

**Town of Amherst
Board of Zoning Appeals**

March 6, 2007

A meeting of the Town of Amherst Board of Zoning Appeals was called to order by Chairman Mays at 6:00 PM on March 6, 2007 in the Council Chambers of the Town Hall. Members Willie Diggs, William Hopkins, Gary Mays and William Olinger were present. Mr. Paul Kilgore arrived late as noted below. Town Manager Jack Hobbs was present in his capacity as Secretary to the Board.

The Chair noted that a quorum was present and welcomed everyone to the meeting.

Mr. Diggs gave an invocation.

Mr. Hopkins made a motion that was seconded by Mr. Diggs to dispense with the reading and approve the minutes of the February 12, 2007 meeting. The motion carried 4-0 with Messrs. Diggs, Hopkins, Mays and Olinger voting in favor of the motion and Mr. Kilgore absent.

Variance Application: Mt. Olive Baptist Church - 160 W. Court Street

Virgil Coleman came forward on behalf of Mt. Olive Baptist Church to present the church's request for a variance. He reported that the church desires to add "ADA" compliant bathrooms for ease of use and for handicapped individuals and to add a covered porch for the main entrance to the church.

Mr. Kilgore entered the meeting.

Mr. Coleman explained that the church's hardship is the fact that its membership is getting older and more individuals are in need of handicapped-accessible facilities and that the porch would help to prevent accidents and protect groups of individuals from the weather. He reminded the Board that Mt. Olive Road had actually moved into the church property in years past.

It was noted that the Planning Commission has not made a recommendation on this application to the Board.

A duly advertised public hearing was opened at 6:05 PM.

Church trustee Paul Douglas came forward to ask the Board to approve the variance and to "help the church help the community."

Church trustee Paul Higginbotham came forward to remind the Board that the church was there before Mt. Olive Road was built.

Church trustee Kinkle Tolliver came forward to express his concern for the safety of older people that must use the steps in inclement weather.

There being no one else who wished to speak, the hearing was closed at 6:11 PM.

The Chair asked for a report from the secretary which was given as follows:

Mount Olive Baptist Church has asked for a variance to Section 18.1-804 of the Zoning and Subdivision Ordinance. If approved, an addition to the existing church at 160 W. Court Street could be built as close as 18 feet to the front (Mt. Olive Road side) property line. This property (TM# 96A4-A-32) is zoned Light Commercial District B-1 which requires a 50' front yard.

By definition, the Mount Olive Road side of the property is the front of the lot (see definition of Yard, front at Sec. 18.1-302.148 of the Zoning and Subdivision Ordinance). There is effectively no setback requirement on the W. Court Street side of the property as the "25' from a residential lot" is met through the width of the W. Court Street right of way (Sec. 18.1-804c).

Factors that would favor the approval of this proposal includes the church having been on this site since before the advent of zoning regulations and the existence of VDOT-maintained streets. Another factor is the intent of the church to provide bathroom facilities in an area where handicapped individuals would be best served.

A significant consideration that is not favorable to the application is the theory that the Town should work towards conformity with established ordinances. In other words, if the setback requirement is not respected when a new building or addition is constructed then the building or addition will not conform to Town policy - as articulated through the Zoning and Subdivision Ordinance - for the entire life cycle of the existing building and/or new addition.

Per §18.1-1006.02 of the Town Code, this application has been transmitted to the Planning Commission for its review. The commission has not acted on the application as of this date.

It was noted that this case is similar to many variance requests in that the BZA must be concerned with the legal/hardship finding requirements and preservation of the integrity of the ordinance. As always, the Board should pay close attention to the state law and the Town's Zoning and Subdivision Ordinance in addition to the testimony during the required public hearing. As a procedural note, three affirmative votes by Board members are required for a request to be granted.

Mr. Diggs declared that he is a member of Mt. Olive Baptist Church, but since he is able to make objective decisions on the matter before the board he will not recuse himself from the matter.

Mr. Kilgore made a motion that was seconded by Mr. Hopkins to grant the variance that would allow an addition to 160 W. Court Street to be built as close as 18' from the front property line (a) due to the hardship created by the fact that the church building existed before the road or the setback requirement, (b) due to the safer situation that will be created with the covered porch, and (c) due to the many benefits that the use of the church building will provide to the community. The motion carried 5-0 with Messrs. Diggs, Hopkins, Kilgore, Mays and Olinger voting in favor of the motion.

Mr. Mays reviewed the procedure by which decisions of the Board can be appealed for those present.

There being no further business to discuss, Mr. Kilgore made a motion that was seconded by Mr. Hopkins to adjourn the meeting at 6:20 PM. The motion carried 5-0 with Messrs. Diggs, Hopkins, Kilgore, Mays and Olinger voting in favor of the motion.

Gary Mays
Chairman

ATTEST:

Secretary