

**Town of Amherst  
Board of Zoning Appeals  
September 1, 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 September 1, 2015 in the Council Chambers of the Town Hall. Members Kevin Akershoek, Ed Carton, Marvin Hensley and Gary Mays were present. Teresa Tatlock 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 led everyone present in a moment of silence.

Mr. Carton made a motion that was seconded by Mr. Hensley to dispense with reading and to approve the minutes from the August 4, 2015 meeting. The motion carried 4-0 with Messrs. Akershoek, Carton, Hensley and Mays voting in favor and Mr. Tatlock 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 this proposal involve Mr. Patteson being able to sell a portion of his property so a dwelling could be built there without incurring the expense of improving an unimproved portion of Waughs Ferry Road to VDOT standards. Costs for that sort of endeavor would generally include surveying and/or engineering, right of way acquisition, grading and pavement installation and is typically 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 local subdivision ordinances in the 1970's.

The state code was recently changed so that a variance must be granted 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 (in addition to other criteria). It is noted that 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.

The Planning Commission reviewed this application per §18.1-1006.02 of the Town Code on August 5. It was noted then that approval of the Patteson proposal would result in a 2-lot subdivision on a road that is not in the VDOT maintenance system, there is no formal road maintenance plan for that portion of Waughs Ferry Road and that there are other properties along this "road" that could be subdivided if the public road frontage requirement articulated in §18.1-405 of the Town Code is not enforced. The Commission passed a motion recommending that the Board deny the Patteson request.

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 explain the hardships supporting his application which include:

1. the stress and anxiety of potential purchasers Jeffrey and Alix Ingber, who currently live on the Sweet Briar College campus, and want to move to Waughs Ferry Road, and
2. his personal anxiety in preparing for his retirement and selling off the real estate he purchased in 2005 without losing money.

Mr. Patteson explained the "unique" features of the portion of Waughs Ferry Road that is not maintained by VDOT and the evolution of road frontage regulations. He indicated that he has studied improving the road to state standards but it was not economically feasible.

Mr. Mays lead a discussion to clarify why the 25' public street frontage requirement is an issue since the proposed lot would have 150' of frontage on a road and whether all other requirements of the Zoning and Subdivision Ordinance would be met if the requested variance were to be approved.

Mr. Carton noted that Sweet Briar College closes the gate at the end of the road at night and that there seems to be no formal or enforceable road maintenance agreement. There was some discussion on when 25' of public street frontage was first required.

Mr. Akershoek gave a report on the number of dwellings currently for sale in and near the Town.

After Mr. Mays inquired as to what would happen if the variance was denied, Mr. Patteson indicated that the Ingbers had approached him about the property and that he would probably have to hold onto the property.

At 6:25 PM, a duly advertised public hearing on the matter was opened.

Alix Ingber, 120 Woodland Road, came forward as the prospective purchaser to give her history in the community and explain her concerns regarding the Sweet Briar College faculty housing program. She expressed her desire to move to Waughs Ferry Road and her belief that one new dwelling would not change the character of that road.

Marie-Therese Killiam, 627 Waughs Ferry Road, came forward to express her belief that one new dwelling would "embellish" the neighborhood.

Wendy Robertson, 582 Waughs Ferry Road, came forward to express her opinion that a new Ingber residence would improve the neighborhood.

Mr. Carton expressed his concerns regarding the public safety aspects on roads that are not properly maintained.

Mr. Jeffrey Inger, 120 Woodland Road, came forward as the prospective purchaser to express his appreciation for the people in the neighborhood who have spoken in favor of the Patteson application.

There being no one else present who wished to speak, the public hearing was closed at 6:35 PM.

Mr. Akershoek led a conversation on whether bank financing would be problematic for future owners if the road is not publicly maintained or maintained by the adjacent property owners under a road maintenance agreement.

Mr. Mays expressed concerns regarding the enforcement of the 25' public street frontage rule even though the property does not front on a public road, the potential for setting a precedent if the variance is approved, and the need for the situation to be unique before a variance should be approved.

Mr. Carton led a discussion on other potential building sites in and near the Town.

Mr. Carton made a motion to deny the request since the standard at §15.2-2309(2)iii of the Code of Virginia (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) would not be met so that there would be a high potential for approval being used as a precedent for future similar variance applications. The motion died for lack of a second.

Mr. Hensley made a motion to approve the application since development would enhance the property and the neighborhood and since all appropriate provisions of § 15.2-2309 of the Code of Virginia would be met. The motion died for lack of a second.

Mr. Akershoek made a motion to deny the request since the standard at §15.2-2309(2)iii of the Code of Virginia (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) would not be met so that there would be a high potential for approval being used as a precedent for future similar variance applications. The motion was seconded by Mr. Carton and carried 3-1 with Messrs. Akershoek, Carton and Mays voting in favor, Mr. Hensley voting against and Mr. Tatlock absent.

Mr. Mays reviewed the appeal process for those present. It was noted that the matter could not be appealed to the Town Council but the Town Council has the authority to amend the Town Code so that the proposed subdivision could be approved under a different standard.

Mr. Patteson indicated that he would consider developing the property as a flag lot.

#### Pending Ordinance Amendments

The Secretary reported that the Planning Commission will consider the following potential changes to the Zoning and Subdivision Ordinance during a public hearing on September 2:

- § 18.1-908.03: Increasing the allowable size of temporary real estate signs in the agricultural, business and industrial districts from 8 square feet with no height limit to 32 square feet and a height limit of 12 feet.
- § 18.1-302.144: Update the definition of "variance" to match the language in §15.2-2201 of the Code of Virginia.
- § 18.1-1402.03: Update the duties and powers of the Board of Zoning Appeals to match those articulated in §15.2-2309 of the Code of Virginia.

There being no further business, Mr. Akershoek made a motion that was seconded by Mr. Carton to adjourn the meeting at 6:57 PM. The motion carried 4-0 with Messrs. Akershoek, Carton, Hensley and Mays voting in favor and Mr. Tatlock absent.

\_\_\_\_\_  
Gary Mays  
Chairman

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