

**Town of Amherst
Board of Zoning Appeals
May 19, 2015**

A meeting of the Town of Amherst Board of Zoning Appeals was called to order by Chairman Gary Mays at 6:00 PM on May 19, 2015 in the Council Chambers of the Town Hall. Members Kevin Akershoek, Ed Carton, Marvin Hensley and Gary Mays were present. Teresa Tatlock arrived late as noted below. Town Manager Jack Hobbs was present in his capacity as Secretary to the Board.

After welcoming everyone to the meeting, the Chair noted that a quorum was present and asked for a moment of silence.

Mr. Carton made a motion that was seconded by Mr. Akershoek to dispense with the reading and approve the minutes from the April 21, 2015 meeting. The motion carried 4-0 with Messrs. Akershoek, Carton, Hensley and Mays voting in favor and Mrs. Tatlock absent.

Variance Application: Moore property - 120 Troopers Trail

The Secretary provided the following report on a variance application:

Mark Moore has applied for a variance for his property located at 120 Troopers Trail (TM#96A5-A-4B), zoned General Residential District R-2. The application pertains to Section 18.1-804 of the Zoning and Subdivision Ordinance. If approved, a 12' wide x 25' deep addition to Mr. Moore's existing dwelling there could be built to within 20' of the rear property line instead of maintaining the 35' separation between the proposed construction and the adjacent lot as required by the Ordinance.

Factors favoring the approval of this proposal include:

- The desire of the property owner to improve the property by building third bedroom onto the side vs. the rear of the existing dwelling.
- The combination of the shape and size of his property and the zoning ordinance would probably prevent any construction there (the front setback is 50', the rear setback is 35' yet the property tapers from 90' to 80' deep).
- The rear-to-side and rear-to-rear arrangement of dwellings on adjacent property relative to Mr. Moore's dwelling.

A significant consideration that is not favorable to the application is the theory that the Town should work towards conformity with established ordinances.

Per county assessment records, the Moore house was built in 1939 which may have been prior to the Town's first zoning ordinances. When the property was resubdivided in 1994 the ordinance allowed two dwellings on the same R-2-zoned property, and 2-lot subdivisions were exempt from most subdivision regulations which currently requires public road frontage for newly created residential lots. Of course, what would have been the side yard with a 10' setback became a rear yard with a 35' setback due to the new lot configuration.

Per §18.1-1006.02 of the Town Code the Planning Commission discussed this application on May 6 but did not act on the issue. The Board of Zoning Appeals has scheduled a duly advertised public hearing on the application for 6 PM on May 19.

This case is similar to many variance requests in that the Board of Zoning Appeals must be concerned with the preservation of the integrity of the ordinance. The Board will note that the legal/hardship finding requirements are currently in a state of flux (See§ 15.2-2201; §15.2-2309; Town Code §18.1-1402.03).

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 will be required to approve this request. Everyone involved should also remember the “one year” rule at §18.1-1006.05 which indicates that “substantially the same petition affecting the same land shall not be considered within any twelve (12) month period.”

Mr. Moore came forward to explain his application, outline the ownership history of the property, note that the proposed addition does not come any closer to the property line than the existing building and explain the need for a new bedroom.

Mr. Moore answered questions about the subdivision of the property in 1994 and his communication with neighbors on his proposal. He indicated a desire to start construction immediately.

Mrs. Tatlock entered the meeting.

The Secretary suggested that the Board might consider what it would do if a dwelling were proposed on this lot if it were vacant -i.e. a variance would be required to construct any building on the property due to the almost non-existent building envelope created by the setback constraints, and the board's discussion might be on how much of a variance to grant instead of whether to grant relief.

At 6:26 PM the required public hearing on the matter was opened. There being no one present who wished to speak, the public hearing was closed at 6:27 PM.

There was a discussion about the angle of the existing building relative to the front property line and the existing front setback at the side of the house opposite the proposed addition.

Concern was expressed that the Board ought to support reasonable use of the property and that a major factor in the application is that Mr. Moore does not proposed to build the addition closer to the rear property line than the house already is.

Mr. Hensley made a motion that was seconded by Mr. Carton that the Board approve the variance as requested so that Mr. Moore can build the proposed 12' wide x 25' deep addition as close as 20' to the rear property line due to findings:

- 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; and
- 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.

The motion carried 5-0 with Messrs. Akershoek, Carton, Hensley, Mays and Mrs. Tatlock voting in favor.

The Chairman reviewed the process for appealing Board of Zoning Appeals decisions for those present.

The Secretary reported that changes to the Town Code that will be required due to changes in the Code of Virginia will be pursued as Amherst County works to change its ordinance.

There being no further business to discuss, at 6:47 PM Mr. Hensley made a motion that was seconded by Mr. Akershoek to adjourn the meeting. The motion carried 5-0 with Messrs. Akershoek, Carton, Hensley, Mays and Mays voting in favor.

Gary Mays
Chairman

ATTEST:

Secretary