

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 13, 2016, in the Amherst County Administration Building, 153 Washington Street, Amherst, Virginia, 24521, to consider the following request:

No. 2016A-01: Request by Mary McDaniel for approval of a variance from Section 804 of the Amherst County Zoning Ordinance. The requested variance will reduce the setback from the side yard requirement of twenty-five (25) feet to fourteen (14) feet. The purpose of the request is to allow for an additional bedroom. The request is referenced by a drawing submitted by the applicant. The property is located at 535 Toytown Road and is further identified as being tax map parcel number 83-5-9.

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
September 8, 2016

RE: Case #: 2016A-01
Tax Parcel #: 83-5-9
Magisterial District: Temperance
Lot Size: 0.5 Acres
Zoning: A-1 Agricultural Residential District

Applicant:
Mary McDaniel
535 Toytown Road
Amherst, VA 24521

Property Owner:
Same as Applicant

Request:
Request by Mary McDaniel for approval of a variance from Section 804 of the Amherst County Zoning Ordinance. The requested variance will reduce the setback from the side yard requirement of twenty-five (25) feet to fourteen (14) feet. The purpose of the request is to allow for an additional bedroom. The request is referenced by a drawing submitted by the applicant. The property is located at 535 Toytown Road and is further identified as being tax map parcel number 83-5-9.

Summary:

Request by Mary McDaniel for approval of a variance from Section 804 of the Amherst County Zoning Ordinance. The requested variance will reduce the setback from the side yard requirement of twenty-five (25) feet to fourteen (14) feet. The purpose of the request is to allow for the expansion of an additional bedroom. The request is referenced by a drawing submitted by the applicant. The property is located at 535 Toytown Road and is further identified as being tax map parcel number 83-5-9.

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):

According to the Commissioner of the Revenue, this existing dwelling was built in 1972. According to the applicant, the dwelling is currently fourteen (14) feet from the side property line. The side yard setback in the A-1 Agricultural Residential District is twenty-five (25) feet. This structure predates the existence of zoning in Amherst County and is considered a legal non-conforming structure (grandfathered).

The applicant wishes to build an approximately 10' X 12' addition along the front of the dwelling. The proposed addition would also fall within the setback from the (west) side lot line, but would not encroach any further into the (west) side lot. This variance request is to reduce the setback from the (west) side lot line.

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 property is occupied with a single-family dwelling and two accessory structures, which are permitted uses within the A-1 Agricultural Residential District. The lot area of this property does not meet the minimum acreage requirements in Section 801 which requires A-1 lots to have a minimum of one (1) acre. Currently, the dwelling is a legal non-conforming structure. The owner would like to construct an addition to the front of the dwelling that encroaches into the side yard setback, but will not encroach any further into the (west) side lot.

“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.

The side yard setback requirement applies to all lots in the A-1 Agricultural Residential District. According to the Amherst County Geographical Information System, other dwellings in the vicinity appear to also be located where if additions were proposed toward side property lines they would likely also fail to meet the side yard setback requirement from exterior lot lines.

- 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 property that is located to the west is owned by the applicant's son. The addition would not expand closer to the street than the existing dwelling. Staff believes that the granting of the variance request will not change the character of the district and will not be of substantial detriment to adjacent property.

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*";

The existing dwelling was built in 1972 prior to zoning in Amherst County. The current owner acquired the property in 1985 (according to the Commissioner of the Revenue). Since the proposed dwelling/property does not contain an outstanding violation and the variance request is not for an existing structure in violation, the property must be considered to have been acquired in good faith. (Per *Zoning Law for the Virginia Zoning Official*; Zoning Officials Certification Test Preparation Program; written by Greg Kamptner, Deputy County Attorney, County of Albemarle; July 29, 2010)

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

This property is a relatively flat piece of property with no substantially steep slopes. However, this parcel is only 0.5 acres in total size. Today, the zoning and subdivision ordinance would not allow a lot to be less than one (1) acre in total size. Therefore, the lot is exceptionally small in relation to other lots in the A-1 Agricultural Residential District.

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.

