

**TOWN OF AMHERST BOARD  
OF ZONING APPEALS  
Monday, May 16, 2022  
7:00 PM**

**AGENDA**

1. Call to Order and Determination of Quorum
2. Moment of Silence
3. Confirmation of Minutes
4. Election of Officers  
*Staff requests a nomination of a slate that includes a Chairman, Vice Chairman and Secretary.*
5. Variance request for Sunset Drive  
*A public hearing on this application has been scheduled and duly advertised.*
6. Adjournment

**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.

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Gary Mays  
Chairman

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



**STAFF REPORT**  
**VARIANCE REQUEST**  
T&T Investments  
Board of Zoning Appeals Public Hearing

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**General Information:**

Processing schedule: The Board of Zoning Appeals has a public hearing that has been advertised for May 16, 2022. Adjacent notification was sent to property owners on April 28<sup>th</sup>. The property was posted the same day. The application and staff report was reviewed by the Planning Commission (per Town Code) at their regular meeting on May 4, 2022.

**Application Information:**

Owner:	T & T Investments, Troy Cash, owner contact
Agent:	Trevor Gillispie
Requested Action:	Variance to allow construction of a single-family home rental
Location:	Located between 184 and 204 Sunset Drive
Tax Map:	95 3 B 11
Existing Zoning:	R-1
Existing land uses:	Vacant
Comp. plan area:	Residential

**Summary of Request and Background Information:**

The subject lot is an existing vacant lot on Sunset Drive. It is situated between two other developed lots. The current owners purchased the lot in 2009. The zoning of the property is R-1. With the provision of public water and a septic tank, the lot is required to be a minimum of 20,000 square feet, with a lot width of 100 feet. The required setbacks are as follows:

Front: 60'

Side: 15'

Rear: 35'

The maximum structure height is 35 feet.

The existing lot is 17,947 square feet, and would not be eligible for construction, except that the Town Code allows the use of a non-conforming lot as follows:

**18.1-302.81**

*Nonconforming lot.* An otherwise legally platted lot that does not conform to the minimum area or width requirements of this ordinance for the district in which it is located whether at the effective date of this ordinance or as a result of subsequent amendments to the ordinance.

The lot was deemed as a buildable lot under the following section:

**18.1-601.01**

*Lots of record.* Where a lot of record at the time of enactment of this ordinance does not contain land of sufficient area or width to permit conformity with dimensional requirements of this ordinance, the following provision shall apply:

1. When a lot was legally created and platted at the time of enactment of this ordinance or amendments thereto, and the lot has width or lot area less than is required by the district in which it is located, such lot may be used as a single family building site, provided that yard dimensions, and requirements other than those applying to area or width of the lot shall conform to the regulation for the district in which such lot is located and safe provision and appropriate permitting has been made for water and wastewater. Variances of yard requirements may be obtained only through an appeal to the board of appeals, as outlined in Section 1008 herein.

This Code section was amended in 2018 upon a recommendation of the Planning Commission, by the Town Council, to encourage the development of non-conforming infill lots located within the Town. When the applicant began working through the process for development of the lot, there were issues with the lender and regulations regarding the existence of a corner of a neighbor's septic drain field on a small portion of this lot. The owners were told that the lot would need to be reconfigured in order to develop it, removing the small triangular section that had the neighbor's septic field corner. Therefore, the owner would require a lot reconfiguration.

The need to reconfigure the lot requires that the lot would meet all current Code requirements, including the lot size requirement, as there is a Town Code section that prohibits subdivision of a lot (including reconfiguration) if the lot is not conforming to the current Code.

The applicant seeks a variance to allow:

1. The reconfiguration of a non-conforming lot.
2. A variance to the size provision found in 18.1-802, minimum lot area, from 20,000 square feet to 17,424 square feet.

Other lots in the neighborhood vary in size. The lots directly around this one are:

204 Sunset Drive: 0.41 acres

184 Sunset Drive: 0.413 acres

193 Sunset Drive: 0.644 acres

201 Sunset Drive: 0.54 acres (approx.)

203 Sunset Drive: 0.54 acres (approx.)

The reconfigured size of this lot would be 0.40 acres.

## **Public Notice**

A legal ad was placed in the New Era Progress and ran on April 28<sup>th</sup> and May 5<sup>th</sup>.

