

**TOWN OF AMHERST
BOARD OF ZONING APPEALS
Monday, September 26, 2022**

AGENDA

6:30 PM

1. Call to Order and Determination of Quorum
2. Moment of Silence
3. Confirmation of Minutes
4. Variance request for Sunset Drive
A public hearing on this application was held on May 16, 2022. The request has been deferred since that time. The applicant has requested that the deferral be ended and a decision rendered by the Board.
5. Adjournment

**Town of Amherst
Board of Zoning Appeals**

A meeting of the Town of Amherst Board of Zoning Appeals was called to order by Vice Chairman Edward Carton at 7:00 PM on May 16, 2022, in the Council Chambers of the Town Hall at 174 S. Main Street.

The Chair noted that a quorum was present as follows and asked for a moment of silence.

| | | | |
|---|------------------------|---|------------------------|
| P | Edward Lawrence Carton | P | June Driskill |
| A | Marvin Hensley | P | R. A. "Tony" Robertson |
| P | Teresa Tatlock Stinson | | |

Town Manager Sara McGuffin, and Clerk of Council Vicki Hunt, were also present.

Mr. Carton made a motion that was seconded by Ms. Stinson to dispense with the reading and approve the minutes from the April 4, 2017, meeting.

There being no discussion, the motion to approve the April 4, 2017, minutes carried 4-0 according to the following:

| | | | |
|--------|------------------------|---------|------------------------|
| Aye | Edward Lawrence Carton | Abstain | June Driskill |
| Absent | Marvin Hensley | Aye | R. A. "Tony" Robertson |
| Aye | Teresa Tatlock Stinson | | |

Mr. Carton asked Town Manager McGuffin to chair the meeting during the election of officers. Ms. Stinson nominated Mr. Carton to be Chairman. There being no other nominations, the Board voted 4-0 to elect Mr. Carton Chairman by acclamation as follows:

| | | | |
|--------|------------------------|-----|------------------------|
| Aye | Edward Lawrence Carton | Aye | June Driskill |
| Absent | Marvin Hensley | Aye | R. A. "Tony" Robertson |
| Aye | Teresa Tatlock Stinson | | |

Town Manager McGuffin asked for nominations for Vice Chairman. Ms. Stinson entered her name for election as Vice Chairman. There being no other nominations, the Board voted 4-0 to elect Ms. Stinson Vice Chairman by acclamation as follows:

| | | | |
|--------|------------------------|-----|------------------------|
| Aye | Edward Lawrence Carton | Aye | June Driskill |
| Absent | Marvin Hensley | Aye | R. A. "Tony" Robertson |
| Aye | Teresa Tatlock Stinson | | |

Ms. Stinson nominated Town Manager McGuffin to be the Board's Secretary. There being no other nominations, the Board voted 4-0 to elect Ms. McGuffin Secretary by acclamation as follows:

| | | | |
|--------|------------------------|-----|------------------------|
| Aye | Edward Lawrence Carton | Aye | June Driskill |
| Absent | Marvin Hensley | Aye | R. A. "Tony" Robertson |
| Aye | Teresa Tatlock Stinson | | |

Variance Application Review: T&T Investments, Inc. – Property Located on Address TBD Sunset Drive, between 184 and 204 Sunset Drive

Town Manager/Secretary McGuffin provided a report on a variance application as follows:

T&T Investments, Inc., owner Troy Cash, and their agent Trevor Gillespie, has applied for a variance to allow construction of a single-family home for property located between 184 and 204 Sunset Drive (TM# 95-3-B-11), zoned Limited Residential District R-1.

The application pertains to use of existing vacant lot for the construction of a new single-family home on an existing non-conforming lot. It is the desire of the property owner to remedy issues regarding the existence of a corner of a neighbor's existing septic drain field on a small portion of the lot between 184 and 204 Sunset Drive which would require a lot reconfiguration. If approved:

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

Code section 18.1-601.01 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.

