

**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.

4. The Property Owner also sought to have the Zoning Administrator, in effect, modify the law under the City 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 in similar situations. The Zoning Administrator properly declined, concluding that the Zoning Administrator had no authority to override laws enacted by the City Council and so notified the Property Owner's legal counsel.

5. The Property Owner continued in violation of the City Code for approximately 10 years despite the City's efforts to achieve compliance.

6. It appeared beyond reasonable doubt to the respected City staff that despite the efforts to get voluntary compliance, the Property Owner ultimately would not comply with the City Code and would continue to seek further delay. Accordingly, the Zoning Administrator and the City of Staunton had no choice but to pursue Council-authorized formal civil injunctive enforcement proceedings through the Circuit Court to assure substantial compliance. Largely to avoid the City's enforcement through injunction proceedings, the Property Owner waited over five years to file yet a second application for a variance with the BZA in 2014, seeking once again another variance from the BZA even though no facts had changed, including that the Property Owner failed to appeal the Circuit Court's 2009 decision to reverse the BZA and invalidate the variance granted to the Property Owner. The City even offered a compromise resolution before injunction proceedings were further pursued, but the Property Owner refused the compromise opportunity simply to lower the wall, choosing instead essentially to continue with the ensuing injunction litigation and now the latest variance proceedings.

7. Following the further judicial proceedings in the Circuit Court, the Supreme Court of Virginia issued a decision that authorized the Property Owner to have yet another hearing before the BZA despite the extensive prior proceedings and the Circuit Court's reversal of the BZA unlawful variance actions in 2009 in all three cases, including that of the Property Owner.

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

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

believed to be an unlawful variance, two of the three were also members of the BZA who voted for the unlawful variance in 2008—as reversed and invalidated by the Circuit Court. Also, two of the current three bare-majority members also have essentially declined repeatedly to take the statewide BZA training despite the City of Staunton, through the Zoning Administrator, having offered over various years to have the City pay for the costs related to such training—and despite the Circuit Court, in its May 10, 2017 Order provided to all BZA members, placing emphasis on the value and importance of such training, a copy of which Order is annexed and incorporated as **Exhibit 4**.

10. The Zoning Administrator, the City of Staunton, and the Council of the City of Staunton believe that once again the BZA's action to grant a variance was unlawful—and once again the BZA's action merits judicial review, as recommended by the City's legal counsel and, yet once again, the BZA's actions will cause the City to incur expense to uphold what are believed to be the reasonable provisions of the City Code.

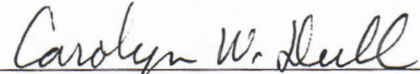
11. Absent an appeal of the BZA's actions believed to be unlawful under the facts and the law, the bare-majority's decision to grant the variance will likely be cited as precedent to justify similar variances and, in effect, potentially change the character of residential neighborhoods in the City. It also would be tantamount to sanctioning of the rewriting provisions of the City Code by the BZA, an unelected bare majority of three people. Again, two of those members have repeatedly declined BZA training, and two were part of the BZA whose actions were previously found to be unlawful by the Circuit Court in 2009, one of whom even made the motion—without any reasoning offered under the facts and the law—to grant the variance in the most recent proceedings conducted on June 12, 2018 (**Exhibit 3**). If that state of matters prevails, the BZA's bare-majority actions, taken utterly without public explanation, would essentially operate to trump City Code zoning provisions that were enacted by the democratically elected members of City Council.

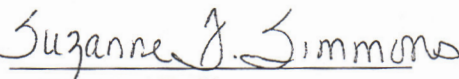
12. City Council realizes that additional expense will be incurred, but it is believed that the expense has been occasioned substantially by the patently erroneous actions of the BZA which originally took unlawful actions in 2008 that had to be reversed by the Circuit Court and, once more, has now taken further action by a bare 3-2 majority to grant a variance without any explanation and public discussion by such majority as to the reasoning based upon the facts and the law. Some of the expense also could have been avoided had the Property Owner not refused the City of Staunton's effort at compromise which would have simply reduced the height of the wall.

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, as the governing body, and counsel for the City are **HEREBY AUTHORIZED** to proceed to take all actions and pursue all recourse and remedies deemed necessary and proper to

appeal and seek reversal of the June 12, 2018 BZA decision as to the Property and Property Owner and otherwise to enforce substantially without further unnecessary delay the applicable provisions of the City Code, including other proceedings and appeals of any kind that may include, but not be limited to, injunctive relief requiring compliance with the City Code, 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, to the fullest extent permitted by law.

ADOPTED this 14th day of June 2018.


Carolyn W. Dull, Mayor

ATTEST: 
Suzanne F. Simmons
Clerk of Council

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF STAUNTON

**JOHN W. GLOVER and
THE CITY OF STAUNTON, VIRGINIA,**

Petitioners,

v.

