

Notice of Public Hearing of the Amherst County Board of Zoning Appeals

The Amherst County Board of Zoning Appeals will conduct a public hearing during its regular meeting commencing at 7:00 P.M. on Thursday, October 12, 2017, in the Amherst County Administration Building, 153 Washington Street, Amherst, Virginia, 24521, to consider the following request:

No. 2017A-06: Request by Shirley and Robert Coleman for approval of a variance from Section 913.03 of the Amherst County Zoning Ordinance. The requested variance will reduce the setback from the front yard requirements of 125 feet to 64.5 feet. The purpose of the request is to allow for the replacement of a manufactured home. The request is referenced by a drawing submitted by the applicant. The property is located at 4607 Elon Road and is further identified as being tax map parcel number 104-A-42.

No. 2017A-07: Request by Judy McCauley for approval of two variances from Section 411 and Section 710 of the Amherst County Zoning Ordinance. The first requested variance will reduce the setback from the buffer zone surrounding select P-1 Public Lands District from 200 feet to 45 feet. The second requested variance will reduce the setback from the Watershed District requirement of no structure within 350 feet from the normal pool elevation of a water supply reservoir to 240 feet. The purpose of the request is to allow for the addition of an attached garage. The request is referenced by a drawing submitted by the applicant. The property is located at 1466 Elon Road and is further identified as being tax map parcel number 136-3-4.

The proposed application is available for review Monday through Friday from 8:30 A.M. to 5:00 P.M. in the Planning/Zoning office at the above address.

Accommodations for disabled persons may be made by calling 434-946-9400 or (TTD) 434-946-9335 at least three (3) days prior to the hearing date.

Jeremy S. Bryant
Director of Planning/Zoning



Amherst County
Department of Planning and Zoning
Jeremy S. Bryant, Director of Planning/Zoning

Variance Review
Staff Report
October 12, 2017

RE: Case #: 2017A-07
Tax Parcel #: 136-3-4
Magisterial District: Elon
Lot Size: 2.2 Acres
Zoning: R-1 Limited Residential District

Applicant:

Tony Bagby
191 Diane Drive
Lynchburg, VA 24504

Property Owner:

Judy McCauley
1466 Elon Road
Madison Heights, VA. 24572

Request: Request by Judy McCauley for approval of two variances from Section 411 and Section 710 of the Amherst County Zoning Ordinance. The first requested variance will reduce the setback from the buffer zone surrounding select P-1 Public Lands District from 200 feet to 45 feet. The second requested variance will reduce the setback from the Watershed District requirement of no structure within 350 feet from the normal pool elevation of a water supply reservoir to 240 feet. The purpose of the request is to allow for the addition of an attached garage. The request is referenced by a drawing submitted by the applicant. The property is located at 1466 Elon Road and is further identified as being tax map parcel number 136-3-4.

Summary:

Request by Judy McCauley for approval of two variances from Section 411 and Section 710 of the Amherst County Zoning Ordinance. The first requested variance will reduce the setback from the buffer zone surrounding select P-1 Public Lands District from 200 feet to 45 feet. The

second requested variance will reduce the setback from the Watershed District requirement of no structure within 350 feet from the normal pool elevation of a water supply reservoir to 240 feet. The purpose of the request is to allow for the addition of an attached garage. The request is referenced by a drawing submitted by the applicant. The property is located at 1466 Elon Road and is further identified as being tax map parcel number 136-3-4.

If the request is approved by the Board of Zoning Appeals, the applicant/property owner must receive a zoning permit and a building permit that is in accordance with the Building Code.

Staff Comment(s):

The parcel of land is located in the Elon magisterial district and is located on Route 130, east of the Village of Elon. The parcel of land is 2.2 acres in total size. The applicant desires to construct a 24x24 foot garage that will be attached to the dwelling.

The parcel of land is constrained by three unique setback requirements. The front yard setback is 100 feet due to the Route 130 overlay district, the rear yard is constrained because it borders a drinking water supply lake which requires 200 feet from the edge of the property and 350 feet from the water's edge of a drinking water supply reservoir. The majority of the yard is consumed by these three unique setback requirements which greatly constrains the applicant from using their property.

