

**Town of Amherst
Board of Zoning Appeals
August 4, 2010**

A meeting of the Town of Amherst Board of Zoning Appeals was called to order by Chairman Gary Mays at 6:00 PM on August 4, 2010 in the Council Chambers of the Town Hall. Members William Iseman, William Hopkins, Gary Mays and Teresa Tatlock were present. Member Willie Diggs was absent. Town Manager Jack Hobbs was present in his capacity as Secretary to the Board.

Mr. Mays noted that a quorum was present, welcomed everyone to the meeting and gave an invocation.

Mr. Hopkins made a motion that was seconded by Mrs. Tatlock to dispense with the reading and approve the minutes from the July 12, 2010 meeting. The motion carried 4-0 with Messrs. Hopkins, Iseman, Mays and Mrs. Tatlock voting in favor; Mr. Diggs was absent.

Berkey Variance Application (180 Waughs Ferry Road)

The Secretary reported that Randy Berkey has applied for a variance to Section 18.1-901 of the Zoning and Subdivision Ordinance. If approved, a new detached two-car garage could be located behind his house at 180 Waughs Ferry Road as close as 5' to the left side property line, 5' to the rear property line and 5' from his house. This property (TM# 95-10-3) is zoned Limited Residential District R-1 which requires a minimum side yard of 15', a rear yard of 15' and a accessory building to main building separation of 15'.

Factors favoring the approval of this proposal include limitation on garage placement options due to the location of the existing house and the drainfield on the property and the general orientation of the existing driveway. Correspondence indicating no objections from the adjoining property owners has been received.

A significant consideration that is not favorable to the application is the theory that the Town should work towards conformity with established ordinances. It is clear that additional buildings or additions were not a major consideration when the Berkey's house was built in the 1990's which was, of course, prior to the Berkey's purchase of the property. The 1992 subdivision plat for this area indicates that setback regulations were different at that point which was also before the area was annexed into the Town's corporate limits in 1994.

Per §18.1-1006.02 of the Town Code, the Planning Commission reviewed this application on July 7 and agreed to recommend that the Board of Zoning Appeals deny the request due to concerns that

it might set a precedent for this part of the Town and possibly other parts of the Town.

Everyone was reminded about the inconsistency between the Code of Virginia (§15.2-2309) and the Town Code (§18.1-1402.02a); the state recently repealed its hardship criteria, but the hardship criteria is still in the Town Code. The Planning Commission has recommended that the Town Council adjust the Town Code so that it will conform to the Code of Virginia, and the Town Council hearing on this topic (and others) is scheduled for August 11.

Randy and Tracey Berkey came forward to present their request. The need for a two-car garage to shelter their vehicles, bicycles, lawn chairs and other items was discussed. The indicated that setbacks requirements for a garage were not considered when they purchased the property. They questioned whether approval of the variance request would have the effect of establishing a precedent.

Board members discussed the installation and location of the fence between the Berkey and Rodgers properties, the merits of a one-car garage, the configuration and topography of the Berkey lot, and placement of the existing house on the lot.

The duly advertised public hearing on the request was opened at 6:20 PM. There being no one present who wished to speak, the hearing was closed at 6:21 PM.

Mr. Hopkins made a motion that was seconded by Mr. Iseman to grant a variance that would allow an accessory building at 180 Waughs Ferry Road to be built as close as 5' to the left side property line, 5' to the rear property line and 5' from the house on the property since there is a hardship with factors including:

- Unusual topography and shape of the building lot,
- Location of the house limits options for placement of an accessory building,
- Difficulties involved in relocating the existing driveway to any other garage site,
- Rodgers and Dameron (the adjacent property owners) have indicated their "approval" of the request, and
- A two-car garage would be a better fit with the existing house than a one-car garage.

The motion carried 3-1 with Mr. Hopkins, Mr. Iseman and Mrs. Tatlock voting in favor of the motion; Mr. Mays voting against; and Mr. Diggs 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. Iseman made a motion that was seconded by Mr. Hopkins to adjourn the meeting at 6:27 PM. The motion carried 4-0 with Messrs. Hopkins, Iseman, Mays and Mrs. Tatlock voting in favor; Mr. Diggs was absent.

Gary Mays
Chairman

ATTEST:

Secretary