

## NOTICE OF MEETING

### AMHERST COUNTY BOARD OF ZONING APPEALS

The Amherst County Board of Zoning Appeals will hold a public hearing on Thursday, November 14, 2013, in the Amherst County Administration Building, 153 Washington Street, Amherst, VA, at 7:00 PM on the following request. Information pertaining to the request is on file and available for public review at the Planning Department in the Amherst County Administration Building weekdays, between 8:30 AM and 5:00 PM. Accommodations for persons with a sight, speaking or hearing disability will be made by this office if notified a minimum of four working days prior to the hearing date. Telephone 434-946-9303, TDD 434-946-9335.

2013A-01 Request by Kinkle W. Toliver, for approval of multiple variances from Sections 710.06 (1) and 804 of the Zoning & Subdivision Ordinance to reduce the setback from the stream setback requirement of seventy-five (75) feet to approximately sixty-five (65) feet and to reduce the setback from the frontage road easement (measured from centerline) of seventy-five (75) feet to approximately thirty-five (35) feet, to allow for an expansion of a porch to an existing single-family dwelling. The request is referenced by a drawing submitted by the applicant. The property is located at 129 My Way off of Route 778, and is further identified as being tax map parcel number 64-A-11.

2013A-02 Request by M. Taze Crowder, L.S. (applicant), and Wayne D. & Brenda B. Carwile (property owner) for approval of multiple variances from Section 804 of the Zoning & Subdivision Ordinance to reduce the setback from the front yard (Blue Bird Lane) from sixty-five (65) (measured from centerline) feet to approximately thirty-four (34) feet and to reduce the rear yard setback from twenty-five (25) feet to approximately eleven (11) feet and to reduce the setback measured from a frontage road easement (measured from centerline) from sixty-five (65) feet to forty-six (46) feet, to allow the replacement of a burned single family dwelling. The proposed new structure is a manufactured home that is transferred in two (2) or more sections and is approximately 466 square feet larger than the existing dwelling that was a non-conforming structure. The request is referenced by a drawing submitted by the applicant with an exhibit at enlarged scale with dimensions. The property is located at 438 Thomas Road, and is further identified as tax map parcel number 155-3-1.

family dwelling. The request is referenced by a drawing submitted by the applicant. The property is located at 129 My Way off of Route 778, and is further identified as being tax map parcel number 64-A-11.

If the request is approved by the Board of Zoning Appeals, the applicant/property owner must still receive a building permit that is in accordance with the Building Code, including flood proofing requirements.

**Staff Comment(s):**

According to the homeowner, the dwelling was erected in 1945. This structure predates the existence of zoning in Amherst County and is considered a legal non-conforming structure (grandfathered). The structure does not meet the setback requirements as prescribed in Sections 710.06 (1) and Sections 804 of the Zoning Ordinance respectively. According to the Commissioner of the Revenue, the structure is approximately 1,344 total square feet. Section 601.02 (2) states: "*a nonconforming structure may be enlarged or altered as necessary, provided such enlargement(s) or alteration(s) do not exceed a cumulative fifty (50) percent of the floor area of the original non-conforming structure, and provided all yard requirements herein are met*". The proposed porch will be a total of 240 square feet and remains less than fifty (50) percent of the original structure.

The dwelling is located within the Flood Hazard Overlay District (Flood Zone A). Typically, a special exception is required to permit a single-family dwelling within this district; however this structure as previously mentioned is a legal-non conforming structure. Section 709.10 of the Zoning Ordinance regulates "*Existing structures in flood districts*". The expansion of a porch must be in compliance with the regulations found within the Building Code dealing with structures (porch) in floodplains.