The parcel owner did seek and receive a variance request in 2001 to construct a third greenhouse. At one point in time, the applicant had three greenhouses that were within these two rear setbacks; all three of the greenhouse structures have been removed and have reduced the impervious surface that exists on this lot.

Procedure for Review:

Under §15.2-2309 of the Code of Virginia, 1950, as amended, and Sec. 1402.03 (b.) of the County Code, no variance shall be authorized by the Board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship.

The parcel of land is constrained due to three unique setback requirements. The three requirements are: Route 130 corridor overlay district, distance from a buffer zone surrounding select P-1 Public Land District, and the distance from a drinking water supply reservoir.

The applicant sought a variance in 2001 to build a greenhouse. This request was approved and the greenhouse was constructed and remained in use until 2017.

“The threshold question for the BZA in considering an application for a variance...is whether the effect of the zoning ordinance upon the property under consideration, as it stands, interferes with “all reasonable beneficial uses of the property, taken as a whole.” If the answer is in the negative, the BZA has no authority to go further.”

Cochran, 267 Va. At 767, 594 S.E.2d at 578.

- b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity.

According to research using the Geographic Information System, approximately 10-12 parcels of land appear to be affected by all three of the same setbacks that affect said lot. This situation is unique only to parcels that are on the Route 130 corridor overlay district and are adjacent to property zoned P-1 Public Lands as well as border a lake that is a drinking water supply for Amherst County residents.

- 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.

The use of the land is not changing; it will remain use as a single-family dwelling. The predominate land use along Route 130 is for single-family dwellings and this use will not affect the character of the district.

Additional Considerations:

It is important to note, that § 15.2-2309 of the Code of Virginia, 1950, as amended, also declares that the requesting property owner must have *“acquired the property in good faith”*;

According to the Amherst County Commissioner of the Revenue, the property was acquired in 1984.

And that the hardship must be caused by *“reason of the exceptional narrowness, shallowness, size or shape”* of the parcel (including topographic conditions).

The property has a gentle slope and drains away from the drinking water supply reservoir, but remains in the protected watershed. The lot is constrained by three unique County regulations.

In addition, 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 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.

Should the Board of Zoning Appeals approve this request; Staff recommends the following conditions:

1. The variance is granted for Tax Map Parcel No. 136-3-4 to reduce the 200 foot rear yard setback to 45 feet and to reduce the distance from the water's edge of a drinking water supply reservoir from 350 feet to 240 feet to allow for the placement of an attached garage to an existing dwelling.
2. No additional land disturbance can take place that is above the high point of the dwelling.
3. Applicant shall meet with the Amherst County Erosion and Sediment Control Program Administrator prior to land disturbance to determine how to manage erosion and sediment control and storm water during construction.
4. The granting of this variance shall not be construed to vest in the applicant a right to the variance until all necessary local, State and Federal plan application, review and approval processes have been completed.
5. This approval may be revoked by the County of Amherst or its designated agent for failure by the applicant or its assigns to comply with any of the listed conditions or any provision of Federal, State or local regulations.

Attached:

Notice to Adjacent Property Owners
Tax Parcel Map
Site Sketch
Variance Request Application
Plat of Property

Current Use(s) of Property

RESIDENTIAL HOME

Proposed Use(s) of Property

24X24 GARAGE

Total Acreage: ~~5.76~~ ^{5.26} 2.2 acres

Check all categories that apply:

Public water ☒

Private wells _____

Public sewer _____

On-site septic systems ☒

Mass drainfield(s) _____

Current Zoning:

(Please circle all that apply)

P-1 A-1 R-1 R-2 R-3 V-1 B-2 M-1 FH WS
130 Overlay District Other _____

Request for variance in order to: 24 x 24 Garage

Fill in only the line(s) that apply to your request	Code Section	Applicant has	Code requires	Variance requested
Total area:				
Lot width:				
Front yard setback:				
Side yard setback:				
Rear yard setback:	411 <u>710</u>	45' <u>240'</u>	200' <u>350'</u>	150' <u>155'</u> <u>110'</u>
Public street frontage:				
Other (write in):				

