

Mayor Jacob P. Bailey called the regular monthly meeting of the Amherst Town Council to order on October 12, 2011 at 7:00 P.M. in the Council Chambers of the Town Hall at 186 S. Main Street. Council members Kenneth Bumgarner, J. Paul Kilgore, Michael Mozingo and Richard Wydner were present. Councilor Haney Mottley was absent. Town Manager Jack Hobbs, Police Chief Kelvin Brown, Office Manager Colan Davis, Director of Public Utilities Tom Fore and Town Attorney Tom Berry were present.

Pastor Mike Fitzgerald from Clifford Baptist Church gave an invocation.

At 7:06 P.M. a duly advertised public hearing on a request by Amherst Baptist Church to amend a February 11, 2004 Special Use Permit for property at 226 Lexington Turnpike was opened. There being no one present who wished to speak, the hearing was closed at 7:07 P.M. It was noted that Mr. Bumgarner and Mr. Wydner are members of Amherst Baptist Church. Mr. Kilgore made a motion that was seconded by Mr. Bumgarner and approved 4-0 to adopt an ordinance, as recommended by the Planning Commission with two additions, which would have the effect of approving the request. Messrs. Bumgarner, Kilgore, Mozingo and Wydner voted "Aye"; Mr. Mottley was absent. A copy of the ordinance is attached and made a part of these minutes.

At 7:22 P.M. a duly advertised public hearing on an amended noise ordinance was opened. Mr. Cliff Hart questioned the definition of the word vehicle. There being no one else present who wished to speak, the hearing was closed at 7:25 P.M. Mr. Bumgarner made a motion that was seconded by Mr. Mozingo and approved 4-0 to adopt the proposed ordinance with three changes. Messrs. Bumgarner, Kilgore, Mozingo and Wydner voted "Aye"; Mr. Mottley was absent. A copy of the ordinance is attached and made a part of these minutes.

Amy Gallagher from Davidson, Doyle & Hilton came forward to give a presentation on her company's audit of the Town's books for the fiscal year that ended on June 30, 2011. The Councilors agreed by consensus to consider approving the report at the November meeting.

Mr. Allen Campbell of 132 Loch Lane came forward to ask the Council for assistance in addressing the continuing grass problem at 119 Maple Lane. The Community Relations Committee was asked to work on an ordinance that would address such situations.

Mr. Bumgarner made a motion that was seconded by Mr. Wydner and approved 4-0 to approve the minutes from the September 14, 2011 meeting with one correction. Messrs. Bumgarner, Kilgore, Mozingo and Wydner voted "Aye"; Mr. Mottley was absent.

Correspondence from Toni Roberts (120 N. Main Street) regarding federal, state, county and town taxes was received.

Mr. Wydner asked that a letter be sent to the Amherst Fire Department thanking that group for its for their quick response to the recent fire at the Goodwin Building at the corner of S. Main and Second Streets.

The Council heard oral status reports on the following items:

- Cable television franchise renewal (Bumgarner)
- S. Main Street landscaping project (Hobbs)
- Capital improvement planning (Hobbs), and
- A property maintenance complaint (Wydner).

There being no further business, the meeting adjourned at 8:45 P.M.

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Jacob P. Bailey  
Mayor

Attest:

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Clerk of Council

AN ORDINANCE TO AMEND THE FEBRUARY 11, 2004 SPECIAL USE PERMIT FOR AMHERST BAPTIST CHURCH GRANTING A SPECIAL USE PERMIT TO ALLOW AMHERST BAPTIST CHURCH TO CONSTRUCT A 22,176 SF BUILDING CONTAINING CERTAIN ACCESSORY USES ON TAX MAP#96A1-A-3A, SUBJECT TO CERTAIN CONDITIONS.

