



**LEXINGTON BOARD OF ZONING APPEALS  
Monday, May 20, 2024 - 6:00 P.M.**

**Second Floor Meeting Room  
Lexington City Hall  
300 E. Washington Street, Lexington, Virginia**

**AGENDA**

**1. CALL TO ORDER**

**2. APPROVAL OF MINUTES**

A. Board of Zoning Appeals minutes from Monday, September 18, 2023\*

**3. NEW BUSINESS**

**A. Election of Chair**

- Nominations
- Motion & Vote

**B. Election of Vice-chair**

- Nominations
- Motion & Vote

**C. BZA 2024-01:** A variance request for the common area of Weatherburn subdivision located at 0 Chamberlain Loop.

- 1) Staff Report\*
- 2) Applicant Statement
- 3) Public Comment
- 4) Board Discussion & Decision

**4. ADJOURN**

\*indicates attachment

## MINUTES

**The Lexington Board of Zoning Appeals  
Monday, September 18, 2023 – 6:00 p.m.  
Community Meeting Room – City Hall  
300 East Washington Street**

### **Board of Zoning Appeals:**

Presiding: Gail MacLeod, Vice-Chair  
Present: Robert Hull  
Alexander Thymmons  
Ross Waller

### **City Staff:**

Arne Glaeser, Zoning Administrator  
Kate Beard, Planning Administrative Assistant

Absent: Jim Gianniny, Chair

### **CALL TO ORDER:**

Vice-Chair MacLeod called the meeting to order at 5:59 p.m.

### **MINUTES:**

The March 21, 2022 Board of Zoning Appeals Minutes were unanimously approved as presented (R. Hull / R. Waller).

### **NEW BUSINESS:**

#### **A. Election of Chair**

R. Waller moved to nominate J. Gianniny as Chair of the BZA. R. Hull seconded and the motion carried (4-0).

#### **B. Election of Vice-Chair**

R. Waller moved to nominate G. MacLeod as Vice-Chair of the BZA. R. Hull seconded and the motion carried (4-0).

#### **C. BZA 2022-01 – An appeal request for the property located at 207 Diamond Street.**

##### **1. Staff Report**

Zoning Administrator Glaeser read the advertisement for the public hearing into the record. The advertisement ran in the September 6<sup>th</sup> and 13<sup>th</sup> editions of the News Gazette and a is attached hereto and made a part of the record. This appeal stemmed from an application for a short term residential rental registration for the property located at 207 Diamond Street, in the General Residential (R-1) zoning district, which was denied based upon his determination, as Zoning Administrator, that the property was not the applicants' primary residence. Mr. Glaeser then provided background as follows:

He read the applicable code sections providing the definition for *short term residential rental*, the requirement that a short term residential rental in any of Lexington's residential districts must be the host's primary residence where he or she resides for at least 185 days of the calendar year, and the provision that the host bears the burden of demonstrating that the dwelling unit is his

or her primary residence. He pointed out the location of the subject property and noted that it and all of the neighboring properties are zoned R-1.

Noting that there is no formal or standardized set of documents required for determining residency, Mr. Glaeser provided the list of documents suggested to applicants for aiding in such a determination. In support of the subject short term rental application, applicants Stephen and Marqui Simmons submitted voter registrations, auto insurance policies, a DMV print out, an Anthem insurance printout, and a copy of a sales contract. These documents were reviewed and considered, but the determination was primarily based upon the following observations:

- The applicants were employed and deriving their income from jobs that appeared to require their presence in northern Virginia;
- Income tax forms showing the Diamond Street address as the primary residence were not provided; and
- Of the 5 vehicles registered in Lexington, none were present on the property on the day he performed an informal inspection of the property.

R. Hull asked how Mr. Glaeser had determined the applicants' presence was required elsewhere for their employment, given that so many jobs now accommodate remote work. Mr. Glaeser explained that applicant Marqui Simmons listed her job as a realtor in northern Virginia and typically realtors need to be in the location where their clients are buying and selling properties. He added that applicant Stephen Simmons, during a phone conversation, had indicated that when he had a job, he would need to be at the job location for approximately 3 days. A. Thymmons said it seemed Mr. Glaeser had based his determination on an assumption that Mr. Simmons would have a job every week and did not take into consideration that the applicants may work remotely. He added that he did not find the fact that none of the vehicles were on the property on one particular day to be convincing evidence of non-residency. He said he believed the applicants had provided adequate documentation to prove primary residency and the fact that their jobs were not local was not a sufficient basis for determining they were not primary residents. R. Waller reminded the Board that applicants for short term rentals in residential districts have the burden of proof when it comes to residency requirements and that it was not the Zoning Administrator's duty to prove anything. He said he believed the absence of a tax return was telling, as there is a special tax treatment for a primary residence.

Applicant Marqui Simmons interjected that the Diamond Street property had been their only residence at the time they applied for the short term rental registration. There was some crosstalk and A. Glaeser suggested the Board finish the staff report portion of the meeting and allow the applicants to answer questions during the applicant statement.

Finishing his thought, Mr. Waller said he thought the tax form was important. He suggested the applicants' home in Northern Virginia likely had considerably more value than the Diamond Street property and he found it unlikely, from a tax perspective, that they would claim the Diamond Street property as their primary residence for tax purposes. Mr. Thymmons pushed back against the assertion that the tax form was more relevant than the documents provided by the applicants, pointing out that the determination letter stated that there is no single document proving primary residency. He said he believed the applicants had provided adequate proof of residency. Mr. Hull suggested the Board move on to the applicant statement to allow the applicants to provide more details. G. MacLeod agreed and explained the format for the rest of the meeting.