**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 that is a permitted use within the A-1 Agricultural Residential District. The lot area of this property does meet the minimum requirements in Section 801. The owner would like to construct a front porch that is approximately 10' x 24' which is a total of 240 square feet. The front porch will encroach within the 75' stream setback as well as the 75' setback from the centerline of My Way. Currently, the dwelling is a legal non-conforming structure. According to measurements taken from the plat, the entire dwelling lies within the two setback requirements and therefore the dwelling cannot be expanded without seeking a variance.**

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

**The dwelling in question appears to be the only dwelling that falls within the seventy-five (75) foot setback requirement from My Way. According to the Amherst County Geographical Information System, two dwellings located on the same tributary appear to also be within the Flood Hazard Overlay District.**

- 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 dwelling is located near the terminus of My Way as it intersects with Route 778 (Lowesville Road). Approximately three (3) dwellings appear to be constructed that use My Way as a point of ingress/egress to access Route 778. The addition of the porch encroaches within the setback regulation. The structure sits below grade from the private road and should not affect sight distance or any other means of vehicle ingress/egress. The private road will likely never be upgraded to a State Maintained road because of its narrowness and because of the sharp changes in the topography of the properties that use this private road. Staff believes that the granting of the variance request will not change the character of the district, since the dwelling has been located on the property since 1945, and the proposed porch will not be of a substantial detriment to adjacent properties.**

**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 current owner acquired the property on March 16, 2008 (according to the Commissioner of the Revenue). The existing structure has been used as a single-family dwelling and will continue to be used in that manner. 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).

**A majority of the buildable portions of the property lie within the floodplain; the overwhelming proportion of the property is wooded and topographically**

**steep. The flattest portion of the property is where the existing dwelling is located.**

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. All construction must be flood proofed in accordance with the Building Code.
2. The variance is granted for Tax Map Parcel No. 64 – A – 11 to reduce the seventy-five (75) foot setback to approximately sixty-five (65) feet and to reduce the setback from the frontage road easement (measured from centerline) of seventy-five (75) feet to approximately thirty-five (35) feet, to allow for an expansion of a porch to an existing single-family dwelling.
3. The proposed porch shall be in general compliance with the submitted plot plan.
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  
Plat  
Variance Request Application





2013A-01  
p 2 10/18/13

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

Kinkle W Toliver  
Applicant Name

Post Office Box 1123 Amherst VA 24521  
Applicant Address City/Town State Zip Code

434-946-9579 (cell phone 434-401-4198)  
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

Kinkle W. Toliver  
Property Owner Name

Post Office Box 1123 Amherst VA 24521  
Property Owner Mailing Address City/Town State Zip Code

434-946-9579 (cell. 434-401-4198)  
Property owner telephone number Property owner fax number Property owner E-Mail

Location of Property

129 my Way 64-A-11  
Street Address Tax parcel ID number

General Description of Property

On Mobleys Mtn off Route 778

When and how did you acquire the property?

Gift

Current Use(s) of Property Home we live in for our family

Proposed Use(s) of Property Family Home to live in

Total Acreage: 27.8

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: \_\_\_\_\_

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:				
Public street frontage:				
Other (write in):	710,06 (1) + 804	65' 35'	75' 75'	10' 40'

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.

See Attach para 1.

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

See Attach para 2.

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.

See Attach para 3.

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.

N/A

#### 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'.

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

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

Case No. 2013A-01

Actions Taken:

Jeremy Bryant (S. Stennett) 10-18-13

County Official Receiving Application

Date

Stacy Stennett

10-18-13

Public Hearing fee received by

Date

Application returned for correction/additional information

Date

Amended application received by

Date

Amherst New Era Progress

Oct 31 ~ Nov 7

Public Hearing advertised in

Date(s)

Stacy Stennett

Oct 30, 2013

Adjacent property owner(s) notified by mail

Date

Action by Planning Commission (if applicable)

Date

Action by Board of Zoning Appeals

Date



- 1) The house was built in 1945 and was built in good faith. The expansion of this porch does not extend beyond the width of the existing house. In 1969, the flood, Hurricane Carmel changed the dimensions of the setback of the Creek from 75 feet to 60 feet. Also it changed the setback dimensions of the private driveway, I assume, from 75 feet to 35 feet due to the same flood of 1969 (Carmel).
- 2) The house was built in 1945 and was unique to the zoning district at that time.
- 3) The adjoining property is wooded and vacant; the expansion of this porch is not visual by other exiting property owners. The landowners that use this private driveway insist that this would be an improvement for this property and also their property. The one property owner that has access to this driveway does not have any objections. See attached: Exhibit A& B

