

**TOWN OF AMHERST
BOARD OF ZONING APPEALS
Tuesday, March 7, 2017**

AGENDA

6:00 PM

1. Call to Order and Determination of Quorum
2. Moment of Silence
3. Confirmation of Minutes of September 1, 2015
4. Election of Officers
Mr. Mays has suggested that officers should be elected at this session. Staff suggests a nomination of a slate that includes a Chairman, Vice Chairman and Secretary.
5. Clemson Investments Variance Application (195 Mount Olive Road)
Documents pertaining to this application are contained in the agenda package. After receiving and discussing the matter, the Board needs to set a time and place for the required public hearing.
6. Adjournment

**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 Pattleson 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 Pattleson 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. Pattleson 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. Pattleson 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

Clemson Investments LLC Variance Application (195 Mount Olive Road)

March 1, 2017

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 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 is scheduled to review this application per §18.1-1006.02 of the Town Code during its March 1 meeting.

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.”

Provisions of the Code of Virginia re Variances as of February 27, 2017

§ 15.2-2201. Definitions. *(excerpt)*

"Variance" means, in the application of a zoning ordinance, 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 ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

§ 15.2-2309. Powers and duties of boards of zoning appeals. *(excerpt)*

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

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.

PUBLIC HEARING NOTICE

The Town of Amherst Board of Zoning Appeals will hold a public hearing at _____ PM on _____, 2017 in the Council Chambers of the Town Hall at 174 South Main Street. The subject of the hearing is a variance application by Clemson Investments, LLC for property located at 195 Mt. Olive Road. (TM#96A3-2-5, zoned Light Commercial District B-1) that would support 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 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.

Documents relating to the request are available for public inspection at www.amherstva.gov and in the Town Hall during normal working hours.

Sec. 18.1-602.04.1. Surfacing

- a. Parking spaces and driveways for single family dwelling units shall be constructed of gravel, compacted stone, concrete, asphalt, brick or paving stones.
- b. Parking spaces and driveways for other than single family dwelling units shall be constructed of concrete, asphalt, brick or paving stones.

Sec. 18.1-804 Minimum yard requirements.

- a. Within the district herein defined, the following minimum yard requirements shall apply:

	<u>Side-Yard Setback</u>			
	<u>Front Yard Setback</u>	<u>Corner Lot</u>	<u>Other Lots</u>	<u>Rear Yd Setback</u>
A-1 Agricultural	50'	15'	15'	25'
R-1 Limited Residential	60'	20'	15'	35'
R-2 General Residential	50'	15'	10'	35'
T-1 Transitional Use Zone	50'	(b)	(b)	35'
R-3 High Density Res.	30'	15'	15'	35'
R-4 Manufactured Home	30'	15'	15'	35'
B-1 Light Commercial	50'	(c)	(c)	(c)
CBD Central Business District	None	(c)	(c)	(c)
B-2 General Commercial	50'	(c)	(c)	(c)
E-1 Business Park	50'	(c)	(c)	(c)
M-1 Industrial	50'	(c)	(c)	(c)

- c. No minimum requirement except that no building or structure shall be erected within twenty-five (25) feet of a residentially zoned lot.

CLEMSON INVESTMENTS LLC 05-00 1280
 2246 IVY RD STE 5
 CHARLOTTESVILLE VA 22903-4988 68-1/510 VA 11862

DATE DECEMBER 28 2016

PAY TO THE ORDER OF TOWN OF AMHERST \$ 150.00

ONE HUNDRED FIFTY AND NO/100 DOLLARS

Bank of America ACH R/T 051000017

FOR HOR 195 VARIANCE APPLICATION FEE

[Signature]

⑈001280⑈ ⑆051000017⑆ 00411917707⑈



APPLICATION FOR VARIANCE
TOWN OF AMHERST BOARD OF ZONING APPEALS
POST OFFICE BOX 280
AMHERST, VIRGINIA 24521
(434) 946-7885

DATE _____

APPLICANT Clemson Investments, LLC OWNER Clemson Investments, LLC
ADDRESS 2246 Ivy Road, Suite 5 ADDRESS 2246 Ivy Road, Suite 5
CITY Charlottesville, VA 22903 CITY Charlottesville, VA 22903
TELEPHONE NO. 434-616-6615 TELEPHONE NO. 434-616-6615