## 2. Applicant Statement

Mrs. Simmons said she and her husband purchased the Diamond Street property in November of 2019 and it was the only residence they owned at the time. She said the house was uninhabitable when they bought it and they were not able to live in it until sometime in 2021. Renovations to the property were completed in 2022. Mr. Simmons added they had sold their prior residence in 2017 and had stayed with Mrs. Simmons' father when they were in Northern Virginia. He said the tax forms would not show another home because they did not own one.

Mr. Waller asked if the Diamond Street residence was their only residence now and Mrs. Simmons answered that they had purchased another home in Northern Virginia in July 2023. She acknowledged they both had to be in Northern Virginia for their jobs, but their presence was not necessary full time. She stated they absolutely reside at the Diamond Street property 185 days of the year, though she was confused by how that was calculated. Mr. Simmons added that he only had to be on site for work for specialty jobs which he indicated were infrequent. He said he owned his business and had teams of workers who did the majority of the day to day on site work. Mr. Hull asked if their tax forms for 2022 and 2023 would show the Lexington address as their primary residence. Mr. Simmons said he believed the Lexington address had been used as their primary residence since they purchased the property and the Northern Virginia address had only been used as a mailing address.

Ms. MacLeod said the fact of the applicants' two residences, their businesses in Northern Virginia, and the absence of a personal state income tax form showing Diamond Street to be their primary residence led her to believe the Zoning Administrator's determination was appropriate and reasonably made. Mr. Thymmons said he would also find the determination reasonable were it not for the applicants' statement that they only occasionally go to Northern Virginia.

## 3. Public Comment – None

## 4. Commission Discussion & Decision -

Mr. Hull suggested the most important factor to consider was where the applicants' primary residence would be going forward. He then asked how short term rental residency requirements are enforced. Mr. Glaeser explained that all short term rental registrations are renewed annually with a new application submitted each year in which the applicant's must certify the property is their primary residence. That being the case, once a property is deemed eligible, the renewal applications are not investigated unless a complaint is received.

There was additional discussion about the address used on the applicants' tax forms, whether it indicated residency or was simply a mailing address, and how much weight it should be given. Responding to questions from Board members, Mr. Glaeser reminded the Board that his determination had been based on the information provided to him in August, and those documents and information were included in the packet. He said he would need something more concrete than verbal assurances from Mr. and Mrs. Simmons that they spend more time at their Lexington home than their home in Northern Virginia, whether that be Mrs. Simmons' father's home or the home they recently purchased, to reconsider his determination. He added that the question at hand was whether his determination was reasonable and correct given the information he had at the time it was made.

Mr. Thymmons argued the determination was based on assumptions rather than facts. He stated Mr. Glaeser had assumed the applicants were away from Lexington 3 – 4 days per week though that was not in the information provided by the applicants. He indicated he believed the

applicants had met the burden of proof and he did not understand how Mr. Glaeser reached the conclusion he reached.

Mr. Waller requested that Mr. Thymmons identify the error Mr. Glaeser made in reaching his determination. R. Hull suggested the error was in making assumptions. Ms. MacLeod said that while the applicants may have convincingly articulated to the Board that the Diamond Street property should be considered their primary residence, the facts were that they owned two homes and split their time between those homes. Given that there was no way of truly accounting for how that time was split, the questions was whether it was reasonable, based on the information initially provided by the applicants, to assume that they spend 185 days in Lexington. R. Hull said he would rather err on the side of what seems fair and equitable, especially given the applicants' explanation of their living arrangements and willingness to alter their tax filing if necessary. R. Waller pointed out that this was new information and again emphasized that if the Board intended to grant the appeal, it would need to identify the error made by Mr. Glaeser. He asked if there was support for finding Mr. Glaeser had erred in finding the evidence provided to him insufficient to establish residency. A. Thymmons indicated he believed Mr. Glaeser's concerns had been legitimate, but were based on assumptions made on incomplete data. He believed the applicants were able to give the Board the complete picture and the Board could now correct the residency determination based on the new information. Mr. Waller countered, saying the Board's duty was not to get a complete picture, but rather to determine whether Mr. Glaeser's determination was reasonable and correct based on the information he had when he made it. Ms. MacLeod said she found it reasonable to have questioned the applicants' residency and added that the fact that they have since purchased another residence in Northern Virginia made the issue even more perplexing.

R. Waller remarked that the discussion had persuaded him that the address used by the applicants for tax filing may have been a mailing address only and may not have indicated residency, suggesting the absence of the tax returns was less relevant than he had initially assumed it to be. He suggested that the Board consider whether Mr. Glaeser erred by giving too much weight to the absence of the applicants' tax returns in the documents they provided to prove residency.

**R. Waller moved to grant the appeal based on the finding that the Zoning Administrator made an error in his relative weighting of the tax return to the other factors that were presented. A. Thymmons seconded and the motion passed unanimously. (4-0)**

## OTHER BUSINESS

None

## ADJOURN:

The meeting adjourned at 6:53 pm with unanimous approval. (R. Waller / A. Thymmons)

Gail MacLeod, Vice-Chair, Board of Zoning Appeals

**Staff Report**  
**Variance Application**

**BZA 2024-01 Variance Request to signs exceeding size and number limitations;  
0 Chamberlain Loop (Weatherburn subdivision)**

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**STAFF REPORT**

**To:** Board of Zoning Appeals  
**Case Number:** BZA 2024-01  
**Date:** May 10, 2024

**Staff:** Arne Glaeser  
**Tax Map:** 39-1-6 & 39-1-6B

**General Info:** The Board of Zoning Appeals is scheduled to hear this request at 6:00 pm on Monday, May 20, 2024 in the Community Meeting Room, Second Floor City Hall, 300 E. Washington Street.