**Case Nos. CL08000025-00
 CL08000026-00
 CL08000051-00**

**THE BOARD OF ZONING APPEALS OF THE
CITY OF STAUNTON, VIRGINIA, et al.,**

Respondents.

FINAL ORDER

With the agreement of counsel and the parties acting pro se, these certiorari proceedings have been conducted as consolidated for purposes of trial and rulings. In recognition of this agreement, and with the concurrence of the Court, it is HEREBY ORDERED that the proceedings are consolidated to that extent.

On October 21, 2008, the Court conducted a pre-trial conference and a hearing on motions matured for consideration, in anticipation of the previously scheduled December 4, 2008 trial pursuant to Virginia Code § 15.2-2314. During the conference, the Staunton Board of Zoning Appeals withdrew its September 29, 2008 Motion for Leave to File Answer. Also, the Court then concluded and, in confirmation, does HEREBY ORDER that the September 12, 2008 motion of the City of Staunton to reconsider and vacate or modify the July 24, 2008 Orders of the prior judge designate is DENIED; however, the services of William E. Shmidheiser as court-appointed counsel for the Staunton Board of Zoning Appeals are HEREBY SUSPENDED effective October 21, 2008, given the appearance of John A. Conrad as counsel.

Exhibit 1

On December 4, 2008, with all parties present, and represented by counsel or acting pro se, the Court conducted an appeal trial of the three Petitions filed by the City of Staunton, et al. and the Answers of the Respondents, if any, in these three consolidated cases pursuant to Virginia Code Section 15.2-2314.

For good cause appearing, and after considering objections of the Petitioners and the argument of counsel, it is hereby ORDERED that the Motion for Leave to File Answer of the Staunton Board of Zoning Appeals is granted and the Answer of the Staunton Board of Zoning Appeals is duly filed, to which the Petitioners objected on the same grounds identified in their October 17, 2008 objection and on the grounds that the motion had been withdrawn and otherwise now was untimely, with the Staunton Board of Zoning Appeals had remaining in default.

Whereupon, the Court received opening arguments, admitted into evidence all evidence submitted by the BZA, overruling the objection of the Petitioners on grounds that additional evidence was not necessary for the proper disposition of the matter, and then the BZA and all other Respondents rested; the Court heard all closing arguments of counsel for the Petitioners and the BZA, and pro se Respondents, and concluded the trial, with leave for the parties to submit additional briefs and/or memoranda of points and authorities, as well as the minutes of the Staunton City Council, all of which were submitted by the parties and considered by the Court.

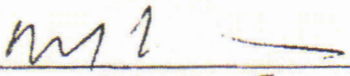
Whereupon, in consideration of the record of the Staunton Board of Zoning Appeals, all evidence submitted by the parties, the written briefs and oral argument of all counsel and all parties, and for the reasons stated in the Court's January 14, 2009 letter opinion, it is HEREBY ORDERED and ADJUDGED that the Staunton Board of Zoning

Appeals' motion to dismiss all three Petitions for lack of standing is DENIED; 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.

It is further ORDERED that the transcript of the October 21, 2008 hearing before the Court is hereby made a part of the record in all of these proceedings.

The Clerk is directed to forward an attested copy of the Final Order to counsel of record and all parties acting pro se.

ENTERED this 17th day of June, 2009.



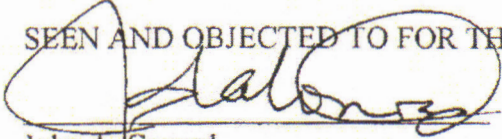
Judge

~~REQUESTED BUT OBJECTED TO AS NOTED OTHERWISE:~~

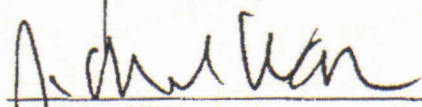


Douglas L. Guynn
Attorney for Petitioners

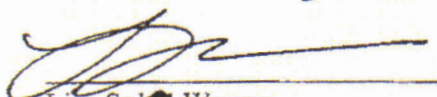
SEEN AND OBJECTED TO FOR THE REASONS STATED IN THE RECORD:



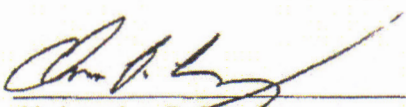
John A. Conrad,
Board of Zoning Appeals Attorney



Michael Warren



Lisa Solari Warren



Christopher P. Lowery

Brandy Piercelowery
Brandy Piercelowery

Frank Belloni
Frank Belloni

Debra Chilton-Belloni
Debra Chilton-Belloni

SEEN:

William E. Schmidheiser, III
William E. Schmidheiser, Esquire

A J APPEARANCE
After Notice
Endorsement
pursuant to
but see letters
dated April 29, 2009
and MAY 15, 2009
M.S.I.
6-17-09