**Whereas**, Amherst Baptist Church has made a proper application for an amendment to the special use permit approved by the Town Council of the Town of Amherst on February 11, 2004 ~~special use permit by submitting a special use permit request form, a site plan and building plans that show a 22,176 SF building housing various church accessory uses;~~ and

**Whereas**, the property on which the project is proposed is shown as Tax Map# 96A1-A-3A and is zoned R-3 High Density Residential District; and

~~**Whereas**, Amherst Baptist Church is fully aware that the area along U.S. Route 60 West was declared a revitalization area on February 13, 2002 due to the relatively small size of the existing water main in that area. Under this status, the Town will allow no new connections there unless and until (1) the water main in that area is replaced by a 12" diameter Town of Amherst water main installed according to Town standards and dedicated to the Town of Amherst or (2) the connection is specifically allowed by the Council of the Town of Amherst. Amherst Baptist Church proposes to install a well to serve its new building unless and until a new Town water main has been installed; and~~

~~**Whereas**, Amherst Baptist Church has been advised and understands that the installation of a new water main along U.S. Route 60 West has not been included in the Town of Amherst Capital Improvement Plan and that the Council of the Town of Amherst has not committed to funding such a project; and~~

**Whereas**, the Town of Amherst Planning Commission held a duly advertised public hearing on this request at 7:30 P.M. on ~~January 7, 2004~~ July 6, 2011 and recommended approval of the request subject to certain conditions; and

**Whereas**, the Council of the Town of Amherst held a duly advertised public hearing on this request at 7:00 P.M. on ~~February 11, 2004~~ October 12, 2011; and

**Whereas**, the Council of the Town of Amherst has reviewed the particular facts and circumstances of each proposed accessory use in terms of the following standards and hereby finds adequate evidence showing that such uses at the proposed location:

- a. Will be harmonious with and in accordance with the general objectives of the Town's comprehensive plan and the Town of Amherst Zoning and Subdivision Ordinance, including the intent of the R-3 High Density Residential District;
- b. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
- c. Will not be hazardous or disturbing to existing or future neighboring uses;
- d. ~~Since the applicant has decided that the project and property should be served by wells instead of the Town of Amherst municipal water system, t~~The project will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies

responsible for the establishment of the proposed use shall be able to provide adequately any such services;

- e. ~~Since Amherst Baptist Church has agreed to extend municipal sewer service toward its building,~~ ~~w~~Will not create excessive additional requirements at public costs for public facilities and services and will not be detrimental to the economic welfare of the community;
- f. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, odors, or water pollution;
- g. ~~The entrance onto U.S. Route 60 having been approved by VDOT,~~ ~~w~~Will have vehicular approaches to the property which shall be so designed as not to create any interference with traffic on surrounding public streets or roads; and
- h. Will not result in the destruction, loss or damage of a natural scenic or historic feature of major importance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL of the Town of Amherst that, pursuant to §18.1-1003 of the Town Code of the Town of Amherst, Virginia, ~~the~~ special use permit for the property located in the Town of Amherst and described as Tax Map #96A1-A-3A, zoned R-3 High Density Residential District, is hereby ~~amended approved~~ for the ~~existing~~ 22,176 SF building ~~proposed~~ and church accessory uses enumerated as follows:

1. 30 classrooms;
2. 3 office rooms;
3. 2 shower rooms;
4. a kitchen facility; and
5. a sanctuary/fellowship hall with no fixed seating.
6. Use of the existing building as a preschool and/or day care facility for as many as 50 children up to kindergarten age.

This special exception shall be subject to the conditions and understandings as set out hereinbelow:

~~1. Execution and recordation of a Town of Amherst sanitary sewer easement and, since municipal water is not currently available, billing agreement for such sewer use prior to issuance of a zoning certificate.~~

1. Installation of a double row of ~~5' high Leyland cypress~~ 4' high arborvitae trees on staggered 10' centers along the Sarver property line prior to the opening of the preschool.
2. It shall be understood that approval for outdoor events involving more than 100 individuals is not granted under this ordinance and approval for such must be obtained from the Council of the Town of Amherst per Chapter 10.1 of the Town Code.

~~3. It shall be understood that neither a school nor day care center, as defined by the Town Code, may be operated from the proposed building unless and until this special use permit is amended.~~

3. It shall be understood that no school operation for students above kindergarten age shall be operated from the building unless and until this special use permit is amended.

4. It shall be understood that the future installation of a sanctuary building on the property is subject to then-current regulations and will not require an amendment to this special use permit unless additional accessory uses are involved.

This Ordinance was adopted on October 12, 2011~~February 11, 2004~~ and shall become effective on the date of passage.