Section 15.2-2309 of the Code of Virginia requires the Board of Zoning Appeals to make the following findings before a variance can be granted. Please read the factors listed below carefully and in your own words, describe how your request meets each factor. If additional space is needed, use an additional sheet of paper. Justification shall be based on the following three (3) criteria:

1. That the strict application of this ordinance would produce undue hardship.

THE PROPERTY SITS BETWEEN ROUTE 130 AND THE GRAMM CREEK (3) RESERVOIR. THE PROPERTY IS UNIQUE IN THE SENSE THAT THESE THREE SETBACK REQUIREMENTS DO NOT ALLOW THE PROPERTY TO BE ADEQUATELY USED. THE DWELLING MEETS THE SETBACK FROM 130 (100') CORRIDOR, HOWEVER IT DOES NOT MEET THE SETBACKS FROM THE WATERSHED DISTRICT (OVERLAY DISTRICT)

2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

IN GENERAL THE HARDSHIP IS NOT SHARED BY PROPERTIES IN THE SAME ZONING DISTRICT AND THE SAME VICINITY.

3. That the authorization of such 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.

THE VARIANCE WILL NOT AFFECT THE OTHER PROPERTIES.

Has the BZA heard a request for this property within twelve (12) months of the date of this application? Yes (No)

Proffers and Conditions

List any proffers or conditions currently associated with this property.

VARIANCE IN 2001 TO CONSTRUCT 3RD GREENHOUSES (APPROVED)

Application fee and other requirements

A \$300.00 application fee must be paid to the County of Amherst upon submission of this application for the cost of advertising and for expenses of notifying the adjacent property owners and incidental to reviewing, publishing, and processing the application (Section 1009, Administrative Fee Structure).

A survey plat of the property by a certified land surveyor must accompany this application. The scale should be 1"=100'.

Signatures

The undersigned Applicant hereby affirms that all information contained herein is accurate to the best of his/her knowledge and confirms that he/she has read the Application and its Instructions and has paid all fees currently due and is aware of costs which may be assessed to Applicant related to this Application process. The undersigned Applicant (and Landowner, if applicable) also authorizes entry onto the subject property by the Zoning Administrator, Planning Director and/or PC or BZA during the normal discharge of their duties regarding the above Applicant.

* Judy J. McCauley 9-11-2017
Property Owner Signature Date

Property Owner Signature Date

Tony Bagby 9-11-17
Agent Signature Date

Agent Signature Date

*****DO NOT WRITE BELOW THIS LINE - OFFICE USE ONLY*****

For use by the County of Amherst Department of Planning and Zoning

Case No. 2017A-07

Actions Taken:

S. Stennett
County Official Receiving Application

9/11/17
Date

S. Stennett
Public Hearing fee received by

9/11/17
Date

Application returned for correction/additional information

Date

Amended application received by

Date

New Era Program
Public Hearing advertised in

Date(s)

S. Stennett
Adjacent property owner(s) notified by mail

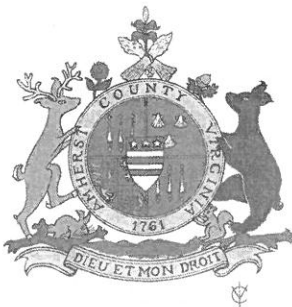
Sept 22, 2017
Date

Action by Planning Commission (if applicable)

Date

Action by Board of Zoning Appeals

Date



pd dc
2017A-07

Procedures

Variance/Map Interpretation/Appeal

WHAT IS A VARIANCE?

A Variance is a request to vary certain requirements of the Zoning and Subdivision Ordinance where, due to special conditions of the property, strict enforcement of the Ordinance would, among other standards, effectively prohibit or unreasonably restrict all reasonable use of the property. Examples include, but are not limited to: Requests to permit construction of a structure closer to a lot line than allowed by the Zoning and Subdivision Ordinance (variance to minimum yard requirement) or requests to permit a subdivision of a lot which would result in new lots that do not meet minimum lot width requirements (variance to minimum lot width).