**BOARD OF
ZONING APPEALS**

**SUPPLEMENT TO
AGENDA BRIEFING**

Staunton, VA

Meeting Date:	June 12, 2018	Zoning Administrator: Rodney Rhodes, Certified Zoning Admin.
Item #		
Applicant	Debra Chilton-Belloni: Variance Request	
Location	1403 North Augusta Street (PID #3060)	
Code Section	Various Virginia Code provisions; and Staunton City Code Sections 18.120.010(2), 18.120.010 (3)(b), 18.120.010(3)(d)	

Introduction

This briefing supplements my original briefing which was prepared in anticipation of the scheduled April 3, 2018 board of zoning appeals (BZA) meeting to consider Ms. Belloni's latest application for variance from the City of Staunton zoning provisions under Title 18 of the Staunton City Code. Once more, she is seeking special treatment, asking the BZA to grant her a variance, now arguing that current law under the Virginia Code should not apply. Instead, apparently believing that she has a better chance of getting a variance under old law, she wants the BZA to apply old law. My position as the Zoning Administrator is that whether under the old law or the current law, Ms. Chilton-Belloni falls far short of establishing entitlement to special treatment in the form of a variance.

In the original Agenda Briefing supplied to the BZA in March before Ms. Chilton-Belloni informed everyone that she would attempt to use old law, I provided an analysis of the standard(s) which the 2015 amendments of the Virginia Code mandated for the BZA's consideration of a variance application. Given that Ms. Chilton-Belloni now lately asserts that the applicable statutory provisions are those which existed in 2014, however, I am supplementing to provide the BZA with my analysis and judgment as to consideration of the 2014 provisions, although it continues to be my view that my prior analysis obtained and required denial of a variance. Let me emphasize: this supplemental briefing is not intended to *replace* my original briefing, with attachments; but rather, it assumes for the purpose of argument, without waiving my prior position, that the old 2014 law applies and provides additional analysis and information within the framework of Ms. Chilton-Belloni's assertion that the law as it existed in 2014 is

applicable to this hearing. My view is that, while I preserve my prior position that current law applies, the BZA should make alternative decisions under the old and current law—and under either and both, Ms. Chilton-Belloni fails to be entitled to a variance as a matter of fact and of law.

Variance Standards Under 2014 Code

In 2014, under the provisions of Virginia Code Section 15.2-2201 a "variance" meant, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land or the size¹, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It does not—and, also in the language of the statute, shall not include a change in use which change shall be accomplished by a rezoning or by a conditional zoning. In addition to some review of the language of the Virginia Code, I offer the BZA my analysis of the Belloni situation so that the BZA may witness for itself that even under the old law, which actually is not that different from the current law, Ms. Chilton-Belloni cannot prevail and the BZA's grant of a variance would be fundamentally flawed.

Under the provisions of Virginia Code Sec. 15.2-2309 as it existed in 2014, boards of zoning appeals were permitted to authorize in specific cases such variance as defined in § 15.2-2201 from the terms of a locality's zoning provisions applicable to everyone else similarly situated as follows as delineated:

- as will not be contrary to the public interest,
- when, owing to special conditions a literal enforcement of the provisions will result in *unnecessary hardship*
- provided that the spirit of the ordinance shall be observed and substantial justice done,
- when a property owner can show that his property was acquired in good faith and
- where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto,
- the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant,
- provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

¹ It appears to me that the term "height" was added in 2015, but was not a part of the 2014 statute, which Ms. Chilton-Belloni contends is applicable.

Further, it is abundantly clear and unequivocal in 2014 no such variance was authorized unless the Board found:

- (1) That the strict application of the ordinance would produce undue hardship *relating to the property*;
- (2) That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- (3) That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
- (4) That the condition or situation of the property concerned 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 ordinance.

In my view as an experienced zoning administrator, it is at least very doubtful whether the above standards are significantly different than those which were applied by boards of zoning appeals prior to the 2009 amendments which removed the requirement that the applicant demonstrate a hardship “approaching confiscation” before a variance could be granted. To illustrate this point, for example, in *Martin v. City of Alexandria*, 286 Va. 61 (2013) the variance applicants argued that since they were now not required to prove a hardship “approaching confiscation” the BZA could “authorize variances in instances that previously were not authorized.” The Supreme Court of Virginia held that the “argument ignores, however, the fact that the amendment did not alter the remainder of” the City Charter, which contained language “virtually identical” to that found at Va. Code §15.2-2309(2). Taking into consideration the considerable remaining requirements for a variance, none was justified, and the Court of Virginia held that the Alexandria board of zoning appeals acted erroneously—as did this BZA originally—in granting a variance, in that its doing so was contrary to law. While I acknowledge that the *Martin* case involved the City Charter, the same reasoning applies because, as the Supreme Court of Virginia, noted, the applicable language of the City Charter and the Virginia Code Section 15.2-2309(2) were “virtually identical”.