# ZONING PUBLIC NOTIFICATION

Case: 2013A-01

Board/Commission:

Board of Zoning Appeals

Public Hearing Dates:

November 14, 2013 - Board of Zoning Appeals

Applicant:

Kinkle Toliver  
P.O Box 1123  
Amherst, VA 24521

Property Owner

Kinkle Toliver  
129 My Way  
Amherst, VA 24521

Tax Map Number:

64-A-11

Adjoining Property Owners:

Tax Map # 64-A-8	Tax Map # 64-A-12	
Joseph & Nellie Harris	James Lennon	
512 Dillard Hill Rd	238 My Way	
Lowesville, VA 22967	Amherst, VA 24521	
Tax Map # 63-A-4	Tax Map # 64-A-10	
Calvin Bailey Family Ltd Partnership	Jack Henley	
1806 Lexington Turnpike	c/o Martha Henley	
Amherst, VA 24521	4806 Tyreeanna Rd	
	Lynchburg, VA 24504	
Tax Map # 64-2-1		
Campbell, James & Melanie		
220 My Way		
Amherst, VA 24521		

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.

Stacy A. Starnes  
Administrative Assistant  
October 30, 2013

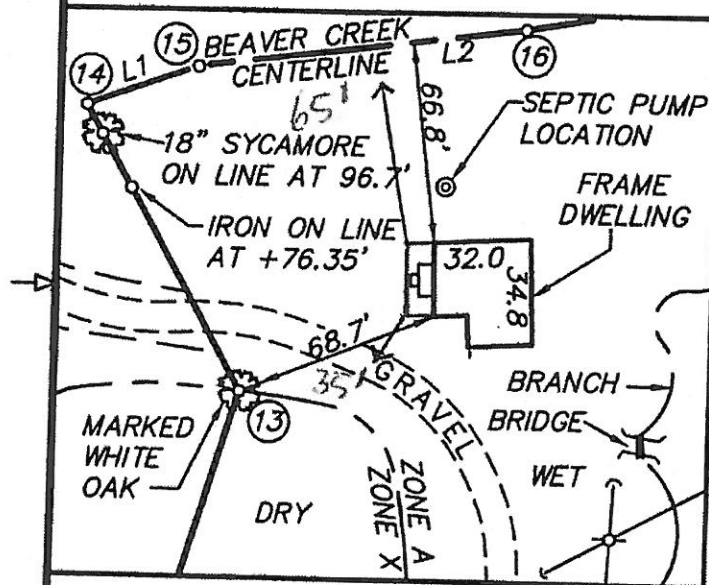
(Signature)

(Title)

(Date)

DETERMINATION, THEREFORE, THIS PLAT IS SUBJECT TO INFORMATION LOCATION OF GRAVEYARDS OR WETLANDS THAT MAY EXIST ON THE SUBJECT PROPERTY.

6. CENTER OF HOUSE AS SHOWN HAS AN APPROXIMATE GEODETIC P OF 37°38'40.06"N LATITUDE, 79° 06'49.16"W LONGITUDE.
7. MINIMUM BUILDING LINES (SETBACKS) ARE NOT SHOWN FOR CLARI PLEASE CONSULT WITH AMHERST COUNTY PLANNING AND ZONING COMMENCEMENT OF ANY CONSTRUCTION ACTIVITY.
8. ALL PINS SET ARE 5/8" IRON REBAR WITH ORANGE "ACTUAL SURVEY PLASTIC CAPS.
9. THIS PLAT IS BASED ON A CURRENT FIELD SURVEY.
10. CORNERS FROM 13-21 TO 1, ARE BY BOUNDARY LINE AGREEMENT FURTHER WITNESSED AND SHOWN HEREON.