Certified letters with the legal notice were sent to all adjacent property owners and the owner of record of the subject property on April 28, 2022.

A sign was placed on the property with the legal notice on April 28, 2022.

## **Consistency with the State Code:**

For the consideration of the variance, State Code outlines that the burden of proof is upon the applicant. It further states that a variance shall be granted if the evidence shows that the strict application ...of the ordinance would unreasonably restrict the utilization of the property. There is no development of this lot for use as a single-family home, without the variance. Thus, the applicant can show that there is a restriction on the use of the property. A variance can further be granted if doing so would "alleviate a hardship...due to a physical condition," which, in this case, would be the corner of the neighbor's drain field.

Evaluation of the variance is outlined by the Code, with the code provision stated, followed by the response.

- (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;  
*There is no reason to believe that the property interest was not acquired in good faith. This property has been in the same hands since 2009. It became available when it was sold without the house as part of a property settlement.*
- (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;  
*This is the challenge for the Board. If this property had not been sold, the lots on the side of the street with this lot would be closer in size to the ones across the street and further down the street. This lot, if developed, will be very similar in size to the developed lots on each side of it. The question is- will the development of this lot be a substantial detriment to the nearby properties?*
- (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;  
*The granting of this variance would not be of so general a nature as to create an issue, as the particular issue on this lot is the encroachment of the neighboring septic field.*
- (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  
*The use that is sought is consistent with the zoning district from a use point of view- the issue is the size of the lot and the need to reconfigure it.*

- (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.

*There is no other remedy available to this applicant.*

**Citizen Comment:**

In advance of the public hearing, there have been two citizens that have expressed their concern with the use and the impact of the smaller lot on the adjacent property value and the enjoyment of the property of adjacent property owners.

**Conclusion:**

This application for a variance meets all of the required State Code elements. It is a legally appropriate use of the remedy.

The decision point to be weighed for the Board of Zoning Appeals is whether the addition of a home on this lot would cause substantial detriment to the neighborhood and the adjacent properties. If the development of the lot creates an inconvenience, or a small detriment, then the variance should be approved, as it meets all of the requirements.

From the State Code regarding variances:

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, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, 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. Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted.

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.



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

2/14/22

DATE

Troy Cash

cashbros1@aol.com

APPLICANT T & T Investments Inc.  
ADDRESS 202 Minuteman Dr.  
CITY Forest, Va.  
TELEPHONE NO. 434-841-7136

OWNER T & T Investments Inc.  
ADDRESS 202 Minuteman Dr.  
CITY Forest, VA  
TELEPHONE NO. 434-841-7136

REPRESENTATIVE Trevor Gillispie  
CITY Mad Heights Va

ADDRESS Winesap Rd  
TELEPHONE NO. 434-660-5853

LOCATION OF REQUEST Sunset Drive Amherst, Va.  
TAX MAP NO. 95-3-B-11 LOT AREA .412 ZONE \_\_\_\_\_  
PROPOSED USE Residential building lot

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?  
Lot would not be able to have a new home constructed on it. Adjoining drainfield encroaches onto subject property.
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?  
Adjoining landowner would not be forced to relocate their existing drainfield.

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.