Regardless, the same analysis which results in a denial of the variance application under the current law, which reflects amendments made in 2015, the old-law standard merits and requires that I recommend the same denial under the version of the statute which applied prior to the 2015 amendments. I urge the BZA to deny the variance under both the old law and the current law, and yet as I mentioned, I will illustrate the fatal flaws in Ms. Chilton-Belloni’s position even under the old, pre-2015 law. What Ms. Chilton-Belloni hopes is that the BZA will try to find some language, even under a distorted reading of it, that will allow the BZA erroneously to act from feelings or from the “heart” to purport to grant her what she is not entitled to get as a special treatment that her other neighbors would not get. If the BZA acts erroneously to give her what she wants, it essentially will be deciding that all other properties in the neighborhood would be entitled to have a wall that violates the Staunton City Code.

Illustrative Analysis Under 2014 Statute

I offer the following illustrative analysis of some aspects to show that a variance cannot, within even the old 2014 law, be granted in this situation. In essence, Ms. Chilton-

Exhibit 2

Belloni must show that all requirements are satisfied, as reflected in the table which is part of the attachments to this briefing, and she cannot do so.

As one example of a standard that cannot be met to gain a variance, Ms. Chilton-Belloni has not shown that enforcement of the zoning ordinance would “result in unnecessary hardship” as the 2014 statute required.

The subject property, for example, obviously has no unique physical condition (shape, size, slope, etc.) that restricts its use more so than other lots in the same zoning district or in the neighborhood vicinity. It has no “exceptional narrowness, shallowness, size or shape” or any “exceptional topographic conditions” as referenced in the 2014 statute. None of her arguments can change the reality that the lot is rectangular, nearly 1.3 acres, and relatively level with a front yard depth of approximately 100 feet when the P-1 District requires a minimum set back from the street right-of-way of only 25 feet.

Furthermore, in the language of the old 2014 Virginia statute, there is no “condition, situation, or development of property immediately adjacent thereto” that “effectively prohibits or unreasonably restricts the utilization of the property”. The adjoining lots are zoned P-1 and most have been developed with residential dwellings. The adjoining property to the north, 1409 North Augusta Road, was at one time even utilized as a gift shop. The property to the south, across Ridgeview Road, is zoned R-2 Low Density Residential and is developed with a single-family dwelling. None of these adjacent uses “effectively prohibits or unreasonably restricts the utilization of the property”.

In this situation, a variance is not needed to reach parity with other lots in the district and, actually, to grant a variance in this instance would be affording this property and its owner what really is truly preferential treatment compared to other properties. It would be a “special privilege or convenience” which the 2014 statute specifically prohibited.

In addition, strict application of the zoning regulations does not “effectively prohibit or unreasonably restrict” Ms. Chilton-Belloni’s utilization of her property. To the contrary, the property has been utilized as residential for over 100 years—and apparently still is today, even being used beyond its original purpose to operate separately rented apartments to tenants. It’s still residential today—and, maybe, in a sense, even more residential and lucrative. Without doubt, the property may continue to be used for this purpose without the granting of a variance. The wall as currently configured is an accessory structure which, by definition under Section 18.10.020 of the Staunton City Code, is incidental to the main building or house and, even without it, the reasonable utilization of the property remains and will remain as all along.

Further, it is notable that the 2014 statute prohibits issuance of a variance unless the BZA finds that “strict application of the ordinance would produce undue hardship *relating to the property*”. Ms. Chilton-Belloni suggests no such hardship, and a limitation on the height of exterior walls at the property does not prevent its full and complete utilization in any logical sense. The only “hardship” which Ms. Chilton-Belloni appears to propose is that her compliance with the law would cause her *economic loss* because she would have to modify what she regards as an *improvement* which she made to the property. Yet, such economic losses, standing alone, have not been found by the Courts to constitute the sort of “hardship” which justify the grant of a variance. I refer you to the cases cited by Greg Kamptner, County Attorney for Albemarle County, in the analysis provided as Exhibit G with the original briefing materials. (Mr. Kamptner is the author of materials used to provide statewide training certification to members of locality

Exhibit 2

boards of zoning appeals.) That analysis includes, as Appendix B (pages B-1 through B-6) a detailed review of the state of the law prior to the 2015 amendments, and I respectfully encourage the BZA to review it thoroughly.

At its last meeting, although I did not know or expect it would be a subject of discussion by the BZA, especially given the absence of counsel for Ms. Chilton-Belloni and counsel for the Zoning Administrator, the BZA pursued the concept of "hardship." But, let me be sure that the BZA understands that the term "hardship" under the controlling law, whether it be in 2014 or 2015, *must relate to the property*. There is no such connection to a physical condition relating to the property. None.

Finally, Ms. Chilton-Belloni has not demonstrated that the condition or situation of the property concerned 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 ordinance. If City Council wished to reduce, or even eliminate, the wall height requirement of the zoning ordinance, it can certainly do so by adopting an ordinance to effect such an amendment to the existing zoning provisions of the Staunton City Code. Its making that choice would certainly be "reasonably practicable" even if, in my view, not necessarily prudent. Regardless, the fact that the height requirements can be addressed legislatively by Council, thus resolving the special privilege Ms. Chilton-Belloni asks the BZA to grant, makes her variance application even less tenable, given the requirements of the 2014 statute.