BOARD OF ZONING APPEALS

The Board of Zoning Appeals (BZA) is a quasi-judicial body comprised of Amherst County citizens who are appointed by the Circuit Court. There are five members, with each member serving in an at-large capacity for a term of five years. The BZA has the authority, among other powers, to approve variances of the Zoning and Subdivision Ordinance and rule on appeals of the Zoning Administrator's decision(s). The powers of the BZA are defined by the Zoning Ordinance and the State enabling legislation.

WHO CAN FILE A REQUEST FOR A VARIANCE?

A variance can be filed by a property owner, tenant, or a designated authorized agent, a government official, a department, a board or a bureau. An agent cannot be an applicant but can be authorized to act on the applicant's behalf. If the applicant is not the owner of the property, evidence must be submitted showing that the applicant will have the right to use the property as proposed.

SUBMISSION REQUIREMENTS

A variance application must meet submission requirements as specified in the Zoning and Subdivision Ordinance. A synopsis of the submission requirements is presented on pages 2 and 3 of this publication to provide a convenient way to ensure that all required portions of the application package are submitted.

BOARD OF ZONING APPEALS DECISION

The BZA may approve, deny, or approve-in-part, a variance request. The BZA may approve a variance only upon a finding that the request meets **all of the required standards for a variance** as outlined in the Zoning Ordinance. These Standards are based upon the Code of Virginia Section 15.2309 – Powers and Duties of the BZA.

ASSISTANCE

For clarification of these instructions, to obtain other information related to the application process, or to request help in filing your application, please call the Amherst County

Planning/Zoning Department at (434) 946-9303, or visit the web site at www.countyofamherst.com.

HOW LONG DOES IT TAKE?

The process takes approximately 4-6 weeks once an application is filed. However the Planning Commission (PC) and BZA can delay the process if desired.

HOW MUCH WILL IT COST?

A decision by the BZA requires a public hearing; all public hearings are subject to a \$300.00 dollar fee.

WHAT IS THE PROCESS?

A variance/map interpretation/appeal follows the same general process.

1. Pre-application conference with Planning/Zoning Department;
2. Completing and filing the application;
3. Staff review and public notice;
4. PC recommendation; and
5. BZA public hearing.

PRE-APPLICATION CONFERENCE

Applicants should schedule a pre-application conference with staff prior to submittal of the variance/map interpretation/appeal application package. *Staff recommends a pre-application conference.* Please schedule a conference with staff by calling (434) 946-9303. Staff will review submitted applications to ensure all required materials and information is provided. If the application is not complete, the required information must be provided prior to formal staff review and acceptance of the application.

Applicants are strongly encouraged to discuss the proposed variance with owners of neighboring properties prior to filing an application.

APPLICATION REQUIREMENTS

An application filed to the BZA consists of three parts:

1. Variance/Map Interpretation/Appeal application form;
 2. Public Hearing Fee, \$300.00;
 3. Site plan; and
1. **Variance / Map Interpretation / Appeal Application Form:** The application is available in the Planning/Zoning Department and may also be found on the department's website at www.countyofamherst.com. It must be signed by all owners of the property. If a legal representative signs for a property owner, a copy of the executed power of attorney is required.
 2. **Public Hearing Fee:** All applications are required to be advertised in accordance with the requirements of the Virginia State Code, § 15.2-2204. The Amherst County public hearing fee is \$300.00.
 3. **Site Plan:** An acceptable site plan is required per Article XI, Site Plan Review Requirements, of the Amherst County Code.

POST FILING INFORMATION

4. **Staff Review and Public Notices:** Once staff has accepted the complete application and filing fees have been paid, adjoining property owners are notified that a variance/map interpretation/appeal has been filed and of the time and date of the public hearing. Notice of public hearing is published as a legal advertisement, and the subject property is posted with a notice for public hearing. Staff prepares a report for the PC and BZA.
5. **Public Hearing:** At the public hearing, the staff presents the report; the applicant may also present the request. The BZA takes public comment and discusses the request and makes a final decision.