### DETAIL

SCALE: 1" = 60'

CENTERLINE OF LOWESVILLE ROAD ROUTE 778  
VARIABLE WIDTH RIGHT-OF-WAY



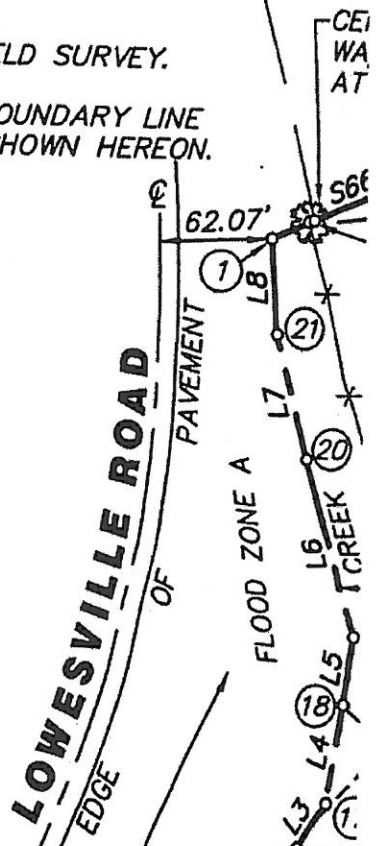
LINE TABLE		
LINE NO.	BEARING	DISTANCE
11	N70°11'35"W	78.70'