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Mayor

ATTEST:

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Clerk of Council

# AN ORDINANCE TO AMEND 11-110.1 OF THE CODE OF THE TOWN OF AMHERST, THE AMENDED SECTION PERTAINING TO NOISE.

## Be it Ordained by the Council of the Town of Amherst:

1. That Sec. §11-110.1 of the Town Code of the Town of Amherst is hereby amended to read as follows:

### Sec. 11-110.1 Noise

#### (A) Declaration of findings and policy

~~The Town Council hereby finds and declares that a~~At certain levels, noise can be detrimental to the health, welfare, safety, and quality of life of the inhabitants of the town, and it is in the public interest that noise should be restricted. It is, therefore, the policy of the town to reduce and eliminate where possible, excessive noise and related adverse conditions in the community and to prohibit unnecessary, excessive and annoying noises from all sources subject to its police power.

#### (B) Definitions

(1) Device means any mechanism which is intended to, or actually produces noise when operated or handled.

~~(2)~~(2) Excessive noise means any sound which annoys or disturbs humans, or which causes or tends to cause an adverse psychological or physiological effect on humans. Specific examples of prohibited excessive noise are set forth in section 10-29 of this chapter.

~~(2)~~(3) Emergency work means work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from immediate exposure to danger, including work performed by public service companies when emergency inspection, repair of facilities, or restoration of services is required for the immediate health, safety or welfare of the community.

~~(3)~~(4) Vehicle means any vehicle including, but not limited to, passenger cars, trucks, truck-trailers, semitrailers, and any type or drawn trailer, campers, motorboats and racing vehicles; and any motorcycle (including but not limited to motor scooters and minibikes) as defined in the Code of Virginia, Section 46.2-100.

~~(4)~~(5) Noise means any sound which may cause or tend to cause an adverse psychological or physiological effect on human beings.

~~(5) Noise disturbance means any unnecessary sound which annoys, disturbs, or perturbs reasonable persons with normal sensitivities; or any unnecessary sound which reasonably may be perceived to injure or endanger the comfort, repose, health, peace or safety of any person.~~

- (6) Person means any individual, corporation, cooperative, partnership, firm, association, trust, estate, private institution, group agency, or any legal successor, representative, agent or agency thereof.
- (7) Public right-of-way means any street, avenue, boulevard, highway, alley or public space which is owned or controlled by any public government entity.
- (8) Residential area means any street or highway within the town where sixty percent or more of the improved property is occupied by dwellings not used for business purposes.
- (9) Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.
- (10) Sound pressure means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space.
- (11) Stationary noise source means any equipment or facility, fixed or moveable, that is capable of emitting a sound beyond the property boundary of the property on which it is used.
- (12) Zoning district classification refers to the Town of Amherst Zoning Ordinance.

~~(C) Nuisance noise. It shall be unlawful for any person to make, or cause to be made or continued, a noise disturbance within the town.~~ Specific prohibitions. The following acts are declared to be ~~noise disturbances~~ excessive noise in violation of this section, provided that the acts so specified shall not be deemed to be an exclusive enumeration of those acts which may constitute a ~~noise disturbance~~ excessive noise under paragraph (c) and provided that the acts so specified below may still constitute a noise disturbance under paragraph (c) independently of the hours of the day the acts take place.

- (1) Operating or permitting the use or operation of any radio, receiving device, musical instrument, television, phonograph, or any other similar device producing sound between the hours of 7:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible across property boundaries or through partitions common to two (2) residences within a building.
- (2) The operation of equipment or other devices making noise between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible across property boundaries or through partitions common to two (2) residences within a building.
- (3) Yelling, shouting, hooting and hollering, whistling or singing on public or private property in such a manner as to be plainly audible across property boundaries or

through partitions common to two (2) residences within a building between the hours of 10:00 p.m. and 7:00 a.m.

~~(C)~~(D) Prohibited vehicle noise.

(1) It shall be unlawful for any person while operating a motor vehicle within the town on public or private property to create in the operation thereof any prohibited noise. In operating such vehicle the following acts are considered a violation of this section, but shall not be deemed to be exclusive:

a. The practice of unnecessarily retarding the spark to the motor of a vehicle and thereby causing ~~prohibited~~excessive noise from the motor; that is plainly audible at a distance of fifty (50) feet or more from its source.

b. In starting a vehicle from a standing position, the practice of gaining speed in a manner which is unnecessarily rapid and thereby causing ~~prohibited~~excessive noise from the motor and the screeching of tires or either of such noises; or in such a manner as to be plainly audible at a distance of fifty (50) feet or more from its source.

c. The practice of coming to an unreasonably rapid stop with a vehicle and thereby causing ~~unnecessary~~excessive grinding of brakes and screeching of tires or either of such noises; or in such a manner as to be plainly audible at a distance of fifty (50) feet or more from its source.