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. Three affirmative votes by Board members will be required to approve this request. Town Code §18.1-1006.05 indicates that “substantially the same petition affecting the same land shall not be considered within any twelve (12) month period.”

Trevor Gillespie, Realtor and Agent for Applicant/Property Owner Troy Cash came forward to explain the application and answer questions.

Applicant/Property Owner Troy Cash and Applicant Thomas Hill, President of T & T Investments were present to answer questions.

Chairman Carton opened a duly advertised public hearing at 7:25 P.M. on the Application for Variance submitted 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).

Shah Kanev, 204 Sunset Drive, Amherst, VA, came forward in opposition expressing her belief that if the variance is approved the proximity of a new construction on the subject property to her adjacent house would cause depreciation and raise privacy issues.

Andrey and Katerina Sunstev, 193 Sunset Drive, Amherst, VA, by letter opposed approval of the requested variance.

Joan C. Smith, 206 Sunset Drive, Amherst, VA, came forward in opposition and referred to subdivision restrictions pertaining to side yard set-back lines.

Shannan Carter, 184 Sunset Drive, Amherst, VA, came forward in opposition to the requested variance expressing her belief that new construction would be too close to her adjacent property.

William Carter, 184 Sunset Drive, Amherst, VA, came forward in opposition to the requested variance, referring to Health Department documents with a sketch of the drainage field.

Edgar Kinnear and Telia Jones Kinnear, 201 Sunset Drive, Amherst, VA, by letter, opposed approval of the requested variance expressing their belief that two drainage fields would be too close together.

Rob Bouldin, 224 Sunset Drive, Amherst, VA, came forward in opposition expressing his belief that approval of the requested variance would fundamentally alter and cause damage to the character of that section of the neighborhood.

Amy Dawson, 203 Sunset Drive, Amherst, VA, came forward in opposition expressing her belief that approval of the variance would contribute to depreciation of neighboring houses.

Bill Dawson, 203 Sunset Drive, Amherst, VA, came forward in opposition of approval of the requested variance.

Svet Kanev, 204 Sunset Drive, Amherst, VA, came forward in opposition of approval of the requested variance.

There being no one else present who wished to speak, the public hearing was closed at 8:14 P.M.

Chairman Carton recessed the meeting at 8:15 PM.

The meeting reconvened at 8:21 PM. It was noted that a quorum was present as follows:

| | | | |
|---|------------------------|---|------------------------|
| P | Edward Lawrence Carton | P | June Driskill |
| A | Marvin Hensley | P | R. A. "Tony" Robertson |
| P | Teresa Tatlock Stinson | | |

Upon applicant's request, the matter was deferred for 30 days to the next meeting of the Board of Zoning Appeals upon motion of Mr. Carton, seconded by Ms. Stinson, and carried 4-0 as follows:

| | | | |
|--------|------------------------|-----|------------------------|
| Aye | Edward Lawrence Carton | Aye | June Driskill |
| Absent | Marvin Hensley | Aye | R. A. "Tony" Robertson |
| Aye | Teresa Tatlock Stinson | | |

There being no further business, the meeting was adjourned at 8:27 P.M.

Edward Carton, Chairman

ATTEST: _____
Secretary



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

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 28th. 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 28th and May 5th.

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

REPRESENTATIVE Trevor Gillispie ADDRESS Winesap Rd
CITY Mad Heights Va 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.