0.4 MI. TO ROUTE 60 LEXINGTON TURNPIKE

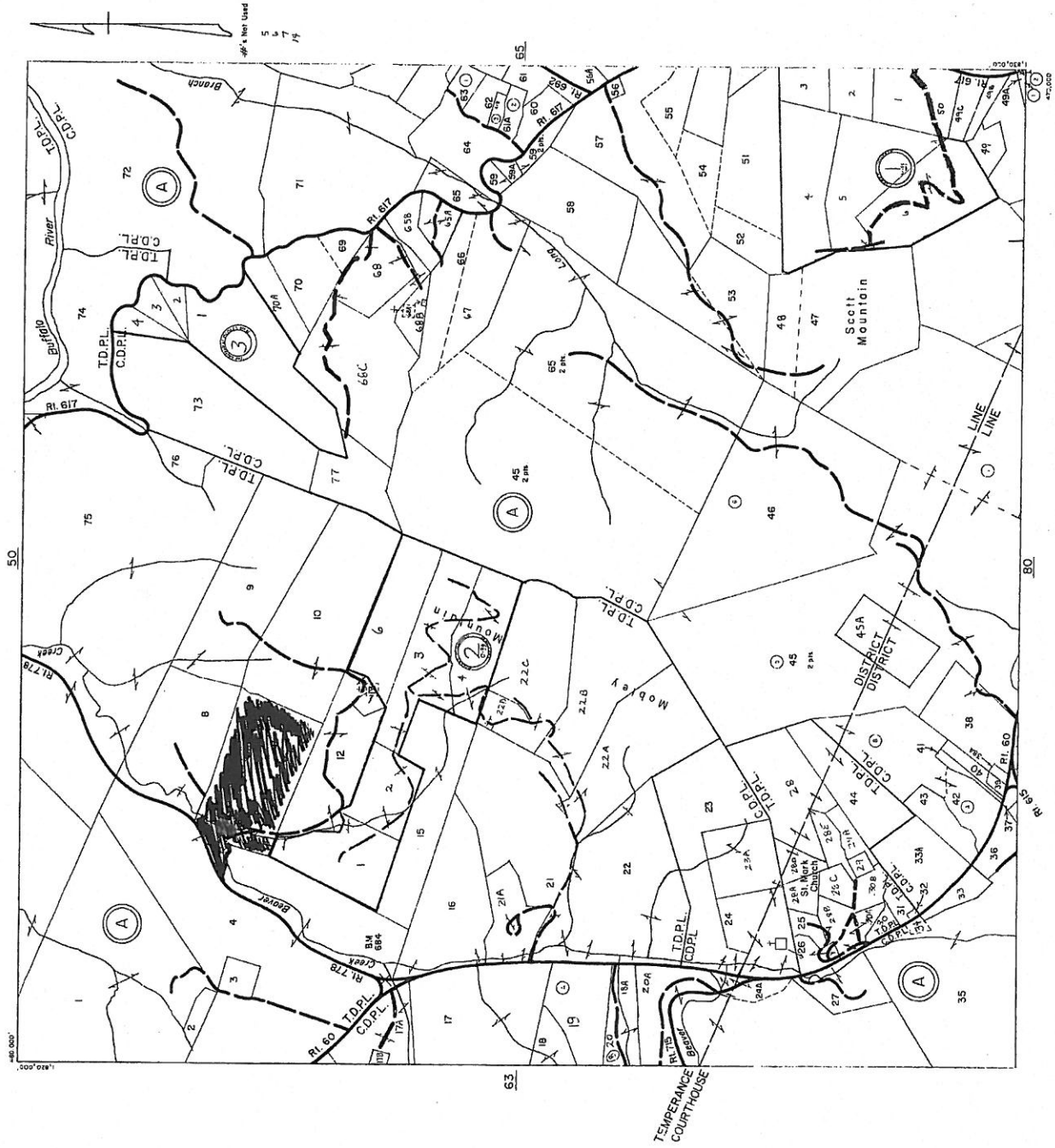
GRAVEL  
CULVERT BRIDGE

107.82' (TOTAL N29°08'34"W  
IRON PIN SET IN ROCK PILE ON LINE AT +76

HEREBY CREATING A 20' ACCESS EASEMENT FOR INGRESS AND EGRESS TO



AMHERST COUNTY



Amherst County

Search Locality

# VamaNet

## Virginia Mass Appraisal Network

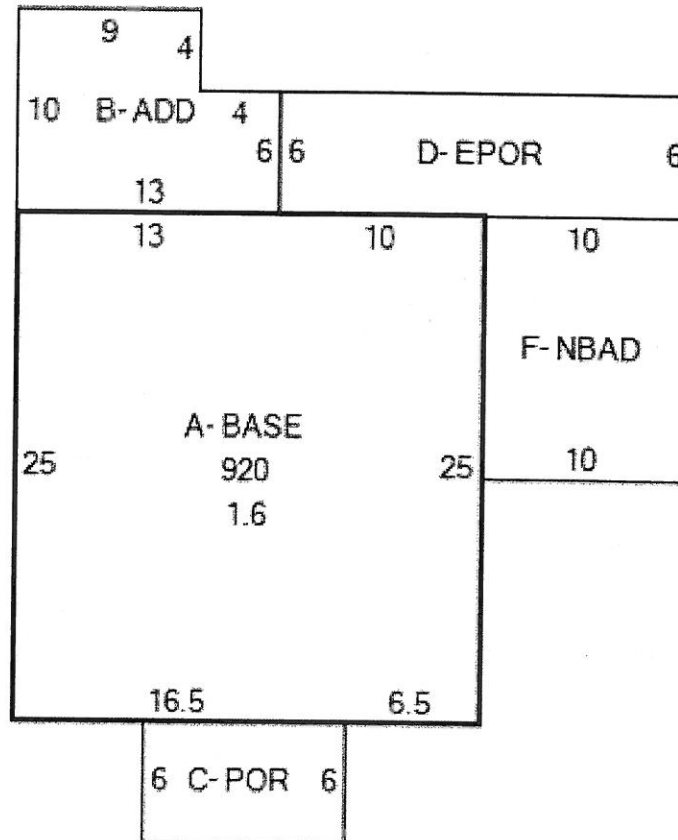
[Home](#) [Search](#) [Contact VamaNet](#) [Commissioners](#) [Localities](#) [FAQs](#) [About This Site](#)

Sketch Index  
Map No. 64 A 11  
Building 1

Sect	Type	Stories	SqFt
A	Main Structure	1.60	920
B	Addition	1.00	114
C	Porch	1.00	60
D	Enclosed Porch	1.00	120
F	Add W/no Bsmt	1.00	130

This Sketch only represents the Exterior of the Structure and does not contain any Internal structural details.

