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PLANNING DEPARTMENT

MEMORANDUM

DATE: September 29, 2011

TO: Amherst County Board of Zoning Appeals

FROM: Jeremy Bryant, Director of Planning/Zoning JSB

SUBJECT: Election of Officers

According to Section 1402.02 (2) of the Amherst County Zoning Ordinance, the Board of Zoning Appeals (BZA) shall elect officers at the first meeting of the board of appeals after July 1 of each year. The BZA met on July 14, 2011, and briefly discussed the election of officers, however, two (2) members were absent from the meeting and the present BZA members decided it would be appropriate to wait until it was represented with the full membership of the BZA. Therefore, the consideration of election of officers will be placed on the October 13, 2011, agenda.

The rules of procedure require that the BZA elect a chairman and vice-chairman from its own membership who serve annual terms and may succeed themselves. It also states that the BZA may elect a secretary as one of its own members or a qualified individual who is not a member of the board. Since 2007, the BZA elected the Director of Planning/Zoning to serve in this capacity, in my absence of your upcoming meeting; I would recommend electing the Director of Planning and Zoning to continue to serve as the BZA secretary.

Enclosure:
Section 1402.02 of the Amherst County Zoning Ordinance: *Rules of Procedure*

1402. - The Board of Zoning Appeals.

The Amherst County Board of Zoning Appeals, hereinafter referred to as the board of appeals, is hereby reestablished.

1402.01. Membership. A board consisting of five (5) members, who shall be residents of Amherst County, shall be appointed by the circuit court of the county, with appointments and terms of office as follows:

1. The board of appeals members appointed hereunder shall serve respectively for terms of one (1) year, two (2) years, three (3) years, four (4) years and five (5) years. Subsequent appointments shall be for terms of five (5) years each. Members may be reappointed to succeed themselves.
2. No member shall hold any public office in the county; however, one (1) member may be a member of the commission.
3. A member whose term expires shall continue to serve until his successor is appointed and qualified.
4. The secretary of the board of appeals shall notify the circuit court at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term.
5. Any member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the circuit court after hearing held after at least fifteen (15) days' notice.
6. A member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four (24) hours prior to the meeting of such fact.

1402.02. Rules of procedure. The board of appeals shall observe the following procedures:

1. The board of appeals shall adopt rules and forms in accordance with the provisions of this ordinance and consistent with other ordinances of the county and general laws of the commonwealth for the conduct of its affairs.
2. The board of appeals shall elect a chairman and vice-chairman from its own membership who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. The election of officers shall be held at the first meeting of the board of appeals after July 1 of each year.
3. The board of appeals shall keep a full public record of its proceedings and other official actions, shall file the same in the office of the board of appeals, and shall submit a report of its activities to the board of supervisors at least once each year.
4. All meetings of the board of appeals shall be open to the public.
5. Any member of the board of appeals shall be disqualified to act upon a matter before the board with respect to property in which the member has an interest.
6. The meetings of the board of appeals shall be held at the call of the chairman and at such other times as a quorum of the board of appeals may determine. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meetings. Such findings shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with Va. Code Section 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.
7. The chairman, or in his absence the vice-chairman or acting chairman, may administer oaths and compel the attendance of witnesses.
8. For the conduct of any hearings and the taking of any action, a quorum shall be at least three (3) members.
9. A favorable vote of at least three (3) members of the board of appeals shall be necessary to reverse any order, requirements, decision, determination of any administrative official or to decide in favor of the applicant on any matter upon which the board of appeals is required to pass.
10. A tie vote among those present and voting defeats the motion, resolution or issue voted upon.

1402.03. Duties and powers. The board of appeals shall have the following duties and powers:

1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of Article 7, of Chapter 22, of Title 15.2 of the Code of Virginia, or of this ordinance. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision;
2. To authorize upon appeal or original application in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest, when owing to special conditions a literal

enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done as follows:

- a. When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board of appeals is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.
 - b. No such variance shall be authorized by the board of appeals unless it finds that all three (3) of the following conditions apply: (1) that the strict application of the ordinance would produce undue hardship; (2) that such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (3) 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.
 - c. No such variance shall be authorized except after notice and hearing as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended. 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.
 - d. No variance shall be authorized unless the board of appeals finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to the ordinance.
 - e. In authorizing a variance the board of appeals 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 insure that the conditions imposed are being and will continue to be complied with.
3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by Virginia Code Section 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.
 4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended, the board of appeals may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. 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. The board of appeals shall not have the power to change substantially the locations of district boundaries as established by this ordinance.
 5. No provision of this ordinance shall be construed as granting the board of appeals the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the board of supervisors.

1402.04. Financing the board of appeals. Within the limits of funds appropriated by the board of supervisors, the board of appeals may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board of appeals may receive such compensation as may be authorized by the board of supervisors.

1402.05. Appeals to the board of appeals. Requests for special exception permits, administrative review, or variances shall follow procedures specified by Article X herein.

1402.06. Decision of board of appeals.

1. Any person or persons jointly or severally aggrieved by any decision of the board of appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the county may file with the clerk of the circuit court for the county a petition specifying the grounds on which aggrieved within thirty (30) days after the final decision of the of the board of appeals.
2. Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of appeals and shall describe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the

court may, on application, on notice to the board of zoning appeals and on due cause shown, grant a restraining order.

3. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
4. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, said court may take evidence or appoint a commissioner to take evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
5. Costs shall not be allowed against the board of appeals unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the cost incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the board may request that the court hear the matter on the question of whether the appeal was frivolous.
6. In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to Va. Code Section 15.2-2286, the decision of the board of zoning appeals shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in court.
7. In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted any application for a variance, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law.

(Ord. of 10-18-05(8); Ord. of 12-19-06(2))