**Applicant/Owner:** Kathy Hills, President / Weatherburn Homeowners Association

**Requested Action:** To allow variances to the 1) number of allowable subdivision entrance signs, and to the 2) maximum allowable height and 3) maximum allowable display area of said entrance signs.

**Code Section:** 420-13.7 Sign Standards: R-1, R-2, R-M, R-LC Zoning District

**Location:** The affected property is the common area at the entrance to the Weatherburn subdivision where the subject signs are installed.

**Existing Land Use:** The Weatherburn subdivision is now completely built out with 52 residential dwelling units. Weatherburn was approved as a Planned Unit Development (PUD) overlay and the zoning district is R-1/PUD.

**Adjacent Land Use:** Properties across Thornhill Road to the north are located in the R-2 zoning district, as is the one adjacent property to the east. The adjacent townhouses to the east are in the R-1 zoning district. The Birdfield subdivision to the south and west is located in Rockbridge County and those parcels are in an R-1 zoning district.

**Comprehensive Plan:** Suburban Neighborhood

**Zoning History:** PUD overlay approved in 2005 to the R-M zoning district. Zoning Ordinance update in 2017 rezoned the properties to R-1 with the continued PUD overlay.

**Request:**

Four signs were constructed without permits: two at the entrance to the Weatherburn subdivision and two at the exit along Chamberlain Loop which is a one-way street. Subdivisions are allowed one freestanding sign per site entrance, and freestanding entrance signs cannot exceed four (4) feet in height nor sixteen (16) square feet in area per Section 420-13.7 of the Lexington Zoning Ordinance. The two signs at the exit will be removed per the applicant, however, the applicant is

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requesting to keep the two freestanding signs at the entrance, which is one more than is allowed. Additionally, each of those signs exceed the height maximum and the display area maximum. Each sign is approximately 6' 3" in height which is 2' 3" over the 4 foot height maximum allowed for a freestanding subdivision entrance sign. And each sign is approximately 22.25 square feet in area which is 6.25 square feet greater than the 16 square feet allowed for a freestanding subdivision entrance sign.

There is some uncertainty regarding the construction date of the two signs at the entrance to the Weatherburn subdivision, and that uncertainty is largely due to the fact that all four of the entrance and exit signs at Weatherburn were installed without the required sign permits. The applicant maintains the two signs in question at the entrance were installed 15 years ago. Staff determined through Google Earth imagery that the signs in question were actually installed around 2016 (see attached photographs). The zoning requirements for freestanding signs located in residential zoning districts in 2016 were even more restrictive than the current requirements, in that the 2016 regulation allowed no more than 12 square feet of signage in a residential zoning district. In either case, signs must meet the zoning requirements in place when the signs are permitted and not when they were constructed. Pending the B.Z.A.'s decision on the requested variances, a sign permit must still be requested and approved for any subdivision entrance sign(s).

**Code Requirements:**

As stated in Section 15.2-2309.2 of the *Code of Virginia*, the Board of Zoning Appeals shall consider certain statutory considerations when reviewing a variance request. A variance shall be granted if:

1. The evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and
2. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
3. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
4. 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;
5. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
6. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § [15.2-2309](#) or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § [15.2-2286](#) at the time of the filing of the variance application.

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In addition to the variance criteria listed above, a variance application must also meet the standard for a variance as defined in Virginia Code Section 15.2-2201 as follows:

Definitions of the *Code of Virginia*

“Variance” means, in the application of a zoning ordinance, 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 when the strict application of the ordinance would unreasonably restrict the utilization of the property, 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 shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

Sections 420-19-2. B & C of the Lexington Zoning Ordinance provide the following additional guidance for variance requests.

Sec. 420-19-2.B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

Sec. 420-19-2.C. In exercising its powers, the Board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made and, to that end, shall have all the powers of the Zoning Administrator.

**Analysis:**

Staff is of the opinion that the variances requested as to a) number, b) height, and c) display area meet, at best, only 2 of the 6 State variance criteria, and all of the criteria must be met in order to issue a variance. Furthermore, the requested variances do not meet the standards found in the State’s definition of a variance.

1. The key element that must be established in order for a variance to be granted is whether there is an unreasonable restriction or a hardship arising from a physical condition of the property.

*The applicant does not describe a physical condition of the property that led to the construction of two signs without permits, in excess number, height and display area. While the applicant concedes the signs in question do not restrict the utilization of the property or create a restriction for persons with a disability, they maintain that an alteration of the signs will create a hardship by negatively impacting the character of the Weatherburn subdivision. Neighborhood character is not a criteria contained in state code and a variance cannot be granted when the criteria are not met. The attached photographs show no obvious physical condition at the entrance to the Weatherburn subdivision relating to the property requiring two*



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*signs instead of one, or for those signs to be taller and larger in display area. There simply is no physical condition existing on the subject parcel resulting in an unreasonable restriction or hardship; the sign code requirements can be applied without difficulty and without creating an unreasonable restriction or hardship. One of the existing signs can be modified or a new entrance sign can be designed and constructed in a way to meet the character desired by the H.O.A.*

*Additionally, if there is an existing reasonable use of the property, neither an unreasonable restriction nor a hardship exists and a variance may not be lawfully granted. Clearly there is a reasonable use existing on the property because the Weatherburn subdivision contains 52 dwelling units.*