On September 15, 2016 the Amherst County Planning Commission recommended approval of the request, with the following conditions:

1. The variance is granted for Tax Map Parcel No. 83-5-9 to reduce the twenty-five (25) foot side yard setback to fourteen (14) feet to allow for an expansion of the existing carport.
2. 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.
3. 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.

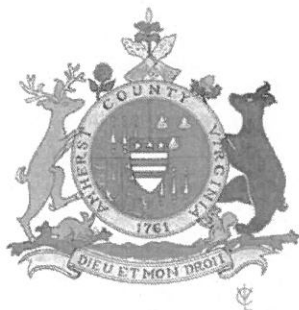
Attached:

Notice to Adjacent Property Owners

Tax Parcel Map

Site Sketch

Variance Request Application



2016A-01

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/FEEES/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



**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

Tax Map 83-5-9

Mary B. McDaniell
Applicant Name
535 Toytown Rd Amherst VA 24521
Applicant Address City/Town State Zip Code

434-946-2958
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

N/A
Property Owner Name

Property Owner Mailing Address City/Town State Zip Code

Property owner telephone number Property owner fax number Property owner E-Mail

Location of Property

535 Toytown Road Amherst, VA
Street Address Tax parcel ID number

General Description of Property

When and how did you acquire the property?

owned property approximately 30 years

Current Use(s) of Property

Dwelling

Proposed Use(s) of Property

Addition to Bedroom

Total Acreage: 0.5

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: Construct addition to bedroom

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:	804	14'	25'	11'
Rear yard setback:				
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 Lot is Only 1/2 Acre + Need adding to bed for a Medical Bed. Setback does Not Allow for Adding To Bedroom.

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

Several Lot in area. Are Small than One Acre however most Property in the Area are larger and not as Constrained.

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.

my son Own the Drain Property

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.

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.

Mary B. McDaniel
Property Owner Signature Date

Property Owner Signature Date

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. 2016A 01

Actions Taken:

S. Bennett
County Official Receiving Application

8/16/16
Date

S. Bennett
Public Hearing fee received by

8/16/16
Date

Application returned for correction/additional information

Date

Amended application received by

Date

Public Hearing advertised in

Date(s)

Adjacent property owner(s) notified by mail

Date

Action by Planning Commission (if applicable)

Date

Action by Board of Zoning Appeals

Date



Application for Zoning Permit Amherst County, Virginia

Section A (Please print in blue or black ink)

Permit No: _____

<u>McDaniel</u>		<u>Mary</u>	<u>Banks</u>
Last (Name of Applicant)		First	MI
<u>535 Toytown Rd</u>			
Mailing Address		City	State Zip Code
<u>535 Toytown Rd</u>		<u>Amherst</u>	<u>Va</u> <u>24521</u>
Property Address		City	State Zip Code
Telephone Number(s) Home		Business	E-Mail Address
<u>434-946-2958</u>			
Last (Name of Property Owner, if different)		First	MI

Is the lot recorded? Yes ☒ No ☐

If yes, complete section B

Section B (Please fill out as completely as possible)

Date lot recorded (if applicable) _____	Date lot surveyed (if applicable) _____
Name of subdivision <u>Toytown Rd</u>	Tax Map # <u>83-5-9</u>
Deed Book/Page No. <u>89 Page Book 501</u>	
Lot area: _____ acres.	
Lot width: <u>1005</u> ft.	
The lot is served by (check all that applies):	Public water: _____
	Private well: <input checked="" type="checkbox"/>
	Public sewer: _____
	Septic system: <input checked="" type="checkbox"/>
Are the water and sewage systems adequate for the proposed use?	<input checked="" type="radio"/> YES <input type="radio"/> NO
Is the lot a corner lot? YES NO	
Does the lot have frontage on more than one street (i.e. double frontage)?	YES <input checked="" type="radio"/> NO
Does the owner of the property own any adjacent lots? <u>NO</u>	
(If so, please include the locations and dimensions of adjacent lots on attached sketch)	
Is the parcel of land located in a flood district? YES <input checked="" type="radio"/> NO	If so, what flood district? _____
Is the parcel of land located in a dam inundation zone? YES <input checked="" type="radio"/> NO	If so, what zone? _____
The erection, modification, replacement of a sign or sign structure requires approval of a sign permit. •	