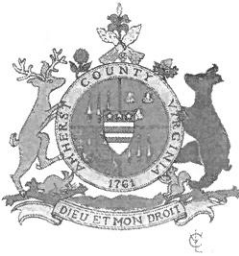
FILING/FEES/DEADLINES

Variances/Map Interpretations/Appeal applications, and accompanying fees, are filed with the:

Department of Planning/Zoning
P.O. Box 390
Amherst, VA. 24521
(434)946-9303

APPEAL

A decision by the BZA may be appealed in accordance with Section 1402.06 of the Amherst County Zoning Ordinance. If you choose to appeal this decision, such action shall occur within 30 days of the date of the Board's action.



pd ck
2017A-07

**APPLICATION FOR VARIANCE/
MAP INTERPRETATION/APPEAL**
Amherst County, Virginia

The undersigned applicant wishes to petition Amherst County Board of Zoning Appeals for a Variance/Map Interpretation/Appeal. Please refer to Section 1006 and 1402 of the zoning ordinance regarding the proper procedure. Please call the Department of Planning and Zoning at 434-946-9303 if you have any questions regarding the County Board of Zoning Appeals duties.

Applicant / Property Owner Information

Tony BAGBY
Applicant Name

191 DIANNE DR. L'BORE VA 24504
Applicant Address City/Town State Zip Code

(434) 941-3805
Applicant phone number Applicant fax number Applicant E-Mail

You are the () property owner; () agent for the property owner.

If you are the agent for the property owner, do you have consent of the owner attached? Please circle one: Yes/No

Judy J. McCauley
Property Owner Name

1466 Elton Rd. Madison Heights, VA 24572
Property Owner Mailing Address City/Town State Zip Code

434-384-2904 434-384-2904 jmb1az.in@co1.com
Property owner telephone number Property owner fax number Property owner E-Mail

Location of Property

1466 ELTON RD. MAD. HTS. L'BORE 136-3-4
Street Address Tax parcel ID number

General Description of Property

RESIDENTIAL HOME

When and how did you acquire the property?



McCauley variance request

Robert Hopkins

to:

'Jeremy Bryant '

09/27/2017 03:02 PM

Hide Details

From: "Robert Hopkins" <rhopkins@acsava.com>

To: "'Jeremy Bryant '" <jsbryant@countyofamherst.com>

Hi, Doc. Got the packet from Carissa (thank you). I have some questions:

- Pg. 4: Who is Tony Bagby? Does he have Ms. McCauley's consent? Those two questions are not answered. When was the property acquired? Those questions all have a bearing on this application.....should they not be answered before this application goes forward?
- Pg. 5: Shouldn't the applicant be requesting a 200' – 45' = 155' variance on the rear yard setback, instead of 150'? I think 150' still puts the structure 5' inside the variance-altered setback.
- Pg. 5: I scaled the distance from the lake on two different sized County GIS maps and came up with about 292' both times, which didn't seem right compared to the application. So I went there this morning and paced it off, to be sure, and I think the 240' on the application is pretty close.
- Pg. 6: Question 1: How is this situation "unique" to this property? There are multiple other properties in the same area with similar, but worse, situations: much less property on which to add such a structure and at least as close, or closer, to the public drinking water body.
- Pg. 6: Question 1: Define "undue hardship"how long has the current resident lived there without the requested garage? What "hardship" does a garage relieve, especially a "hardship" that has existed since the property was developed and that the current owner has lived with, for how long?
- Pg. 6: Question 2: I disagree. Multiple properties in the area have the same, even greater, hardship. This property has extensive area on which a garage could be added; the other properties I see are much smaller and have no other area on which to build without much greater setback violations.
- Pg. 6: Question 2: This question is not really fair.....how many other properties in the R-1 zoning district have a public water supply reservoir immediately behind them? I don't think this question on the application was meant for this kind of situation.
- Pg. 6: Question 3: I disagree. The variance could absolutely cause extensive detriment to at least one adjacent property (ours) and that detriment could create at least a financial hardship, and maybe a public health hardship, for up to thousands of other households.
- Pg. 6: The existing house had the same setback problems, right? It does not pre-date the reservoir construction (I have an aerial photo of the construction.....the house to the east of 1466 is there, but no

structure on 1466). Does it pre-date the public water body setback ordinance? When was that enacted? Did the house construction require and get a public water body setback variance for construction?