The applicant fails to meet other applicable requirements as well, including in my view the reality that the wall, as currently configured, has changed the character of the neighborhood—and, by necessity of precedent by decision of the BZA, would do so even more because any other property owner in the vicinity would expect the same special privilege. In effect, Ms. Chilton-Belloni really is asking the BZA to be an unelected, super-City Council, to legislate changes to the City's zoning provisions.

In my earlier submission to the BZA I provided a table, drawn from the current provisions of the Virginia Code, to illustrate the test that must be met for entitlement to a variance. It illustrated the lack of merit of Ms. Chilton-Belloni's application. In like form, attached as Exhibit O is a similar table, referencing the statutes as they existed in 2014 under the old law that Ms. Belloni seeks to exploit.

Whether before or after adoption of the 2015 amendments to the Virginia Code, Ms. Chilton-Belloni fails to establish that her application meets the standard for a variance as defined in Va. Code Section 15.2-2201 and the criteria set out in Va. Code Section 15.2-2309. A variance issued for a lesser reason or simply because the BZA feels it is doing "justice" or following its "heart," a word used either explicitly or implicitly by one or more BZA members, at the BZA's February 13, 2018 meeting, would constitute a disregard of the law, plainly wrong decision-making, and a failure to follow and apply the law as written, whether under the old or current law.

Staff Recommendation

The Zoning Administrator continues to oppose and urge denial of the variance request.

Exhibits:

Exhibit O – Zoning Administrator Table Entitled “Board of Zoning Appeals – Variance Provisions of 2014 Statues”

Specific Requirements	Va. Code Section	
The zoning administrator shall transmit a copy of the application for variances to the local planning commission which may send a recommendation to the BZA or appear as a party at the BZA hearing.	§ 15.2-2310	
“Variance” means, in the application of a zoning ordinance, — a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure — when the strict application of the ordinance would: — result in unnecessary or unreasonable hardship to the property owner, — <u>and</u> such need for a variance would not be shared generally by other properties, — <u>and</u> provided such variance is not contrary to the intended spirit and purpose of the zoning ordinance, — <u>and</u> would result in substantial justice being done. “Variance” shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.	§ 15.2-2201	
Boards of zoning appeals shall have the following powers and duties: — 2. To authorize upon appeal or original application in specific cases such variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:	§ 15.2-2309(2)	

When a property owner can show that his property was acquired in good faith — <u>and</u> where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, — the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property — <u>or</u> where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.	§ 15.2-2309(2)	
No such variance shall be authorized by the board unless it finds: — a. That the strict application of the ordinance would produce undue hardship relating to the property; — b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; <u>and</u> — c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.	§ 15.2-2309(2)	
No variance shall be authorized unless the board finds that the condition or situation of the property concerned 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 ordinance.	§ 15.2-2309(2)	

BOARD OF ZONING APPEALS

Transcript of Proceedings
June 12, 2018

Hart

REPORTING AND
VIDEOCONFERENCING

Advancing with Technology and Excellence



Statewide Coverage in Virginia

National and International Scheduling

590 Neff Avenue, Suite 2000
Harrisonburg, VA 22801
(540) 801-0288

1020 Ednam Center, Suite 002
Charlottesville, VA 22903
(434) 296-3111

205 34th Street, #1601
Virginia Beach, VA 23452
(757) 227-4241

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BOARD OF ZONING APPEALS

Staunton, Virginia

ORIGINAL

EXCERPT FROM TRANSCRIPT OF PROCEEDINGS

Tuesday, June 12, 2018

2:00 p.m.

Pages 1 - 5

Reported by: Kay Trigilio, RPR

1 A P P E A R A N C E S

2

3 BOARD MEMBERS:

4 PAUL VAMES, Chairman

5 HAL SHARP

6 WILLARD KEELING

7 BRADLEY BRYANT

8 JUDITH WIEGAND

9

10 ON BEHALF OF THE ZONING COMMISSIONER:

11 VICTOR SANTOS, ESQUIRE

12 NELSON, McPHERSON, SUMMERS & SANTOS

13 12 North New Street

14 Staunton, Virginia 24401

15 (540) 885-0346

16

17 ON BEHALF OF DEBRA CHILTON-BELLONI:

18 MARK D. OBENSHAIN, ESQUIRE

19 OBENSHAIN LAW GROUP

20 420 Neff Avenue, Suite 130

21 Harrisonburg, Virginia 22801

22 (540) 208-0727

23 mdo@obenshainlaw.com

24

25

1 E X C E R P T

2

3 MR. VAMES: Thank you, gentlemen. Once
4 again, we'll close the public session of this part of
5 this meeting and I'll open the closed session, if
6 anyone wants to make a motion. Is anyone ready to
7 make a motion?