REPRESENTATIVE Thomas C. Brooks, Sr./Acres of Virginia, Inc. ADDRESS 404 Clay Street
CITY Lynchburg, VA 24504 TELEPHONE NO. 434-528-4674

LOCATION OF REQUEST 195 Mt. Olive Road
TAX MAP NO. 96A3-2-5 LOT AREA 1.066 acres ZONE B-1 Light Commercial
PROPOSED USE single family housing

QUESTIONS TO BE ANSWERED BY APPLICANT

1. Which of the following special conditions necessitates a variance?
 Exceptional narrowness, shallowness, size or shape of property.
 Exceptional topographic conditions or other extraordinary conditions of property.
 Exceptional conditions of adjacent property.
2. In what way would the strict application of the zoning ordinance effectively prohibit or unreasonably restrict the utilization of the property?
see attachment
3. What effect would the variance have on adjacent property? Would the proposal be detrimental to adjacent property or change the character of the district?
see attachment

Please attach sketches and other detailed information to this application.

Applicants are reminded that §18.1-1002 of the Town Code requires signs describing the action requested under this application to be posted on the property.

As owner of the property listed above, I hereby petition the Board of Zoning Appeals to grant a variance as described herein.

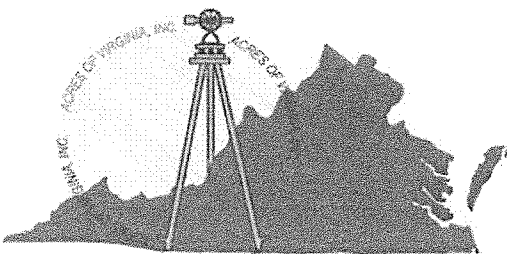
see attachment

Thomas C. Brooks, Sr. 12-19-16
Signature of Owner AGENT Date

BOARD OF ZONING APPEALS PUBLIC HEARING _____
Date Time

BOARD OF ZONING APPEALS ACTION:

Zoning Administrator Date



ACRES OF VIRGINIA, INC.
SURVEYORS~ENGINEERS~PLANNERS
ENVIRONMENTAL~SOIL CONSULTANTS
GEOTECHNICAL

404 Clay Street Lynchburg, VA 24504
Office: (434) 528-4674 Fax: (434) 845-1048
e-mail: serca2@aol.com
website: www.acresofvirginia.com

December 19, 2016

Mr. Jack Hobbs, Town Manager
Town of Amherst
P. O. Box 280
Amherst, VA 24521

Re: Variances

Dear Mr. Hobbs:

Our client, Clemson Investments, LLC, is requesting two variances for property located at 125 Mt. Olive Road in the Town of Amherst. The property is shown on the town tax maps as 96A3-2-5 and encompasses 1.066 acres. The property is currently zoned B-1 Light Commercial. The proposed use of the property will be single family housing.

The property is encompassed with an existing older building which will be renovated and converted into single family housing for rent to the consumer. The infrastructure existing on the property is shown on our site plan dated September 27, 2016. Copies are attached for distribution.

Our client is requesting two variances:

Variance #1 will be for a side yard setback on the west side of the property adjoining the cinderblock building. Our client is requesting a side yard setback of 7 feet in place of the required setback shown in the zoning ordinance. The seven foot setback will allow our client to install verandas on the western portion of the building off the second floor.

Variance #2 will be to allow our client to maintain the parking area and the road travel ways as gravel in place of pavement or surface treatment which is required by ordinance.

1. The following conditions do necessitate variances.

- (i) The lot is exceptional in size and shape.
- (ii) The topographic conditions of the property do not allow construction anywhere else within the boundaries.
- (iii) The property bordering to the east is encumbered with a swale and steep grades on the north and south ends of the property.

2. The strict application of the zoning ordinance does prohibit and restrict the utilization of the property. If our client adheres to the strict zoning ordinance, there are no other areas within the boundaries of the property that can be developed for building and only the building that exists can be used. The building that exists on the property can be renovated and utilized as a functional facility for use by our client and would be a substantial asset to the Town of Amherst.