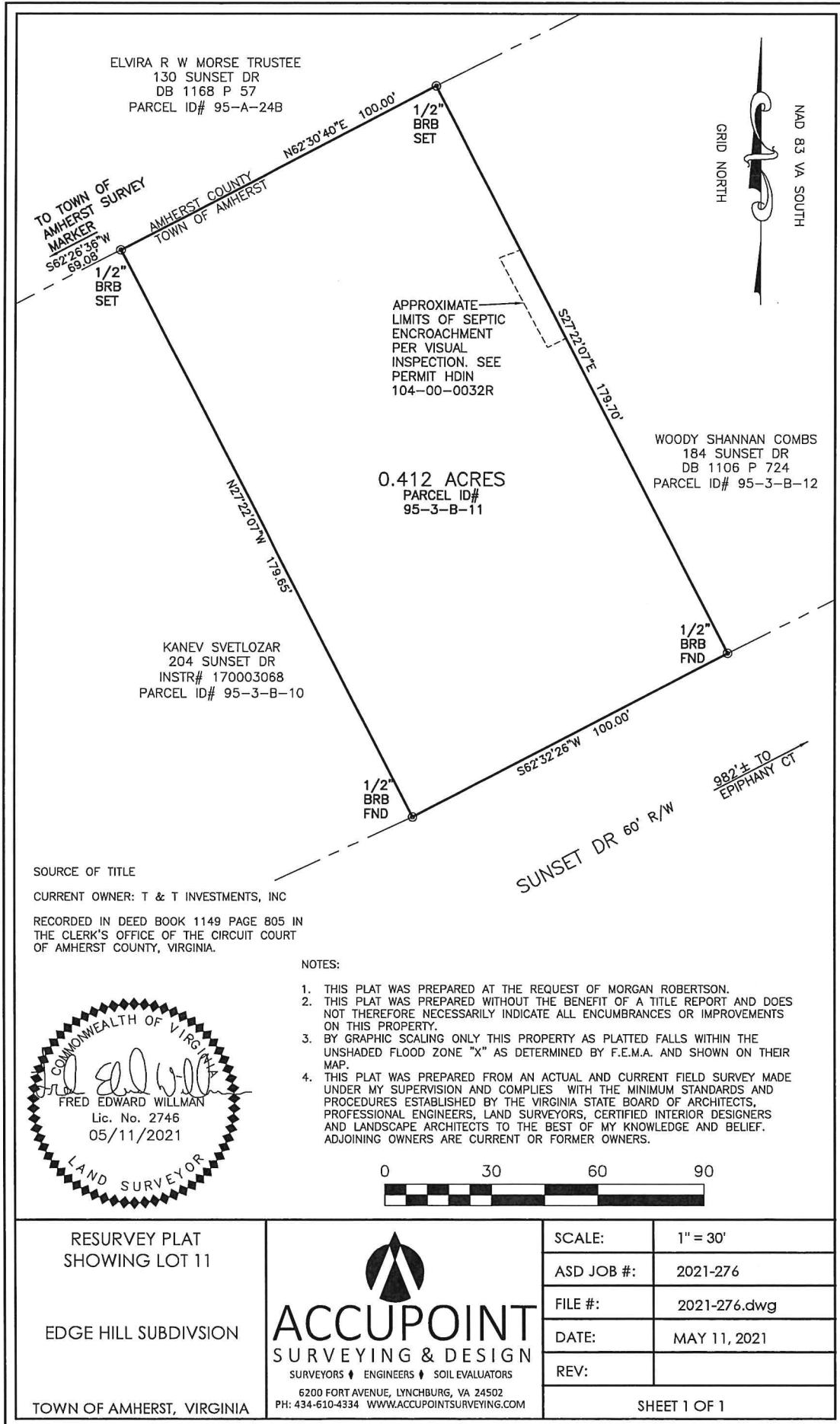
Troy Cash
Signature of Owner 2/23/22
Date

BOARD OF ZONING APPEALS PUBLIC HEARING _____
Date Time

BOARD OF ZONING APPEALS ACTION:

Zoning Administrator Date

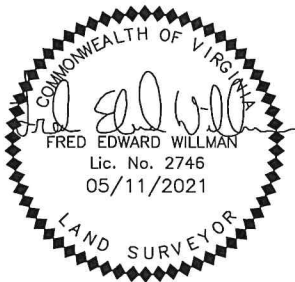
Current Plat



SOURCE OF TITLE
 CURRENT OWNER: T & T INVESTMENTS, INC
 RECORDED IN DEED BOOK 1149 PAGE 805 IN
 THE CLERK'S OFFICE OF THE CIRCUIT COURT
 OF AMHERST COUNTY, VIRGINIA.