8 MS. WIEGAND: Not quite yet. I'm still
9 looking through my material here.

10 MR. VAMES: Okay. Anyone wish to make a
11 motion?

12 MR. KEELING: I can make a motion. Are you
13 all ready to make a motion?

14 MS. WIEGAND: If you are, please go ahead.

15 MR. KEELING: Okay. I've listened -- first
16 of all, let me say I've been on this thing since the
17 very beginning, so I kind of know all the facts, I
18 think. I've carefully listened to all the material,
19 the evidence presented by both sides. I've listened
20 to all the arguments presented by both sides today, so
21 I now make a motion to grant variances to Section
22 18.120.010(2), Section 18.120.010(3)(b), and Section
23 18.120.010(3)(d) for the property at North Augusta and
24 Ridgeview Road. My motion in variances are to leave
25 the wall in place without modification and to allow

1 for repairs to the damage to the entrance gate.

2 MR. VAMES: Members of the board, you all
3 heard a motion. Is there a second to the motion?

4 MR. SHARP: Second.

5 MR. VAMES: Motion has been made and
6 seconded. Call for the vote. Let's do this one at a
7 time.

8 MS. WIEGAND: Nay.

9 MR. BRYANT: Nay.

10 MR. SHARP: Yes.

11 MR. KEELING: Yes.

12 MR. VAMES: Yes. Motion carries, 3 to 2.

13 And there is no other business to come before the
14 board today. Again, either party, when they are on
15 the losing side of this, know you have 30 days to file
16 an appeal.

17 MR. SANTOS: Thank you for your time.

18 MR. OBENSHAIN: Thank you, members of the
19 board.

20

21 (Proceedings were concluded at 5:08 p.m.)

22

23

24

25

CERTIFICATE OF COURT REPORTER

I, Kay Trigilio, RPR, do hereby certify that I recorded verbatim the proceedings at the Board of Zoning Appeals for the City of Staunton in the captioned cause, on June 12, 2018.

I further certify that the foregoing pages, numbering 1 through 4 inclusive, constitute a true, accurate, and complete transcript of excerpted proceedings.

Given under my hand this 13th day of June, 2018.

Kay Trigilio



Kay Trigilio, RPR

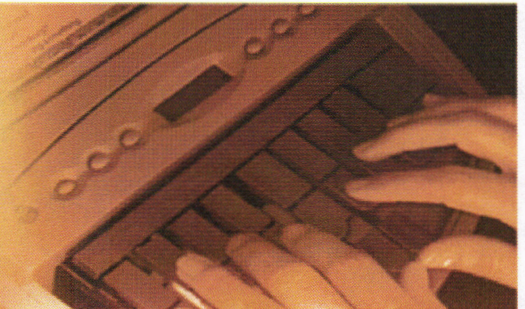
1	D	members 4:2,18 modification 3:25 motion 3:6,7,11,12, 13,21,24 4:3,5,12	T
18.120.010(2) 3:22 18.120.010(3)(b) 3:22 18.120.010(3)(d) 3:23	damage 4:1 days 4:15		thing 3:16 time 4:7,17 today 3:20 4:14
2	E	N	V
2 4:12	entrance 4:1 evidence 3:19	Nay 4:8,9 North 3:23	VAMES 3:3,10 4:2, 5,12 variances 3:21,24 vote 4:6
3	F	O	W
3 4:12 30 4:15	facts 3:17 file 4:15	OBENSHAIN 4:18 open 3:5	wall 3:25 WIEGAND 3:8,14 4:8
5	G	P	
5:08 4:21	gate 4:1 gentlemen 3:3 grant 3:21	p.m. 4:21 part 3:4 party 4:14 place 3:25 presented 3:19,20 proceedings 4:21 property 3:23 public 3:4	
A	H	R	
ahead 3:14 appeal 4:16 arguments 3:20 Augusta 3:23	heard 4:3	ready 3:6,13 repairs 4:1 Ridgeview 3:24 Road 3:24	
B	K	S	
beginning 3:17 board 4:2,14,19 BRYANT 4:9 business 4:13	KEELING 3:12,15 4:11 kind 3:17	SANTOS 4:17 seconded 4:6 Section 3:21,22 session 3:4,5 SHARP 4:4,10 side 4:15 sides 3:19,20	
C	L		
Call 4:6 carefully 3:18 carries 4:12 close 3:4 closed 3:5 concluded 4:21	leave 3:24 listened 3:15,18,19 losing 4:15		
	M		
	made 4:5 make 3:6,7,10,12, 13,21 material 3:9,18 meeting 3:5		

BOARD OF ZONING APPEALS

Transcript of Proceedings
June 12, 2018

Hart
REPORTING AND
VIDEOCONFERENCING

Advancing with Technology and Excellence



Statewide Coverage in Virginia

National and International Scheduling

590 Neff Avenue, Suite 2000
Harrisonburg, VA 22801
(540) 801-0288

1020 Ednam Center, Suite 002
Charlottesville, VA 22903
(434) 296-3111

205 34th Street, #1601
Virginia Beach, VA 23452
(757) 227-4241

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BOARD OF ZONING APPEALS

Staunton, Virginia

ORIGINAL

EXCERPT FROM MR. GLOVER'S STATEMENTS

Tuesday, June 12, 2018

2:00 p.m.