d. The operating of vehicles off road, creating ~~unnecessary~~excessive noise plainly audible across a residential real property boundary ~~ies~~ in such a manner that causes a noise complaint to be filed by any nearby property owner or resident; or in such a manner as to be plainly audible at a distance of fifty (50) feet or more from its source.

e. Operating or permitting the use or operation of any radio receiving set or any other device producing sound in motor vehicles within the town in such a manner as to be plainly audible ~~twenty-five (25)~~ at a distance of fifty (50) feet or more ~~feet~~ from such motor vehicle.

f. ~~The operation of a vehicle in which the noise produced by the exhaust system is louder than that produced by the standard factory exhaust system for that particular vehicle.~~ Operation of a motor vehicle or operation of a motorcycle within the town with a gutted muffler, muffler cutout, straight exhaust, or without an exhaust in good working order, as provided by Code of Virginia, 46.2-1047 and 46.2-1049.

~~(D)~~(E) Sound-amplifying equipment.

(1) Except pursuant to a permit issued by the office of the town manager, the use in, on or attached to any motor vehicle operating on any highway or parking lot which is open to the public within the town, of any radio, phonograph, musical instrument,



bell, whistle, loudspeaker, amplifier or device of any kind whatsoever whereby sound is cast on any highway, street or parking lot which is open to the public to promote the sale of goods, wares, or merchandise or for the purpose of advertising auction sales, sporting events or other business or things advertised thereby is prohibited. The use of a loudspeaker on a motor vehicle for making auction sales on streets or highways or on any property then being sold shall not be construed as a violation of this paragraph when such use is limited strictly to the selling of such property.

- (2) Except pursuant to a permit issued by the office of the town manager, the use of any radio, phonograph, musical instrument, bell, whistle, loudspeaker, amplifier or device of any kind whatsoever whereby sound is cast on any highway, street or across property boundaries is prohibited. The use of a loudspeaker for making auction sales on the property being sold shall not be construed as a violation of this paragraph when such use is limited strictly to the selling of such property.
- (3) Any permit issued by the office of the town manager for the use of any sound amplifying equipment shall be subject to the following regulations:
  - a. The only sound permitted is music and human speech.
  - b. May only operate during the hours specified within the permit.
  - c. Human speech and music amplified shall not be lewd, indecent, slanderous or tend to incite riotous or other unlawful conduct.
  - d. Must operate within any restrictions as specified on the permit.
- (4) A fee of twenty five dollars (\$25.00) shall be imposed for each permit issued.

~~(E)~~(F) The following specific activities are exempt from the provisions of this section.

(1) The use of intercoms or paging systems by businesses located in commercial areas shall not be construed as a violation of this paragraph provided that the sound systems are used for paging purposes only.

(2) Sound amplifying equipment used at public parks, ~~or~~ recreation fields or schools are exempt from the provisions of this section.

~~(2)~~(3) Fireworks utilized under permit.

~~(3)~~(4) Clock chimes, bells and music played for a call to worship between the hours of 8:00 a.m. and 9:00 p.m.

~~(4)~~(5) Motor vehicles or instruments used during duly authorized parades or wedding processions shall be exempt from the provisions of this section.

~~(5)~~(6) All motor vehicles or devices used for the purpose of sweeping, blowing or cleaning business parking lots between the hours of 6:00 a.m. and 12:00 midnight shall be exempt from the provisions of section (I) subsection (2)(c) only, provided such business is located in a properly zoned district.

~~(6)~~(7) All motor vehicles or equipment owned or contracted by a government entity, including volunteer emergency services, or other public utility, or contractor thereof being operated on an emergency basis, or for the purposes of necessary repairs or maintenance of highways or other public utilities shall be exempt from the provisions of this section.

~~(F)~~(G) Penalties. The provisions of this article shall be punishable by a fine not to exceed two hundred fifty dollars (\$250.00).

(H) Enforcement. The provisions of this section shall be enforceable by the police department.

~~(G)~~(I) Emergency exception. The provisions of this section shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency, nor to the emission of sound in the performance of emergency work.

(Adopted December 10, 1997.)

**2. That this Ordinance shall be effective on October 12, 2011.**

*This ordinance was adopted on October 12, 2011.*

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Mayor

ATTEST:

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Clerk of the Council