Troy Cash  
Signature of Owner

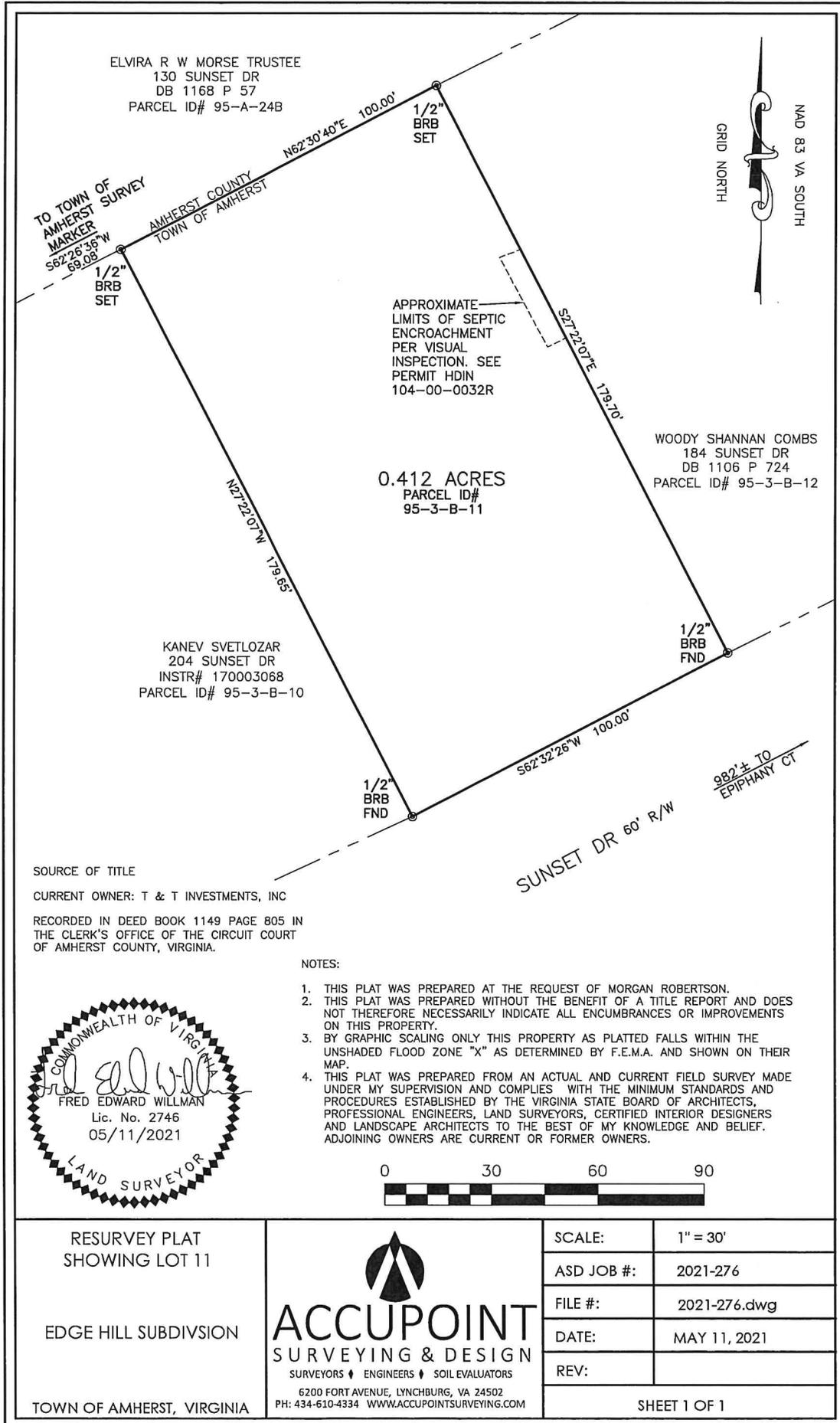
2/23/22  
Date

BOARD OF ZONING APPEALS PUBLIC HEARING \_\_\_\_\_  
Date Time

BOARD OF ZONING APPEALS ACTION:

\_\_\_\_\_  
Zoning Administrator Date

# Current Plat



RESURVEY PLAT  
SHOWING LOT 11

EDGE HILL SUBDIVISION

TOWN OF AMHERST, VIRGINIA

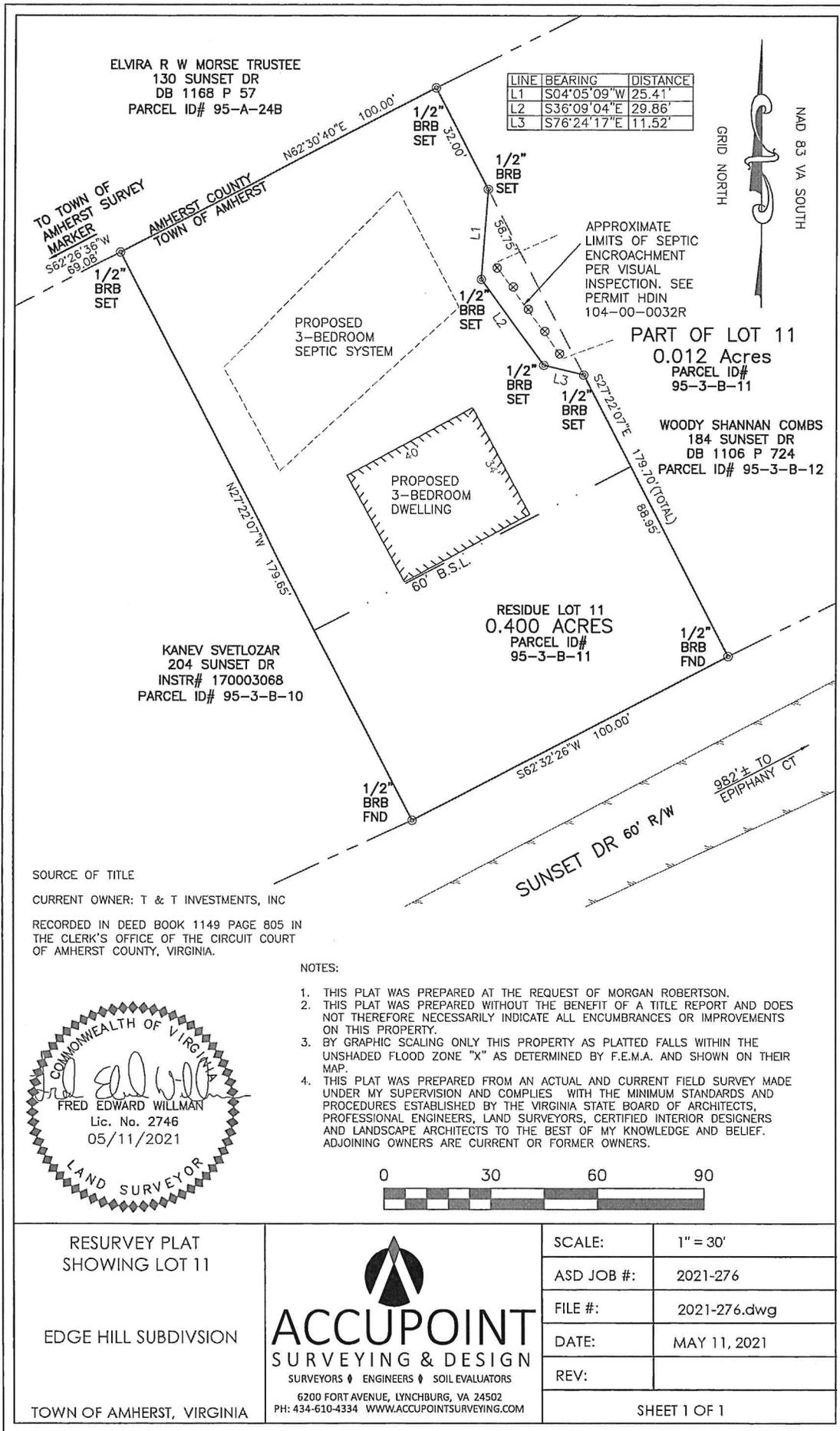
**ACCUPOINT**  
SURVEYING & DESIGN

SURVEYORS ♦ ENGINEERS ♦ SOIL EVALUATORS

6200 FORT AVENUE, LYNCHBURG, VA 24502  
PH: 434-610-4334 WWW.ACCUPOINTSURVEYING.COM

SCALE:	1" = 30'
ASD JOB #:	2021-276
FILE #:	2021-276.dwg
DATE:	MAY 11, 2021
REV:	
SHEET 1 OF 1	

# Proposed.





## **PUBLIC HEARING NOTICE**

The Town of Amherst Board of Zoning Appeals will hold a public hearing at 7:00 PM on May 16, 2022 in the Council Chambers of the Town Hall at 174 South Main Street. The subject of the hearing is a variance application by T&T Investments, Inc. for property located on address TBD Sunset Drive, between 184 and 204 Sunset Drive. (TM# 95-3-B-11, zoned Limited Residential District R-1) that would support the use of existing vacant lot for the construction of a new single family home on an existing non-conforming lot. If approved: An existing non-conforming lot would be allowed to be reconfigured with a slightly smaller size and deemed legally non-conforming for the construction of a single family home. T

Documents relating to the request are available for public inspection at [www.amherstva.gov](http://www.amherstva.gov) and in the Town Hall during normal working hours.