As we discussed, the removal of the greenhouses mitigates the addition of garage impermeable area, the garage is to be built where there is already impermeable area (a double-wide driveway), and, you're right, the topography drains away from the reservoir, to the south and a long way around the dam and down to Graham Creek below the dam. Given all that, I think we can support the variance, with the following conditions (are conditions allowed on variances?):

- Submittal of and construction from an approved site plan with the new attached garage on the northwest side of the house, where the existing double-wide driveway is, in line with the rear face of the house, with no recess or offset of the garage further to the northeast, toward the lake, inside the variance-altered setback.
- No land disturbance beyond the high point behind the house.
- No additional impermeable construction (porch, patio, house addition, etc.) inside the variance-altered setback to the rear face of the house.
- Approval and adequate implementation of suitable erosion and sediment control measures to control stormwater from exiting the property in any direction, and proper removal and disposal of all sediment and construction debris and waste off the property.
- No access to, disturbance of, or construction debris disposal on ACSA property or other adjacent properties, or blocking of the ACSA driveway to the dam.

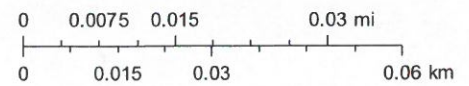
Bob

Robert A. Hopkins, PE
 Director of Public Utilities
 Amherst County Service Authority
 113 Phelps Road / PO Box 100
 Madison Heights, VA 24572
 434-845-1605 (office)
 434-221-8757 (cell)
 rhopkins@acsava.com



September 11, 2017

1:1,128



The GIS data is proprietary to the County, and title to this information remains in the County. All applicable common law and statutory rights in the GIS data including, but not limited to, rights in copyright, shall and will remain the property of the County. Information shown on these maps are derived from public records that are constantly undergoing change and do not replace a site survey, and is not warranted for content or accuracy.

ZONING PUBLIC NOTIFICATION

Case: 2017A-07

Board/Commission:

Board of Zoning Appeals

Public Hearing Dates:

October 12, 2017

Applicant:

Judy McCauley
1466 Elon Rd
Madison Heights, VA 24572

Property Owner

Judy McCauley
1466 Elon Rd
Madison Heights, VA 24572

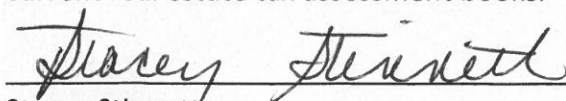
Tax Map Number:

136-3-4

Adjoining Property Owners:

Tax Map #136-A-66	Tax Map #136-3-4A	
Judy McCauley	Willis & Lillie Winfree	
1466 Elon Rd	1456 Elon Rd	
Madison Heights, VA 24572	Madison Heights, VA 24572	
Tax Map #136-A-116	Tax Map # 136-A-65	
Amherst Cty Service Authority	Stacey Tyree	
POB 100	1527 Elon Rd	
Madison Heights, VA 24572	Madison Heights, VA 24572	
Tax Map # 136-A-70		
Warren Wright		
141 E Perch Rd		
Monroe, VA 24574		

I hereby make affidavit that the notices of public hearing for this case as required by Section 15.2-2204 of the Code of Virginia, 1950, as amending, have been sent by first class mail to the last known address of the owners of abutting property as shown on the current real estate tax assessment books.



Stacey Stinnett

(Signature)

Administrative Assistant

(Title)

September 22, 2017

(Date)



AMHERST COUNTY TREASURER – PROPERTY TAXES FORM

Case #: 2017A-07

Case Request for: Judy McCauley

Date Contacted Treasurer Department: 9/12/17

Caller: Stacy Skinnell

Spoke with: via email Kay Rowe

Has Owner Paid All Property Taxes with Amherst County: YES ☒ NO ☐

If Not Please Include Comments: _____

AMHERST COUNTY



SECTION 136

DISTRICT

AMHERST COUNTY