2. The property was acquired in good faith and any hardship was not created by the applicant.

*All four of the subdivision entrance signs were installed by Max Ivankov, contractor, at the request of Custis Coleman, Manager of Weatherburn Holdings, LLC. In 2014, Mr. Coleman purchased the unbuilt portions of the Weatherburn subdivision, including the open space and all of the remaining buildable lots, and it appears the two signs in question were installed sometime in 2016 (see attached photographs). Mr. Coleman sold the remaining buildable lots to Max Ivankov of MaxMark Homes, and the deed to the common area transferred recently from Mr. Coleman to the Weatherburn Homeowner's Association. Being aware of the planned transfer of the common area, staff provided a copy of the attached Notice of Violation to Kathy Hills on December 13, 2023. The Notice of Violation described the zoning violation created by the unpermitted signs, and the Homeowner's Association was therefore aware of the unpermitted signs prior to accepting the deed for the common area where the signs in question are located. It is staff's opinion that while the unpermitted signs leading to the claimed hardship were not constructed by the current owners of the common area, the claimed hardship was created by the previous owner of the common area and a variance cannot be granted for a self-inflicted hardship. A hardship does not arise when an owner violates a provision of the zoning ordinance and then seeks a variance to provide relief from the unlawful act.*

3. The BZA must show that "granting the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area."

*It can be debated whether the two signs in question that are larger in size, height and number than allowed for other subdivisions in Lexington is a "substantial" detriment to adjacent properties. The purpose of the Lexington sign regulations is to regulate the size, height and location of all signs placed on private property to ensure the protection of property values, the character of the various neighborhoods, and the creation of a convenient, attractive and harmonious community. It is staff's opinion that two signs that are larger in height, display area, and number violate the purposeful restriction of signs in Lexington.*

*One of the key principles in granting a variance is to only grant a variance to achieve parity with other properties in the same zoning district and not to allow an applicant to do what others in the zoning district may not do without a variance. Other subdivisions in Lexington are only allowed one freestanding sign. The granting of the requested variance would be contrary to the principle of only granting variances to achieve parity with other properties in the same zoning district.*

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4. The condition of the subject parcel is not so unique that an amendment to the zoning ordinance could not be reasonably formulated.

*An owner's showing that a special condition of the property and its resulting hardship are non-recurring is of considerable importance in determining the propriety of the variance. The applicant has not shown what special condition exists on the subject parcel necessitating the construction of two signs that are greater in number, height, and area. Without an obvious special condition existing on the subject parcel, a variance cannot be granted. If there was an obvious need in Lexington for all subdivisions to have two signs at each site entrance that were over 4 feet in height and greater than 16 square feet in size, then City Council could initiate a zoning text amendment to change the subdivision sign minimum regulations, but that need does not exist.*

5. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.

*Use variances are prohibited, and the applicant seeks relief from signage regulations and not a variance to a land use.*

6. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § [15.2-2309](#) or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § [15.2-2286](#) at the time of the filing of the variance application

*While State Code § [15.2-2309](#) enables Boards of Zoning Appeals to hear cases for special exception (i.e. conditional uses in the Lexington Zoning Ordinance), that authority to review conditional use permits has not been granted to the B.Z.A. in Lexington, so relief from the sign regulations cannot be granted by the B.Z.A. through the conditional use process. Similarly, State Code § [15.2-2286](#) enables local ordinance to allow the zoning administrator to grant modifications from certain provisions contained in the zoning ordinance, but in Lexington that authority has not been granted to the Zoning Administrator, so relief from the sign regulations cannot be granted by the Zoning Administrator.*

*If the zoning ordinance provides an alternative remedy, a variance is unnecessary. The Lexington Zoning Ordinance, however, does not provide an alternative remedy in the two limited instances provided by State Code sections 15.2-2309 and 15.2-2286.*

In addition to the above listed variance criteria, a variance application must also meet the standard for a variance as defined in Virginia Code § [15.2-2201](#) (see state variance definition on page 3). These “standards” include the standard that the “strict application of the ordinance would unreasonably restrict the utilization of the property.” In staff’s opinion the strict application of the subdivision sign regulations has not restricted the utilization of the property as evidenced by the existence of 52 dwelling units constructed on the property.

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**Staff Recommendation:**

The variances requested as to a) number, b) height, and c) display area to allow the two unpermitted subdivision signs to remain do not meet all of the variance criteria as required by State code, nor do they meet the standards found in the State definition of a variance. Staff therefore recommends denial of the requested variances.

**Suggested Motion:**

I move to approve/deny the variances as requested in BZA 2024-01, to allow variances to the 1) number of allowable subdivision entrance signs, and to the 2) maximum allowable height and 3) maximum allowable display area of said entrance signs for Tax Parcels 39-1-6 & 39-1-6B.