NOTES:

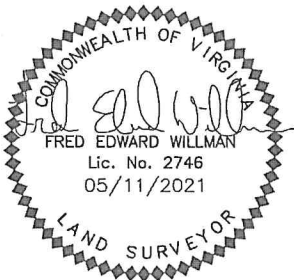
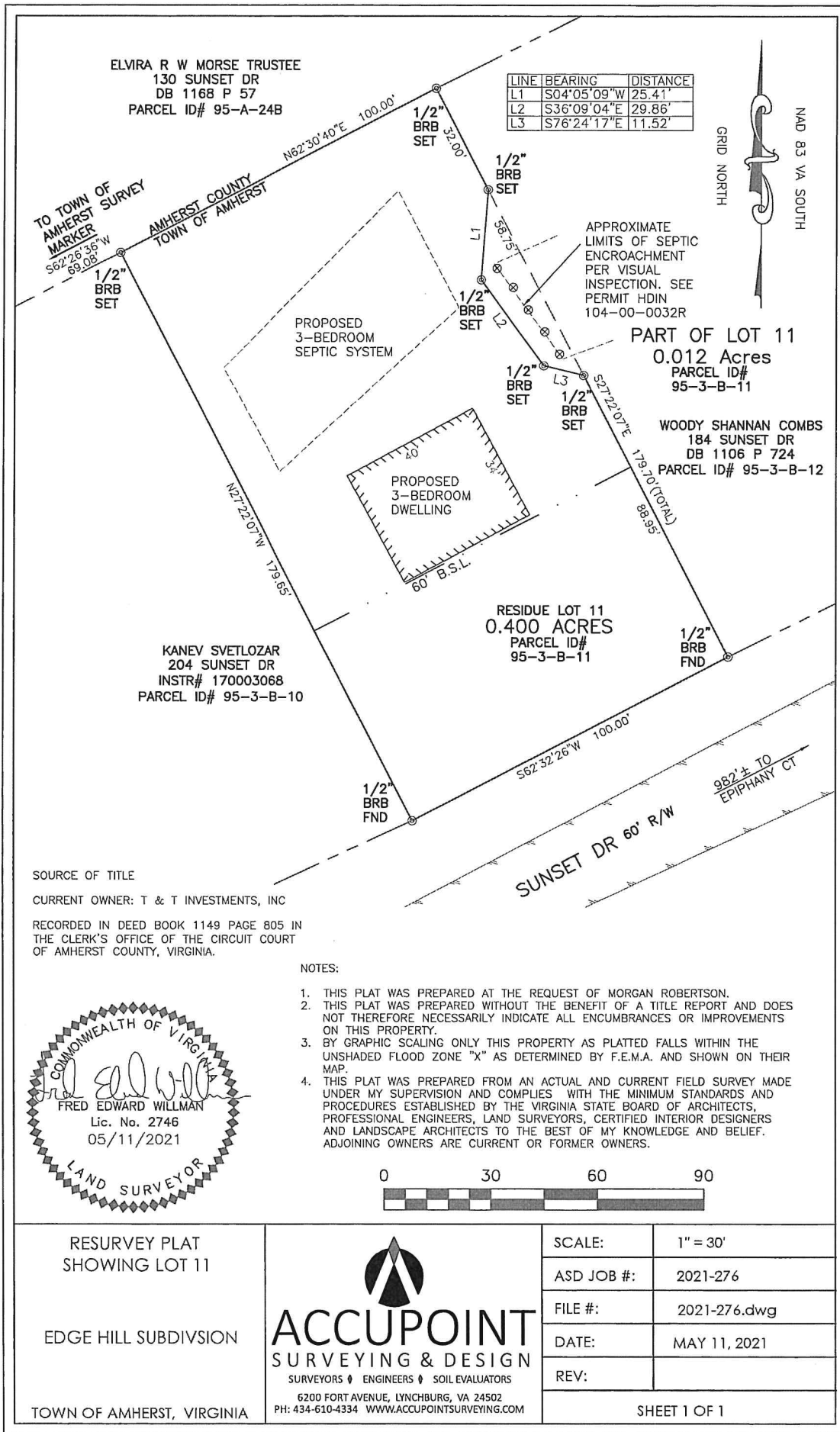
1. THIS PLAT WAS PREPARED AT THE REQUEST OF MORGAN ROBERTSON.
2. THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT THEREFORE NECESSARILY INDICATE ALL ENCUMBRANCES OR IMPROVEMENTS ON THIS PROPERTY.
3. BY GRAPHIC SCALING ONLY THIS PROPERTY AS PLATTED FALLS WITHIN THE UNSHADED FLOOD ZONE "X" AS DETERMINED BY F.E.M.A. AND SHOWN ON THEIR MAP.
4. THIS PLAT WAS PREPARED FROM AN ACTUAL AND CURRENT FIELD SURVEY MADE UNDER MY SUPERVISION AND COMPLIES WITH THE MINIMUM STANDARDS AND PROCEDURES ESTABLISHED BY THE VIRGINIA STATE BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS TO THE BEST OF MY KNOWLEDGE AND BELIEF. ADJOINING OWNERS ARE CURRENT OR FORMER OWNERS.



