City staff that despite efforts to get voluntary compliance, the wall's property owner ultimately would not comply with the City Code and would continue to seek further delay. Consequently, the zoning administrator and the City had no choice but to pursue Council-authorized formal civil injunctive enforcement proceedings through the Circuit Court to assure substantial compliance. Even then, again, the City offered the compromise, which the property owner rejected and, in effect, chose to continue the dispute. The Circuit Court's injunction that requires the property owner to comply has not been rescinded or vacated.

- **How much has the City spent on legal fees in court?**

Because of the BZA's illegal decisions and the protracted delays on behalf of the property owner the City has 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 and to seek enforcement. So far, in this matter which has been ongoing for 12 years, paid legal fees for the law firm's services taking the lead in court and more recent BZA proceedings amount to more than \$95,000.

The BZA's latest illegal actions on June 12, 2018 have caused the City to incur further expense to defend the City's zoning laws and uphold what are believed to be the reasonable provisions of the City Code that a BZA is not allowed, in effect, to trump by the vote of three unelected people who gave no reasons or analysis for the quick vote—and allowed no discussion among the BZA members. Two of the BZA members voted against the variance. The City believes the dissenting two members honored their oaths of office and applied the law; the Circuit Court, in effect, agreed.

- **Has the property owner of the illegal wall made any efforts to come into compliance with the City's zoning laws?**

No. The property owner has continued in violation of the City's zoning laws for approximately 12 years, despite the City's efforts to achieve compliance, and has repeatedly sought preferential treatment, despite the City's clearly written zoning laws. That preferential treatment has included even an effort to rewrite the legal rules retroactively through legislation promoted by the property owner's lawyer, a member of the General Assembly.

- **The property owner says a member of the City's staff gave her permission to build the wall. Didn't the City make a mistake?**

[Read an excerpt from the June 12, 2018 BZA hearing](#) regarding what the property owner(s) were told by the City. Also, read the City Council Resolutions from [2014](#) and [2018](#).

The City's restrictions on walls and fences are clearly stated in the City Code, readily accessible, and plainly understandable by anyone reading the Code online. The City believes the property owners were initially provided with accurate information—that the City Code clearly prohibited the high wall; however, for some reason, they

later approached a different member of the City's staff who provided inconsistent information about the City's zoning laws.

The City recognizes that there was one City employee who apparently failed to reinforce accurately the obligation to follow the plainly written City zoning laws, while, at the same time, another employee had originally provided them with accurate information on the matter. Still, no different than someone who might ask the City's Chief of Police for permission to continuously violate a posted City speed limit indefinitely, no City employee—not the Chief of Police, the City Manager, or the Mayor—can sanction continued violation or disregard of City laws.

Furthermore, in September of 2007, while the wall was under construction, City staff visited the property owner at the property to issue a notice of violation and a stop-work order. At that time, the wall was not complete. In fact, City staff testified to stepping over a portion of the wall to walk to the front door of the home to issue the stop-work order. Nevertheless, the property owner continued with the construction of the wall. [See the photos.](#)

- **Why wouldn't City Council just drop it all and avoid incurring any further expense?**

City Council's Resolutions summarize its reasons for adopting the Resolutions to seek judicial review every time. While the City might avoid committing any more resources, the City believes that the BZA's latest decision—yet once more—was unlawful; that integrity of public body decision-making is a critical value for Staunton citizens; and the zoning laws deserve to be defended; and it is only the means of judicial review that provides that opportunity. Also, there is a larger cost of abdicating: it would fail to assure BZA decision-making integrity and hurt the Staunton citizens who rely on those zoning laws to protect their neighborhoods.