**Attachments:**

- A – Vicinity Map
- B – Photographs
- C – Notice of Violation
- D – Application

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*Vicinity Map*  
*(unpermitted subdivision entrance sign locations shown in yellow)*





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*2008 Google Maps photograph*



*2012 Google Maps photograph (front)*



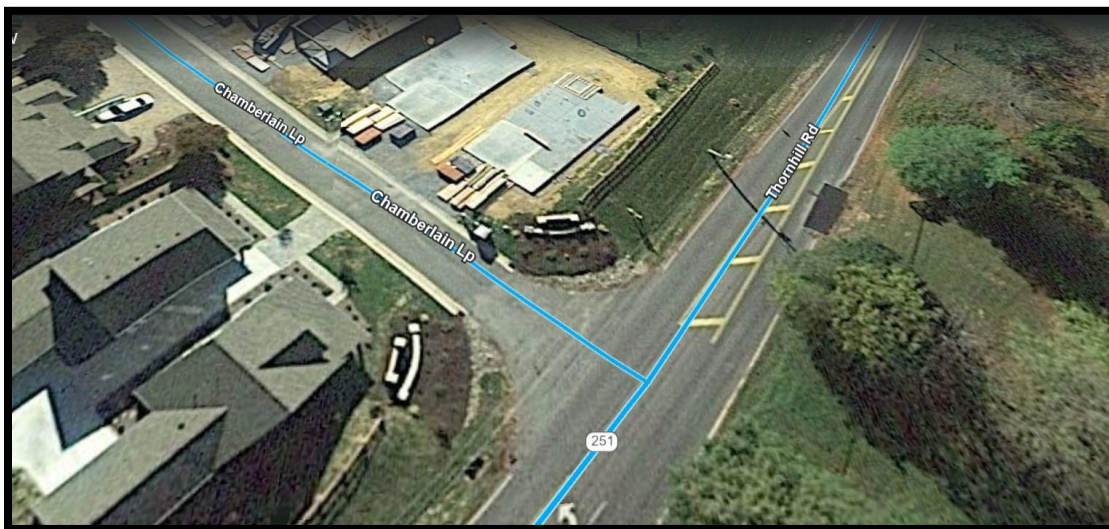
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*2012 Google Maps photograph (rear)*



*2016 Google Maps aerial photograph*





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CERTIFIED MAIL / RETURN RECEIPT

December 12, 2023

Weatherburn Holdings, LLC.  
Custis Coleman, Manager  
530 Wykehurst Drive  
Henrico, VA 23238

**RE: Notice of Violation Letter for unpermitted subdivision entrance signs for the Weatherburn Subdivision (Tax Map # 39-1-6 & 39-1-6B)**

Mr. Coleman,

The City of Lexington is devoted to providing its citizens with a healthy, safe, and enjoyable community in which to live, work, and play. Signs advertising the Weatherburn Subdivision were installed at the entrance and exit of Chamberlain Loop Way without the required approvals and this notice of violation letter intends to make you aware of the existing violations as well as provide you with thirty days to comply with the City's sign requirements.

An email was sent to you on July 25, 2023 regarding a) signage required to delineate Chamberlain Loop Way as a one way street, and b) subdivision entrance signs that were installed without the required sign permits. A couple of days ago I received confirmation that the stop sign, one ways signs, and the do not enter signs were installed to delineate the one way traffic pattern that was shown and approved in your site plan approval. Thank you for the installation of those signs.

The item that remains unaddressed are the signs advertising the subdivision that Max Ivankov acknowledges he erected at the entrance and exit of the Weatherburn Subdivision on your behalf as you remain the owner of the common area in the Weatherburn Subdivision where the four signs were installed. Those four signs advertising the Weatherburn subdivision were installed, two at the entrance and two at the exit, without the required submittal and approval of sign permits. Per §420-13.2 of the Zoning Ordinance, no sign shall be erected, constructed, posted, painted, altered, or relocated, unless and until a zoning permit has been issued by the zoning administrator. All four of the subdivision signs are in violation of the Lexington Zoning Ordinance and **you have until January 22, 2024** to bring your parcels into compliance with the City's sign requirements. The attached photographs taken on December 12, 2023 show the four unpermitted entrance signs.

While you did not respond to my email on July 25, 2023, both Max Ivankov replied, and Russ Orrison of Perkins and Orrison contacted me about possible remedies for the installed signs. To date, nothing has been submitted to the City to bring your signs into compliance, and a response from you has not been received.

Currently, the four installed signs are in violation of the following sections of the Lexington Zoning Ordinance:

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1. §420-13.2 of the Zoning Ordinance, no sign shall be erected, constructed, posted, painted, altered, or relocated, unless and until a zoning permit has been issued by the zoning administrator.
2. §420-13.7 one freestanding sign is allowed per site entrance and that sign may be up to 16 square feet in area and up to 4 feet in height.

Four signs were installed in total, with two signs installed per entrance in excess of the one freestanding sign allowed per site entrance. The display area of each of the installed signs is 22.25 square feet in area which exceeds the 16 square feet permitted. The height of the installed signs is 6' 3" which exceeds the 4 feet in height permitted in the Lexington Zoning Ordinance. The proper course of corrective action to bring the unpermitted signs into compliance is to a) submit a sign permit application showing signs that meet the requirements of the Lexington Zoning Ordinance, and then b) to remove/alter the existing signs to meet the approved sign permit. **Please submit a sign permit application showing signs that meet the requirements of the Lexington Zoning Ordinance by January 22, 2024.** The sign permit application can be found on the City's website at <https://www.lexingtonva.gov/services/forms/-folder-38>.

Under provisions of 15.2-2311 of the Code of Virginia, this letter represents an interpretation of the City's Zoning Ordinance and anyone aggrieved by this interpretation may appeal to the City of Lexington Board of Zoning Appeals within thirty days of the receipt of this letter. The decision shall be final and unappealable if not appealed within 30 days. The applicable fee for appeal is \$350. Information regarding the appeal process is located in Article XIX, Section 420-19.4 of the Zoning Ordinance which is also available on the city's website <https://ecode360.com/33048431>.