| | | |
|---------------------------------|--------------|--------------|
| RESURVEY PLAT SHOWING LOT 11 | SCALE: | 1" = 30' |
| | ASD JOB #: | 2021-276 |
| EDGE HILL SUBDIVSION | FILE #: | 2021-276.dwg |
| | DATE: | MAY 11, 2021 |
| TOWN OF AMHERST, VIRGINIA | REV: | |
| | SHEET 1 OF 1 | |

ACCUPOINT
 SURVEYING & DESIGN
 SURVEYORS ♦ ENGINEERS ♦ SOIL EVALUATORS
 6200 FORT AVENUE, LYNCHBURG, VA 24502
 PH: 434-610-4334 WWW.ACCUPOINTSURVEYING.COM

Proposed.



Adjacent property owner information for

Special Use Permit Application - Rezoning Application - Conditional Zoning Application - Variance Application - Appeal Application

§ 15.2-2204 of the Code of Virginia requires that a notice of pending action to be mailed to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie outside the Town; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000 feet of the affected property. The purpose of this form is to assist the applicant to collect the needed information from the Amherst County Commissioner of the Revenue's office.

| Tax Map # | Physical Address | Owner's Name | Owner's Mailing Address |
|-----------|------------------|--|-------------------------------------|
| ✓ 953B10 | 204 Sunset Dr. | Karen Svellozar | 204 Sunset Dr. Amherst, VA 24521 |
| ✓ 95A24B | 130 Sunset Dr. | Elvira R W Marsh Trustee Elvira R W. | PO Box 7 Amherst, VA 24521 |
| ✓ 953B12 | 184 Sunset Dr. | Shannon Combs Woody | 184 Sunset Dr. Amherst, VA 24521 |
| ✓ 955B | 201 Sunset | Telia M Jones | PO Box 766 Amherst |
| ✓ 955A | 193 Sunset | Andrey + Katerina Sunset | 193 Sunset Dr |
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Applicants should use as many forms as are needed to provide the needed information.

Note: Applicants are reminded that §18.1-1002 of the Town Code requires signs describing pending action by the Planning Commission, Town Council or Board of Zoning Appeals to be posted when approval of a site plan, subdivision, special use permit, rezoning, conditional zoning, variance, or appeal is requested.