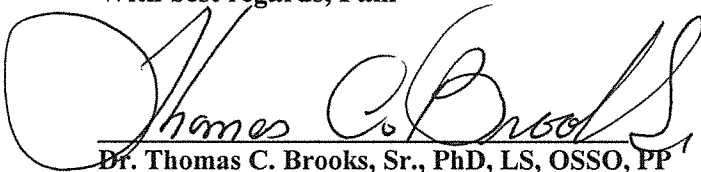
3. What affect would a variance have on the adjacent property?

The side yard variance would not have a determinate to the adjoining property which is a larger tract of land and is farm use. The verandas would protrude from the second floor of the building and would be used by the consumer as an outdoor sitting area.

Our client is also asking for a variance to allow him to leave the parking area and the driveways into this property as gravel. He is asking that he not be required to surface treat or pave these areas. The majority of the residential properties along West Court Street and Mt. Olive Street have gravel driveways for access.

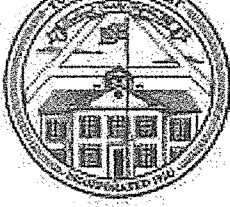
The plan proposal would not have a detrimental effect on adjacent properties nor would it change the character of the zoning district. This property's parking and its driveways have been gravel for many years. The building on the property has been a part of this property for many years. The renovation and use of this building will increase the asset value and would also be an asset value for the Town of Amherst for a tax base.

With best regards, I am

A handwritten signature in black ink, appearing to read "Thomas C. Brooks, Sr.", written over a horizontal line.

Dr. Thomas C. Brooks, Sr., PhD, LS, OSSO, PP¹
CEO of Acres of Virginia, Inc.

TCBSr/jl



DATE 11-20-2016
CERTIFICATE OF OWNER'S REPRESENTATIVE
TOWN OF AMHERST
POST OFFICE BOX 280
AMHERST, VIRGINIA 24521
(804) 946-7885

Property Owner	James W. Newman, Jr.
Company	Clemson Investments, LLC
P.O. Box	2246 Ivy Rd, Suite 5
City, State, Zip	Charlottesville, VA 22903
E-mail Address	jeepnewman@aol.com
Telephone	434-979-0568
Fax	434-797-4421

This is to confirm that I am the owner of the property described as follows:

Deed Book/Page Number	1205-202
Tax Map Number	96A3-2-5
Street Address	195 Mount Olive Road
Other Description	

and that I hereby make, constitute and appoint:

Representative	Thomas C. Brooks, Sr., LS
Company	Acres of Virginia, Inc.
P.O. Box	404 Clay Street
City, State, Zip	Lynchburg, VA 24504
E-mail Address	serca2@aol.com or acresoffice2@gmail.com
Telephone	434-528-4674
Fax	434-845-1048

my true and lawful agent and in my name, place and stead giving unto this individual full power and authority to do and perform all acts and make all representation necessary, without any limitation whatsoever, to make application for zoning change(s), special use permit(s), and/or variance(s) for the property referenced herein. The right, powers, and authority of said agent herein granted shall commence and be in full force and effect as of the date this is signed and shall remain in full force and effect thereafter until actual notice is received by the Town Manager of the Town of Amherst stating that the terms of this power have been revoked or that another individual has been appointed as my representative.

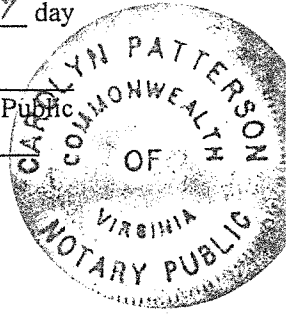
 Owner

STATE OF VIRGINIA AT LARGE, TO WIT:
 CITY/COUNTY OF ALBEMARLE

I, CAROLYN PATTERSON, a Notary Public in and for the State of Virginia At Large do hereby certify that James W. Newman, Jr. signed the foregoing instrument before me this 28th day of DECEMBER, 2016.

My Commission Expires: AUGUST 31, 2017

 Notary Public
 Registration # 257244



KITY ASSOCIATES
DB 514 P. 332
TM 96A3-A-3

Expanded view of building/yard variance area