If you would contact me to discuss the proposed course of corrective action, I am confident that we can resolve this violation in a timely manner. You may contact me at 540-462-3730 or [aglaeser@lexingtonva.gov](mailto:aglaeser@lexingtonva.gov) at your convenience. Thank you for your cooperation regarding this matter.

Sincerely,



Arne Glaeser  
Planning Director

Cc: Jim Halasz, City Manager  
Jeremy Carroll, City Attorney  
Max Ivankov, MaxMark Homes  
Kathy Hills, Weatherburn HOA president



Staff Report  
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Photograph #1 of the Weatherburn entrance taken December 12, 2023



Photograph #2 of the Weatherburn entrance taken December 12, 2023



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Photograph #3 of the Weatherburn exit taken December 12, 2023



Photograph #4 of the Weatherburn exit taken December 12, 2023







www.lexingtonva.gov

Planning & Development Department  
300 East Washington Street  
Lexington, Virginia 24450  
Phone: (540) 462-3704 Fax: (540) 463-5310

## APPLICATION FOR VARIANCE/APPEAL OF ZONING ADMINISTRATOR'S DECISION

### Applicant<sup>1</sup>

Name: Kathy Hills, HOA President Phone: 540-460-6723

Company: Weatherburn Homeowners Association Fax: \_\_\_\_\_

Address: 2 Chamberlain Loop Email: kathyhills85@gmail.com

Applicant's Signature: *Kathy Hills* Date: 3/22/24

### Property Owner

Name: Weatherburn Homeowners Association Phone: \_\_\_\_\_

Address: 2 Chamberlain Loop Email: \_\_\_\_\_

Owner's Signature: *Kathy Hills* Date: 3/22/24

### Proposal Information<sup>2</sup>

Application Type:  Appeal (attach description of appeal)  Variance<sup>3</sup> (complete below)

Address (or location description): 2 Chamberlain Loop

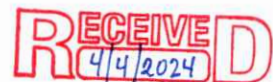
Tax Map: 39-1-6 Deed Book and Page #: 240000082

Acreage: 0.682 Zoning (attach any existing zoning conditions or proffers): \_\_\_\_\_

The Applicant requests a variance from Section 420-13.2, 420-13.7 of the City of Lexington Zoning Ordinance, in respect to the requirement for A sign 16 square feet and up to 4 feet in height.  
in order to build N/A

1. Prior to submitting an application, the applicant is required to meet with staff for a pre-application meeting.
2. Any application deemed incomplete by staff will not be accepted.
3. See page 2 of this application for the powers and duties of the Board of Zoning Appeals in granting appeals and variances. If not specifically required in the zoning ordinance, submitting a sketch plan or other visual detail of your variance request is highly encouraged.

NON REFUNDABLE





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## **Powers and Duties of the Board of Zoning Appeals**

Pursuant to § 15.2-2309 of the Code of Virginia, the Board of Zoning Appeals is granted the following powers:

### **Appeals:**

To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter or of any ordinance adopted pursuant hereto.

### **Variances:**

The Board may authorize variances from the terms of the Zoning Ordinance, as allowed by State Law. When granting variances, the Board must make the following findings:

1. The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and;
2. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
3. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
4. 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;
5. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
6. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of 15.2-2286 at the time of the filing of the variance application. *(Neither of these provisions apply in Lexington because the Lexington City Code does not a) authorize the BZA to hear special exception petitions and b) the zoning administrator is not authorized to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land.)*

The applicant must demonstrate these findings to the Board of Zoning Appeals. Submit a letter attached to the application, demonstrating findings 1 through 5 listed above.





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Variations: (continued)

In addition to the State variance criteria listed on the previous page, please answer the following questions:

- 1. What are the special circumstances that apply to your property?

The signs in question were designed and installed 15 years ago without the involvement of the current developer or the Weatherburn HOA. They are aesthetically pleasing and well constructed. They are not detrimental to the nearby property owners and do not create a distraction for the traveling public. They enhance the community and Weatherburn itself. Replacement/removal of signs

- 2. What are the circumstances that render the property in question undevelopable? N/A

to bring them into compliance with a newer ordinance will create a hardship where none currently exists. The Weatherburn homeowners will bear a considerable cost to remove and replace signs, in addition the remaining stone structures will need to be removed or reinvented in some way, which will be costly.

- 3. How will the requested variance not alter the character of the neighborhood?

The request will retain the character of the neighborhood. Failing to grant the variance will negatively alter the character of the neighborhood.

- 4. How will the requested variance be the minimum that will afford relief?

The requested variance is the only solution that will preserve the design of the signs in question. Altering their design (or removing them completely) will result in negative consequences for Weatherburn residents and the surrounding property owners.

Be aware that conditions may be assigned with any variance approval to meet the purpose of the variance regulations.



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Notice to Adjacent Property Owners

For variance requests, the City will give notice of public hearings to be held on the application to those persons who own property, any portion of which abuts the subject property, and all property which is directly across the street from any portion of the subject property, as determined by the City's real property tax records. This notice will give the date, time and place of the hearing, identify the property which is the subject of the application and give a brief description of the proposed action. Notices will be mailed a minimum of ten (10) days prior to the date of the scheduled public hearings.

Posting of the Property

For variance requests, the City will place a sign provided by the City on the subject property which indicates that an action is pending. The sign will be located to be clearly visible from the street.