Pages 1 - 5

Reported by: Kay Trigilio, RPR

1 A P P E A R A N C E S

2

3 BOARD MEMBERS:

4 PAUL VAMES, Chairman

5 HAL SHARP

6 WILLARD KEELING

7 BRADLEY BRYANT

8 JUDITH WIEGAND

9

10 ON BEHALF OF THE ZONING COMMISSIONER:

11 VICTOR SANTOS, ESQUIRE

12 NELSON, McPHERSON, SUMMERS & SANTOS

13 12 North New Street

14 Staunton, Virginia 24401

15 (540) 885-0346

16

17 ON BEHALF OF DEBRA CHILTON-BELLONI:

18 MARK D. OBENSHAIN, ESQUIRE

19 OBENSHAIN LAW GROUP

20 420 Neff Avenue, Suite 130

21 Harrisonburg, Virginia 22801

22 (540) 208-0727

23 mdo@obenshainlaw.com

24

25

1 E X C E R P T

2

3 (Answers by Mr. Glover)

4 BY MR. SANTOS:

5 Q. Do you recall going to the Belloni property
6 with Mr. Hartless?

7 A. I do.

8 Q. What was the purpose of going there?

9 A. We had sent a Notice of Violation sometime
10 around September, middle of September, maybe the 20th,
11 I can't remember dates exactly, but somewhere around
12 September the 20th.

13 Q. This is of?

14 A. This is 2007 for a Notice of Violation.

15 Work continued on the wall after the Notice of
16 Violation was delivered, so -- I wasn't there
17 personally when it was delivered. You mentioned that
18 earlier in the proceedings.

19 So later on, between September and
20 November, I went back -- I think it was sometime the
21 end of September, probably, beginning of October, I
22 went back with Mr. Hartless, and we delivered a Stop
23 Work Order and advised Dr. and Mrs. Belloni to stop
24 construction on the wall at that time. It was not
25 complete.

1 Q. So describe what you recall the condition
2 of the wall was at that time.

3 A. When we parked on the Ridgeview side and
4 got out of the car, walked directly, stepped over the
5 wall, it was no more than -- I can't remember -- maybe
6 one course of the block, maybe; we were able to step
7 right over it. We walked to the front door, rang the
8 doorbell, and Dr. and Mrs. Belloni both came out and
9 spoke with us.

10 Q. Did you hand them the Stop Work Order?

11 A. Yes, sir, I did.

12 Q. In terms of the front, Augusta Street, can
13 you recall how much construction had been done?

14 A. It was considerably more complete on
15 Augusta. I can't say whether it was a hundred percent
16 or 50, but it was considerably more complete, but the
17 Ridgeview side was not very complete.

18 Q. Did the Bellonis stop construction after
19 being provided -- after being told to stop?

20 A. No, sir. They continued yet to construct
21 the wall until it was completed.

22

23

24

25

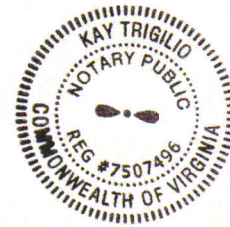
CERTIFICATE OF COURT REPORTER

I, Kay Trigilio, RPR, do hereby certify that I recorded verbatim the proceedings at the Board of Zoning Appeals for the City of Staunton in the captioned cause, on June 12, 2018.

I further certify that the foregoing pages, numbering 1 through 4 inclusive, constitute a true, accurate, and complete transcript of excerpted proceedings.

Given under my hand this 14th day of June, 2018.

