

**Town of Amherst
Board of Zoning Appeals**

May 15, 2007

A meeting of the Town of Amherst Board of Zoning Appeals was called to order by Chairman Mays at 6:00 PM on May 15, 2007 in the Council Chambers of the Town Hall. Members Willie Diggs, Paul Kilgore, Gary Mays and William Olinger were present. Member William Hopkins was absent. 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. Diggs made a motion that was seconded by Mr. Kilgore to dispense with the reading and approve the minutes of the April 26, 2007 meeting. The motion carried 4-0 with Messrs. Diggs, Kilgore, Mays and Olinger voting in favor. Mr. Hopkins was absent.

Variance Application: Hwong - 151 Pine Street

The Secretary reported that Henry Hwong had applied for a variance to Section 18.1-804 of the Zoning and Subdivision Ordinance. If approved, a new dwelling to be located at 151 Pine Street could be built as close as 30' to the front property line. This property (TM# 96A4-14-53 thru 55) is zoned General Residential District R-2 which requires a 50' front yard.

It was noted that a factor that would favor the approval of this proposal includes the fact that the building that Mr. Hwong's new dwelling will replace was in line with the other dwellings on Pine Street and that what is proposed aligns with the house on the lot that was recently demolished.

It was noted that 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 front setback requirement is not respected when a new building is constructed then the building will not conform to Town policy - as articulated through the Zoning and Subdivision Ordinance - for the entire life cycle of the new building.

The Secretary reported that, per §18.1-1006.02 of the Town Code, this application has been transmitted to the Planning Commission for its review. On May 2 the Planning Commission voted to recommend that the Board on Zoning Appeals approve this request.

Henry Hwong came forward to present his application. Mr. Hwong explained that he needs more room for his family who wants to be near other relatives who live on Pine Street. He indicated that he had considered adding onto his original dwelling but decided to

replace it due to its deteriorated condition. Although he had originally desired to install the dwelling as required by current zoning standards, he has now realized that his neighbors are concerned about privacy and that the placement so far back on the lot will limit his options for use of the back yard which include preventing him from installing a deck there. Mr. Hwong expressed his belief that enforcing the ordinance would achieve the opposite effect of what the code intended to do. He noted that he may have a problem selling the house some day if it is required to be set back so far.

Mr. Mays and Mr. Kilgore discussed the alignment of the existing dwellings on the street.

The duly advertised public hearing on the Hwong request was opened at 6:10 PM. There being no one present who wished to speak, the hearing was closed at 6:11 PM.

Mr. Mays expressed concern about how the Board could justify a variance decision in this matter and what the Board would do if another, similar situation developed on the street.

Mr. Kilgore expressed concern that the old Pine Street subdivision was built with a lower setback requirement in mind and that it may not be reasonable to expect all dwellings in the Town to be built 50' back from the street. He discussed the idea that the setback requirement might be the cause of a hardship for Mr. Hwong's neighbors.

Mr. Mays expressed concern about the lack of neighbors present to support the application.

The Secretary reminded the Board that it could postpone a decision on the application for the purpose of determining how deep the lot is and to give the applicant time to solicit expressions of support from his neighbors.

The Board and applicant discussed the hardship finding requirement and the text of Section 15.2-2309(2) of the Code of Virginia.

Mr. Kilgore made a motion that was seconded by Mr. Diggs to grant the variance that would allow an addition to 151 Pine Street to be built as close as 30' from the front property line since the strict application of the ordinance would have a negative impact on the property due to the subject dwelling being behind existing structures as well as creating a hardship by having the opposite effect of the desired intention of the ordinance, leaving the home on the street not in continuity and equidistant from the street which creates a hardship on the adjacent neighbors and the entire neighborhood. The motion carried 3-1 with Messrs. Diggs, Kilgore,

and Olinger voting in favor of the motion; Mr. Mays dissenting;
and Mr. Hopkins absent.

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. Olinger made a
motion that was seconded by Mr. Diggs to adjourn the meeting at
6:48 PM. The motion carried 4-0 with Messrs. Diggs, Kilgore, Mays
and Olinger voting in favor of the motion; Mr. Hopkins was absent.

Gary Mays
Chairman

ATTEST:

Secretary