

PUBLIC HEARING NOTICE

The Town of Amherst Town Council will hold a public hearing at 7:00 PM on October 14, 2015 in the Council Chambers of the Town Hall at 174 South Main Street. The subject of the hearing is a proposal to amend the following portions of the Zoning and Subdivision Ordinance:

- § 18.1-908.03: Increasing the allowable size of temporary real estate signs to a height of eight (8) feet and an area of sixteen (16) square feet in the Commercial Business District CBD and a height of twelve (12) feet and an area of thirty two (32) in the agricultural, industrial and other business districts.
- § 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.

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

Sec. 18.1-908.03 Signs Allowed Without a Permit.

Sign permits shall not be required for the following signs; however, all other applicable regulations of this Ordinance shall apply:

- p. Temporary real estate signs, located on the premises, not exceeding a height of six (6) feet or an area of four (4) square feet in residential districts, a height of eight (8) feet or an area of sixteen (16) square feet in the Commercial Business District CBD, or a height of twelve (12) feet or an area of thirty two (32) ~~or eight (8)~~ square feet in other districts. One real estate sign shall be permitted for each side of the property facing a public right of way. No off-premise real estate signs shall be permitted, with the exception of open house notices, which may be displayed for no more than 72 consecutive hours, and not more than five (5) directional signs not exceeding two (2) square feet in area. No real estate sign shall contain language indicating that the subject real estate is sold or under pending contract and any such sign so erected shall be immediately removed by the Zoning Administrator. Temporary real estate signs shall be removed within 10 days of sale.
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For reference:

Sec. 18.1-506. Classification of districts.

For the purpose of this ordinance, the Agricultural District A-1 is classified as an agricultural district. The Limited Residential District R-1, the General Residential District R-2, Transitional Use Zone District T-1, High Density Residential District R-3 and Manufactured Home District R-4 are classified as residential districts. The Light Commercial District B-1, Central Business District CBD and General Commercial District B-2 are classified as business districts. The Business Park District E-1 and Industrial District M-1 are classified as industrial districts.

Zoning and Subdivision Ordinance Variance Code - September 10, 2015

Sec. 18.1-302.144

Variance. A reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure when the strict application of the provisions of this ordinance would result in unnecessary or unreasonable hardship to unreasonably restrict the utilization of the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of this ordinance, and would result. It shall not include a change in substantial justice being done use, which change shall be accomplished by a rezoning or by a conditional zoning.

Sec. 18.1-1402. The Board of Zoning Appeals

The Town of Amherst Board of Zoning Appeals, hereinafter referred to as the board of appeals, is hereby reestablished and continued.

Sec. 18.1-1402.01 Membership.

A board of consisting of five (5) members shall be appointed by the circuit court of the county, with appointments and terms of office as follows:

1. The board of appeals members appointed hereunder shall serve respectively for terms of one (1) year, two (2) years, three (3) years, four (4) years and five (5) years. Subsequent appointments shall be for terms of five (5) years each. Members may be reappointed to succeed themselves.
2. No member shall hold any public office; however, one (1) member may be a member of the Planning Commission.
3. A member whose term expires shall continue to serve until his successor qualifies and is appointed.
4. The secretary of the board of appeals shall notify the circuit court at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term.
5. Any member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the circuit court after hearing held after at least fifteen (15) days notice.

Sec. 18.1-1402.02 Rules of Procedure.

The board of appeals shall observe the following procedures:

1. The board of appeals shall adopt rules in accordance with the provisions of this ordinance and consistent with other ordinances of the Town and general laws of the Commonwealth of Virginia for the conduct of its affairs.
2. The board of appeals shall elect a chairman and vice-chairman from its own membership who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. The election of officers shall be held at the first meeting of the board of appeals after July first of each year.

3. The board of appeals shall keep a full public record of its proceedings and shall submit a report of its activities to the Town Council at least once each year.
4. All meetings of the board of appeals shall be open to the public.
5. Any member of the board of appeals shall be disqualified to act upon a matter before the board with respect to property in which the member has an interest.
6. The meetings of the board of appeals shall be held at the call of the chairman and at such other times as a quorum of the board of appeals may determine.
7. The chairman, or in his absence the vice-chairman or acting chairman, may administer oaths and compel the attendance of witnesses.
8. A quorum shall be at least three (3) members.
9. A favorable vote of at least three (3) members of the board of appeals shall be necessary to reverse any order, requirement, decision, determination of any administrative official or to decide in favor of the applicant on any matter upon which the board of appeals is required to pass.

Sec. 18.1-1402.03 Duties and powers

The board of appeals shall have the ~~following~~ duties and powers as set forth in § 15.2-2309 of the Code of Virginia.

- ~~1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision.~~
- ~~2. To authorize upon appeal or original application in specific cases such variance as defined in §15.2-2201 of the Code of Virginia from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:~~

~~When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.~~

~~No such variance shall be authorized by the board unless it finds:~~

- ~~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.~~

~~No variance shall be authorized except after notice and hearing as required by §15.2-2204 of the Code of Virginia. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail.~~

~~No variance shall be authorized unless the board finds that 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 authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.~~

- ~~3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by §15.2-2204 of the Code of Virginia. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail.~~
- ~~4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by §15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.~~
- ~~5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.~~

Sec. 18.1-1402.04. Financing the Board of Appeals.

Within the limits of funds appropriated by the Town Council, the board of appeals may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board of appeals may receive such compensation as may be authorized by the Town Council.

Sec. 18.1-1402.05. Appeals to the Board of Appeals.

Requests for special use approvals, administrative review, or variances shall follow procedures specified by Article X herein.

Sec. 18.1-1402.06. Decision of Board of Appeals

1. Any person or persons jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer or any officer, department, board of bureau of the Town may present to the circuit court of the county a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the board of appeals.
2. Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of appeals and shall prescribe therein the time within which a return thereto must be made and served upon the petitioner's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the appeals and on due cause shown, grant a restraining order.
3. The board of appeals shall not be required to return the original paper(s) acted upon by it, but it shall be sufficient to return certified or sworn copies thereof (or) of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
4. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, said court may take evidence or appoint a commission(er) of the court to take such evidence as the court may direct and report the same to the court with his finding(s) of fact and conclusions of law, which shall constitute a part of the proceeding(s) upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
5. Costs shall not be allowed against the board of appeals unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from.

Board of Zoning Appeals Powers and Duties State Code as of July 29, 2015

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application.

No variance shall be considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.