Kay Trigilio



Kay Trigilio, RPR

1	BEHALF 2:10,17 Belloni 3:5,23 4:8 Bellonis 4:18 block 4:6 Board 1:5 2:3 5:4 BRADLEY 2:7 BRYANT 2:7	describe 4:1 directly 4:4 door 4:7 doorbell 4:8	K	percent 4:15 personally 3:17 proceedings 3:18 5:4,10 property 3:5 provided 4:19 purpose 3:8
2	C captioned 5:6 car 4:4 CERTIFICATE 5:1 certify 5:3,7 Chairman 2:4 CHILTON-BELLONI 2:17 City 5:5 COMMISSIONER 2:10 complete 3:25 4:14,16,17 5:9 completed 4:21 condition 4:1 considerably 4:14,16 constitute 5:8 construct 4:20 construction 3:24 4:13,18 continued 3:15 4:20 COURT 5:1	E earlier 3:18 end 3:21 ESQUIRE 2:11,18 EXCERPT 1:12 excerpted 5:9	L LAW 2:19	R rang 4:7 recall 3:5 4:1,13 recorded 5:4 remember 3:11 4:5 Reported 1:16 REPORTER 5:1 Ridgeview 4:3,17 RPR 1:16 5:3,16
4	4 5:8 420 2:20	F foregoing 5:7 front 4:7,12	M MARK 2:18 Mcpherson 2:12 mdo@obenshainlaw.com 2:23 MEMBERS 2:3 mentioned 3:17 middle 3:10	S SANTOS 2:11,12 3:4 September 3:10, 12,19,21 SHARP 2:5 side 4:3,17 sir 4:11,20 spoke 4:9 STATEMENTS 1:12 Staunton 1:6 2:14 5:5 step 4:6 stepped 4:4 stop 3:22,23 4:10, 18,19 Street 2:13 4:12 Suite 2:20 SUMMERS 2:12
5	5 1:15 50 4:16 540 208-0727 2:22 540 885-0346 2:15	G Glover 3:3 GLOVER'S 1:12 GROUP 2:19	N Neff 2:20 NELSON 2:12 North 2:13 Notice 3:9,14,15 November 3:20 numbering 5:8	
A	accurate 5:9 advised 3:23 answers 3:3 Appeals 1:5 5:5 Augusta 4:12,15 Avenue 2:20	H HAL 2:5 hand 4:10 5:11 Harrisonburg 2:21 Hartless 3:6,22 hundred 4:15	O OBENSHAIN 2:18, 19 October 3:21 Order 3:23 4:10	
B	back 3:20,22 beginning 3:21	I inclusive 5:8	P p.m. 1:14 pages 1:15 5:7 parked 4:3 PAUL 2:4	
	D dates 3:11 day 5:11 DEBRA 2:17 delivered 3:16,17, 22	J JUDITH 2:8 June 1:13 5:6,11		

T

terms 4:12

time 3:24 4:2

told 4:19

transcript 5:9

Trigilio 1:16 5:3,16

true 5:8

Tuesday 1:13

V

VAMES 2:4

verbatim 5:4

VICTOR 2:11

Violation 3:9,14,16

Virginia 1:6 2:14,
21

W

walked 4:4,7

wall 3:15,24 4:2,5,
21

WIEGAND 2:8

WILLARD 2:6

Work 3:15,23 4:10

Z

Zoning 1:5 2:10 5:5

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF STAUNTON

IN RE: APPOINTMENT TO THE STAUNTON BOARD OF ZONING APPEALS

ORDER

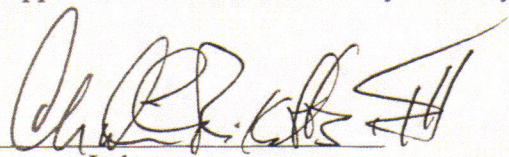
Taking notice that Carl V.W. Hensley, who served on the Staunton Board of Zoning Appeals, passed away on or about February 23, 2017, according to the obituary published in The News Leader, the Court finds it appropriate now to appoint a successor to the Staunton Board of Zoning Appeals.

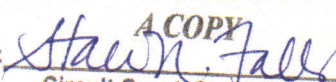
Upon consideration of the qualifications of Judith Wiegand, a resident of the City of Staunton and a member of the Staunton Planning Commission, it is ADJUGED, ORDERED AND DECREED that Judith Wiegand is HEREBY APPOINTED to serve as a member of the Staunton Board of Zoning Appeals for the unexpired portion of Mr. Hensley's term of office, namely until January 31, 2021, pursuant to Virginia Code § 15.2-2308(A), which provides that "[a]ppointments to fill vacancies shall be only for the unexpired portion of the term." Also consistent with the provisions of Virginia Code § 15.2-2308(A) that "[m]embers of the board shall hold no other public office in the locality except that one may be a member of the local planning commission," Ms. Wiegand would be the sole member of the Staunton Planning Commission to serve on the Staunton Board of Zoning Appeals.

To the extent made available through funding by the City of Staunton, all members of the Staunton Board of Zoning Appeals are encouraged to take advantage of training through the Virginia Certified Boards of Zoning Appeals Program, so that each member has the knowledge and skills needed to perform their duties effectively and responsibly in accordance with law. For any future appointment consideration, the Court will expect to be informed whether the person is committed to completing such training before the end of the second year of service after an initial appointment or, if already an incumbent for a full term of office, has completed such training before the expiration of the incumbent's term of office.

The Clerk of the Court is directed to provide an attested copy of this Order to the Clerk for the Staunton Board of Zoning Appeals, requesting that the Clerk for the Staunton Board of Zoning Appeals provide a copy to all members of the Staunton Board of Zoning Appeals and to the Staunton City Attorney.

ENTER this 10th day of May, 2017.


Judge

TESTE:  **A COPY** 
Circuit Court, Staunton, VA **CLERK**