

**Town of Amherst  
Board of Zoning Appeals  
August 4, 2015**

A meeting of the Town of Amherst Board of Zoning Appeals was called to order by Vice Chairman Ed Carton at 6:00 PM on August 4, 2015 in the Council Chambers of the Town Hall. Members Kevin Akershoek, Ed Carton, Marvin Hensley and Teresa Tatlock were present. Gary Mays was absent. Town Manager Jack Hobbs was present in his capacity as Secretary to the Board.

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

Mr. Akershoek made a motion that was seconded by Mrs. Tatlock to dispense with reading and to approve the minutes from the May 19, 2015 meeting. The motion carried 4-0 with Messrs. Akershoek, Carton, Hensley and Tatlock voting in favor and Mr. Mays absent.

**Variance Application: Patteson property - 610 Waughs Ferry Road**

The Secretary provided the following report on a variance application:

John L. Patteson, Jr. has applied for a variance for his property located at 610 Waughs Ferry Road (TM#110-A-127), zoned Limited Residential District R-1. The application pertains to Section 18.1-405 of the Zoning and Subdivision Ordinance. If approved, Mr. Patteson will be able to create a two-lot subdivision there without having to meet the 25' public street frontage requirement for new lots.

Factors favoring the approval of the proposal involve the desire of the property owner to sell a portion of his property so a dwelling could be built there without the current or immediate future owner incurring the expense of improving an unimproved portion of Waughs Ferry Road to VDOT standards. The cost of that endeavor typically includes surveying and/or engineering, right of way acquisition, grading and pavement installation and is not inexpensive.

The public street frontage requirement in Section 18.1-405 of the Zoning and Subdivision Ordinance is a key clause in that document. If that requirement were not on the books then numerous other subdivisions with lots fronting on private streets could be created, leading to the proliferation of dwellings on substandard streets. It has been said that the history of private road maintenance is poor unless enough property owners agree to an enforceable contract to fund street maintenance, although there are a few local exceptions. In fact, the unregulated development of private streets and subsequent homeowner demands that state and local governments fund improvements to those private roads led to the state-mandated adoption of subdivision ordinances in the 1970's.

The state code was recently changed so that a variance must be granted (in addition to other criteria) if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property and 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. There are other non-VDOT streets throughout the Town.

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

Per §18.1-1006.02 of the Town Code, the Planning Commission may “consider the proposed request and may present its recommendations to the Board of Zoning Appeals, or appear as a party at the hearing”.

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 need to consider the variance standard that recently changed (reference §15.2-2309 of the Code of Virginia).

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. Patteson came forward to reiterate the items in his application letter that explain his request to the Board.

It was agreed that the public hearing on the Patteson application would be held on Tuesday, September 1, 2015 at 6:00 PM in the Town Hall per the following advertisement:

**PUBLIC HEARING NOTICE**

The Town of Amherst Board of Zoning Appeals will hold a public hearing at 6:00 PM on September 1, 2015 in the Council Chambers of the Town Hall at 174 South Main Street.

The subject of the hearing is an application by John L. Patteson, Jr. for property located at 610 Waughs Ferry Road (TM#110-A-127, zoned Limited Residential District R-1) for a variance to Section 18.1-405 of the Zoning and Subdivision Ordinance. If approved, a two-lot subdivision could be created there without having to meet the 25' public street frontage requirement for new lots.

Documents relating to the request are available for public inspection in the Town Hall during normal working hours.

There being no further business to discuss, the meeting adjourned at 6:20 PM.

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Ed Carton  
Vice Chairman

ATTEST: \_\_\_\_\_  
Secretary