

**Town of Amherst
Board of Zoning Appeals
April 4, 2017**

A meeting of the Town of Amherst Board of Zoning Appeals was called to order by Chairman Gary Mays at 7:00 PM on April 4, 2017, in the Council Chambers of the Town Hall at 174 S. Main Street. Members Kevin Akershoek, Marvin Hensley, Ed Carton, Teresa Tatlock, and Gary Mays were present. Town Manager Jack Hobbs, in his capacity as Secretary to the Board, and Deputy Town Clerk Vicki Hunt were present.

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. Hensley to dispense with the reading and approve the minutes from the March 7, 2017, meeting. The motion carried 5-0 with Messrs. Mays, Akershoek, Hensley, Carton and Mrs. Tatlock voting in favor.

After some discussion, Mr. Mays asked the Secretary to chair the meeting during the election of a Chairman. Mrs. Hensley nominated Mr. Mays to be Chairman. Mr. Carton seconded the nomination. There being no other nominations, the Board voted 4-0 to elect Mr. Mays Chairman by acclamation. Messrs. Akershoek, Hensley, Carton and Mrs. Tatlock voted in favor.

Mr. Mays resumed as Chairman by asking for nominations for Vice Chairman. Mr. Carton entered his name for election as Vice Chairman. Mr. Akershoek seconded the nomination. There being no other nominations, the Board voted 4-0 to elect Mr. Carton Vice Chairman by acclamation. Messrs. Akershoek, Hensley, Mays and Mrs. Tatlock voted in favor.

Mrs. Tatlock made a motion which was seconded by Mr. Carton and carried 5-0 to elect Mr. Hobbs to be the Board's Secretary. Messrs. Akershoek, Hensley, Carton, Mays and Mrs. Tatlock voted in favor.

Variance Application Review: Clemson Investments, LLC – 195 Mt. Olive Road

The Secretary provided a report on a variance application as follows:

Clemson Investments, LLC, through signatory James W. "Jeep" Newman, Jr. and representative Tommy Brooks, has applied for variances for property located at 195 Mount Olive Road (TM#96A3-2-5), zoned Light Commercial District B-1.

The application pertains to the conversion of an existing accessory building into a multifamily dwelling. If approved:

1. The 25' yard on the right side of the lot required by Section 18.1-804 of the Town Code would be reduced to 7', and
2. A gravel parking lot and driveways for the proposed total 7 dwelling units on the site (adjusted to 10 as outlined below) would be allowed instead of being constructed from concrete, asphalt, brick or paving stones as required by Sec. 18.1-602.04.1 of the Town Code.

Factors favoring the approval of this proposal involve the desire of the property owner to improve the old building on the site and convert it to a more usable state. The impact of a reduction in actual setback on the adjacent property which is currently being used as a cowpasture is expected to be minimal. Gravel surfacing allows stormwater to infiltrate into the soil instead of running off, concentrating and creating potential downstream erosion and flood control problems as is the case with “hard” surfacing.

A significant consideration that is not favorable to the petitioner is the theory that the Town should work towards conformity with established ordinances. 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. From a practical perspective, adjusting setbacks and waiving paving requirements would be somewhat harder to justify in the case of a proposed new building.

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).

The Planning Commission reviewed this application per §18.1-1006.02 of the Town Code during its March 1 meeting at which time by a vote of 4-0 a motion carried to recommend that the Board of Zoning Appeals approve the Clemson Investments proposal as requested.

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.”

Thomas Brooks, Sr., from Acres of Virginia, representative for Applicant/property owner James Newman came forward to explain the application.

Applicant/property owner James Newman was present to answer questions.

At 7:25 P.M. a duly advertised public hearing on the matter was opened.

Charles Brown, West Court Street, Amherst, VA, came forward to express his belief that the conversion of an existing accessory building into a multifamily dwelling would improve the neighborhood.

There being no one else present who wished to speak, the public hearing was closed at 7:26 P.M.

Mr. Mays opened discussion on the effects of the setback line reduction on the right side of the lot from 25' as required by Section 18.1-804 of the Town Code to 7' if the requested variance were to be approved.

Mr. Carton made a motion, seconded by Mrs. Tatlock, that the Board (a) find that the shape and topography at the site and arrangement of the existing building on the property constitutes a hardship and the cantilevering of the balcony will result in no horizontal encroachment on the ground level so that impact on adjacent property will be minimal, and (b) approve the variance so that the conversion and renovation of the existing accessory building into the multifamily dwelling proposed could be built as close as 7' to the right side property line instead of having to maintain the 25' setback specified in the Zoning and Subdivision Ordinance. The motion carried 5-0 with Messrs. Mays, Akershoek, Hensley, Carton and Mrs. Tatlock voting in favor.

Mr. Mays opened discussion on the effects of the gravel parking lot and driveway variance proposal.

Mr. Hensley made a motion, seconded by Mr. Carton, to approve a variance to the paving requirement as set forth in Sec. 18.1-602.04.1 of the Town Code as requested, except for a paved 150' driveway that would be installed into the property from Mt. Olive Road, due to the potential for increased stormwater runoff and potential for erosions and the practical problems associated with building a stormwater pond at the bottom of the property. The motion carried 5-0 with Messrs. Mays, Akershoek, Hensley, Carton and Mrs. Tatlock voting in favor.

Mr. Mays reviewed appeals process for those present.

There being no further business to discuss, Mr. Carton made a motion that was seconded by Mrs. Tatlock to adjourn the meeting at 8:22 PM. The motion carried 5-0 with Messrs. Mays, Akershoek, Hensley, Carton and Mrs. Tatlock voting in favor.

Gary Mays
Chairman

ATTEST: _____
Secretary