Directions to project site (from Amherst County Administration Building):

29 N to Toytown Road.

Section C (Please fill in the blanks where applicable)

For construction of a new building (including accessory buildings and building additions):

Type of building: Bedroom Existing floor area: 800 sq. ft.
Proposed floor area: 10x12 sq. ft. Number of dwelling units proposed: 1
10

Number of stories: 1 Height of structure (from finished grade): _____ ft.
Area of land disturbance: 8x12 sq. ft. (Estimate the total area of all clearing, grading, excavating, transporting, and filling activities on the site. Include proposed septic drainfield areas.)
Will the driveway exit on a private or public road? Private Road _____ Public Road ☒
If the driveway exits on a public road, provide the VDOT entrance permit number: _____

For a change in use to an existing structure or property:

Current use: Dwelling Proposed use: Bedroom addition
Provide details about type of business, machinery and equipment involved, hours of operation, no. of employees, etc. Attach separate sheet, if necessary: _____

Attach a site plan, survey plat, or sketch showing the following:

(Note: construction of a primary building on any site will require a survey performed by a licensed professional)

- I. The dimensions and shape of parcel(s) to be built upon including the location of existing public and private streets.
- II. The location and dimensions of existing primary and accessory buildings.
- III. The location and dimensions of proposed structures, accessory buildings, or additions/enlargements*
- IV. Proposed front, rear, and side yard set back lines for all existing and proposed buildings or additions.

* Where applicable, applicants will need to show the location of (1) existing public water and sewer facilities, including the point of connection to those facilities, or (2) proposed well and septic facilities including primary and reserve drainfield areas.

I hereby certify that the foregoing information and attachments are true and accurate to the best of my knowledge.

Mary B. McDaniel
Applicant's Signature

8-16-16
Date

*Any zoning permit shall automatically expire twelve (12) months from the date of issuance if the persons, firm, or corporation to which the permit was issued has not clearly demonstrated that the permit is being exercised for the purpose for which it was issued, or if the work so authorized is suspended or discontinued for a period of twelve (12) months.

DO NOT WRITE IN THIS SPACE - OFFICE USE ONLY			
ZONING DISTRICT	REQUIRED YARDS: FRONT	SIDE	REAR
CONFORMING:	LOT(S)	YES	NO
	EXISTING BUILDING:	YES	NO
	PROPOSED BUILDING:	YES	NO
	EXISTING USE:	YES	NO
	PROPOSED USE:	YES	NO
Is proposed development located within the WS District? _____ Does the project require a LDA permit? _____			
COMMENTS _____			

APPROVED/DENIED BY ZONING ADMINISTRATOR			
SIGNATURE		DATE	

ZONING PUBLIC NOTIFICATION

Case: 2016A-01

Board/Commission: Board of Zoning Appeals

Public Hearing Dates: October 13, 2016

Applicant: Mary B. McDaniel
535 Toytown Rd
Amherst, VA 24521

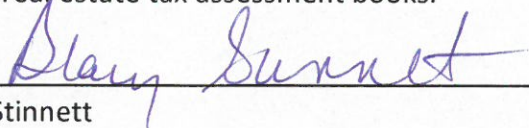
Property Owner
Mary B. McDaniel
535 Toytown Rd
Amherst, VA 24521

Tax Map Number: 83-5-9

Adjoining Property Owners:

Tax Map # 83-5-8	83-6-1	
Michael Meade	Rosa Carter	
Po Box 6692	532 Toytown Rd	
Woodbridge VA 22195	Amherst, VA 24521	
Tax Map # 67-A-28,83-A-6,8,91-92,98-100		
Louise Cash		
629 Toytown Rd		
Amherst, VA 24521		
Tax Map # 83-4-2		
Broady Cash		
1231 Ramblewood Dr		
Annapolis MD 21409		

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
26-Sep-16

(Title)
(Date)

AMHERST COUNTY