THIS SECTION TO BE COMPLETED BY STAFF ONLY

Application Fee: \$350 Amount Paid: \$350 Case Number: BZA- 2024 - 01
Date Received: 4/4/24 Received By: Arne

Staff Review

Planning: Public Works:
Police: Fire/Rescue:

Board of Zoning Appeals

Legal Ad Dates: Adj. Property Notifications:
Public Hearing Date: Action:



**State Variance Criteria**

**Background Information**



**Figure 1**

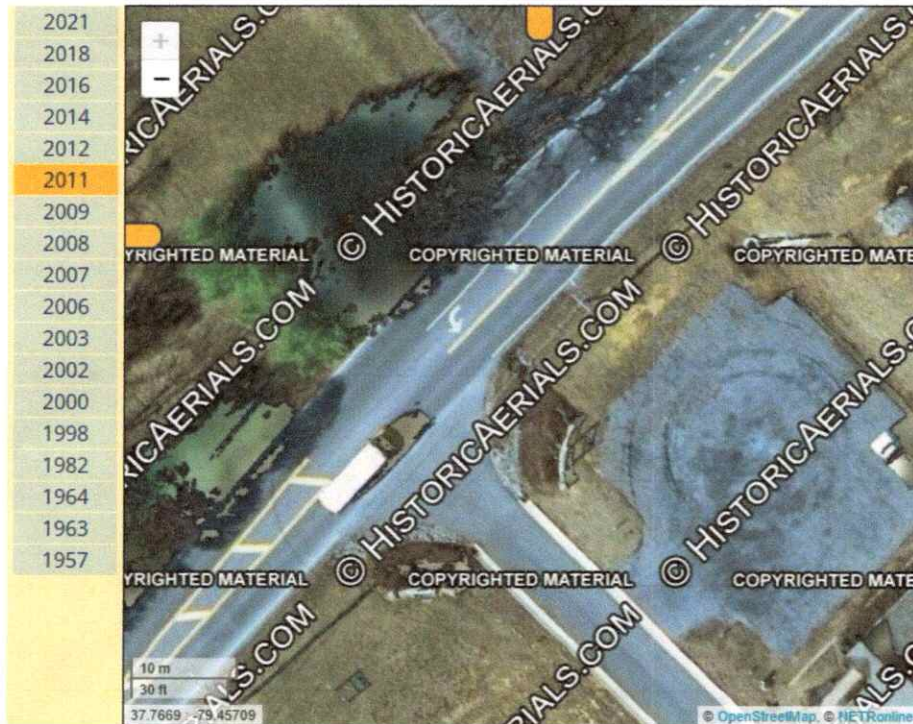


**Figure 2**





**Figure 3**



**Figure 4**

The subdivision of Weatherburn currently has four (4) identical installed signs “advertising” the community. Two (2) are installed at the northern intersection of Chamberlain Lp and Thornhill Rd (community exit), and two (2) are installed at the southern intersection of Chamberlain Lp and Thornhill Rd (community entrance), see **Figure 2** above. As can be seen in **Figure 3**, the signs are aesthetically designed and robustly constructed. They enhance the character of the community and are a source of pride for community members.



On November 27, 2023, the Weatherburn HOA was copied on a “Notice of Violation Letter” issued by the City of Lexington Planning & Development Office and addressed to the subdivision developer. The letter states that the signs installed in the subdivision do not comply with City zoning ordinances. The remedies offered to the developer were to bring the signs into compliance or to remove them. The developer has indicated that he intends to remove them.

In an effort to show goodwill and find a compromise, the HOA has instructed the developer to remove the signs located at the northern intersection. These signs were installed during the summer of 2023 by the developer and, we are told, were not permitted.

**Regarding the two signs located at the southern intersection, with this application, we are requesting a variance that would allow us to retain them as-is.**

- Based on aerial photographs of the subdivision, these 2 signs were constructed as early as 2008 (no later than 2011). See **Figure 4**.
- Since that time, we have been aware of no complaints about the signs registered with either the Weatherburn HOA or the City of Lexington.
- Since that time and until November of 2023 (15 years) the City expressed no concerns about these signs.
- Bringing the signs into compliance, as outlined in the “Notice of Violation Letter”, will present a financial hardship to the Weatherburn community of several thousand dollars. Additionally, a compliant sign (height and width) or no sign at all will have the unintended consequence of negatively impacting the aesthetics of the signs. This, in turn, will have a detrimental effect on the character of the community, potentially impacting the salability of homes in the community.

**State Variance Criteria (Findings 1-6)**

1. The signs in question do not restrict the utilization of community property or create a restriction for persons with a disability. However, altering the signs to bring them into compliance with City ordinances will create a hardship by negatively impacting the character of the Weatherburn subdivision.
2. The signs in question were installed by the original developer of

the subdivision roughly 15 years ago. This was before the formation of the Weatherburn HOA. As such, the Weatherburn HOA was not involved in the signs' design, permitting, or construction. The same can be said of the current developer of the subdivision. Regardless, their existence poses no hardship of any kind.

3. The granting of the variance will in no way be detrimental to adjacent/nearby properties. Such properties and their owners have "lived with" the signs in question for 15 years without expressing concern. On the contrary, we assert that altering the signs will create a detrimental condition (aesthetically) where none currently exists.
4. We assume that the situation is sufficiently unique that it does not require an amendment to the relevant ordinance(s).
5. Granting the variance will not result in a non-permitted use of the property or impact the zoning classification of the property.
6. Not applicable per Lexington City Code



## Weatherburn Sign Petition

### Petition Statement

As a resident of the Weatherburn subdivision, I have reviewed the "Application for Variance/Appeal of Zoning Administrator's Decision" document prepared by the Weatherburn HOA Board. By signing below, I am expressing my support for the variance request outlined in the "Application for Variance..." document.

Date Printed Name House # Signature


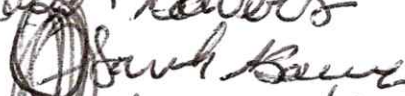
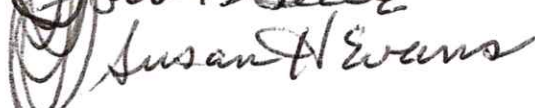

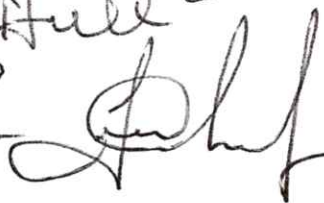

3/8/24	GABRIELLA SOMERVILLE BROWN #44	G. Somerville Brown
3/8/24	KATHY HILLS #25	Kathy Hills
3/8/24	Mary Jo Brinkley #37	Mary Jo Brinkley
3/8/24	Carlton P. Brinkley #37	Carlton P. Brinkley
3/8/24	C. Stevens Cathcart #48	C. STEVENS CATHCART
3/8/24	MARGARET CATHCART #45	Margaret W. Cathcart
3/8/24	RS Cooper #5	RS Cooper
3/8/24	Marlene Cooper #5	Marlene Cooper
3/8/24	Torguil MacCorkle #17	Torguil MacCorkle
3/8/24	David Folsom #46	David A. Folsom
3/8/24	Nancy Trimps #29	Nancy Trimps
<del>3/8/24</del>	<del>Carole Barton #52</del>	
3/8/24	CAROLE BARTON #52	Carole Barton
3-8-24	Lucretia Fresques #54	Lucretia Fresques
3-8-24	P. J. Fresques #54	P. J. Fresques
3-8-24	A R Somerville Brown #44	A R Somerville Brown
3-9-24	Sam Calhoun #31	Jackie Calhoun
3-9-24	Pamela Ragland #39	Pamela Ragland
3-9-24	Edie MacCorkle #17	Edie MacCorkle
3-9-24	SUZANNE KORNEGAY II	Suzanne Kornegay
3-9-24	BILLY A KORNEGAY II	Billy Kornegay

## Weatherburn Sign Petition

### Petition Statement

As a resident of the Weatherburn subdivision, I have reviewed the "Application for Variance/Appeal of Zoning Administrator's Decision" document prepared by the Weatherburn HOA Board. By signing below, I am expressing my support for the variance request outlined in the "Application for Variance..." document.

Date Printed Name House # Signature

3/9/24	Sarah Bowers	#33	
3/9/24	Savannah Bowers	#33	
3/9/24	Susan Evans	#19	
3/9/24	Michael J Evans	#19	Michael J Evans
3/10/24	Dann Stupp	#13	
3/10/24	#60 Richard Hull		
3/10/24	Yarem Stull	#60	
3/10/24	Max Ivankov		
3/10/24	LINDSAY PETER	#13	
3/11/24	Diane E. Kebabala	#41	Kebabala
3/11/24	Paul Clancy	#2	PAUL CLANCY
3/11/24	JUDY CLANCY	#2	JUDY CLANCY





From: **Karrie Cerone** karriecerone@me.com  
Subject: **Re: Weatherburn Maintenance Activities**  
Date: **Mar 12, 2024 at 7:43:42 AM**  
To: **kathy hills** kathyhills85@gmail.com

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Hi Kathy,

If it's not too late, you can add our names to the petition. We are coming into town this weekend, but we may be too late to sign.

Thank you,

**Karrie & Chris Cerone**  
Sent from my iPhone

---

From: **Laurie Gist** laurie\_gist@yahoo.com  
Subject: **Re: Weatherburn Maintenance Activities**  
Date: **Mar 12, 2024 at 9:25:12 AM**  
To: **kathy hills** kathyhills85@gmail.com

---

**We are happy to sign as well! Sorry, we have been crazy busy!**

Thank you,

**Laurie Gist**

---

From: **Glenn Petty** glenn@trianglefarms.com  
Subject: **Re: Weatherburn Maintenance Activities**  
Date: **Mar 12, 2024 at 4:39:54 PM**  
To: **kathy hills** kathyhills85@gmail.com

---

Kathy -

If it isn't too late, feel free to add my signature. I sign as Glenn T. Petty.

Glenn T. Petty  
Triangle Farms, Inc.  
4915 Waters Edge Office Park, Suite 185  
Raleigh, NC 27606  
[303/513-8467 M](tel:3035138467)  
[www.trianglefarms.com](http://www.trianglefarms.com)

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From: **Tom Goodwin** tenninety4@gmail.com  
Subject: **Re: Weatherburn Maintenance Activities**  
Date: **Mar 12, 2024 at 9:29:51 AM**  
To: **kathy hills** kathyhills85@gmail.com

---

**Kathy,**

**I am still out of town.**

**I give you permission to sign my name for unit 14 if it is not too late for the petition.**

**Tom Goodwin**

**(Thomas D. Goodwin, Jr.)**

**540-463-6222**

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From: **Paul Clancy** pclancy6655@gmail.com  
Subject: **Re: Weatherburn Sign Permit Appeal**  
Date: **Mar 8, 2024 at 11:21:06 AM**  
To: **kathy hills** kathyhills85@gmail.com

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**If it doesn't 'void' the petition, or foul up the process, you certainly can add Paul and Judi Clancy's name. Unfortunately we're out of town until Tuesday evening.**

**Paul**

**Paul G. Clancy, MBA**

**Financial Professional**

**30 Whitehead St**

**Peaks Island, ME 04108**