Click the image for actual size view.



**-Property Information- -Sales Information-**

If you encounter any difficulties with this site, please e-mail the Webmaster.  
All rights reserved, Copyright© 2013

Dimensions

24  
24 x 10 = 300 square feet



Amherst County

  
Search Locality

# VamaNet

## Virginia Mass Appraisal Network

[Home](#) [Legal](#) [Contact VamaNet](#) [Commissioners](#) [Localities](#) [FAQ](#) [About this Site](#)**Property Information** - Tax Map# 64 A 11 - Account# 9711Property Owner:  
Toliver Kinkle W Jr & Lula MLegal Description:  
On Mobleys Mtn Off Rt 778  
See Db 1191-719  
64 A 11[View Sketch](#)  
(Building 1)Owners Address:  
P O Box 1123  
Amherst Va  
Amherst, Va 24521

Prior Assessment:

71,300

Zoned:  
A1Total Land Area:  
27.841Acres**Assessment Values:**Building 1

34,060

Other Improvements:

0

Land Value:

61,300

Calculated Value:

95,360

Rounded Taxable Value:

95,400

Physical Location:  
129 My Way  
Amherst, Va 24521Magisterial District:  
Temperance

---

**-Property Information- -Sales Information-**

---

If you encounter any difficulties with this site, please e-mail the Webmaster.  
All rights reserved, Copyright© 2013

Exhibit (A)



290-13

Amherst County  
Amherst VA 24521  
LIEN AGENT:

BUILDING PERMIT

PERMIT NUMBER: 0000290 - 2013  
USBC: 2009  
APPLICATION DATE: 7/10/2013  
ISSUANCE DATE: 7/10/2013  
RENEWAL DATE:  
DATE: 7/10/2013

OWNER NAME/ADDRESS  
FRY MARGARET T. SHAW  
P O BOX 229  
MADISON HEIGHTS, VA 24572  
  
PHONE: 929-2004

SITE ADDRESS  
438 THOMAS ROAD

CONTRACTOR NAME/ADDRESS  
ALLENS MOBILE HOMES  
ROUTE 4  
RUSTBURG, VA 24588  
  
PHONE: 804 821 2760

RE ACCOUNT#:  
TAX MAP NO.:  
DESCRIPTION OF CONSTRUCTION LOCATION  
LOT: 3 BLOCK: 1 SECTION: 155 BLDG NO.:

SET-BACKS:  
FRONT: 40' BACK: 25'  
RIGHT: 10' LEFT: 10'  
CNTR : FRTGE:  
HEALTH PERMIT NO.: OK  
FLOODPLAIN: N  
AREA: ELON  
RIGHT-OF-WAY:  
DISTRICT: ELON  
SUB-DIVISION:  
ZONE: R2 GENERAL RESIDENTIAL  
S/E CUP NO.: SITE PLAN:

DIRECTIONS TO SITE: 438 THOMAS ROAD  
DOUBLEWIDE, 3 BEDROOMS, 2 BATHS, AND NO BASEMENT

USE GROUP: RESIDENTIAL R-5  
CNST.TYPE:  
USE CODE: doublewide home  
NATURE/WRK: USE GROUP R-5 DOUBLEWIDE, CONSTRUCTION TYPE 5-B  
SQ FEET: 1248

BUILDING PERMIT

Typ. Frame	WOOD	Typ. Heat	ELEC	Ownership	PRIVATE	Width	
Length		Wat. Pub.	X	Wat. Priv.		Cent Air	X
unf-base.	NONE	stories	1	Sq.Footage	1248	fin-base.	
Garage		# Bedrooms	3	#Part. Bth		#Full Bth	2
Asbes.Insp		Sewer	PRIVATE				
Plumber		Electrician	ALLENS			Drywall	
Heat/Air		Architect				Engineer	

JOB VALUE: 50,000.00

PERMIT FEE: 153.00

I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by them to make this application as his authorized agent and we agree to conform to all applicable laws of this jurisdiction. 24 hour notice required on all inspections. CALL 946-9302

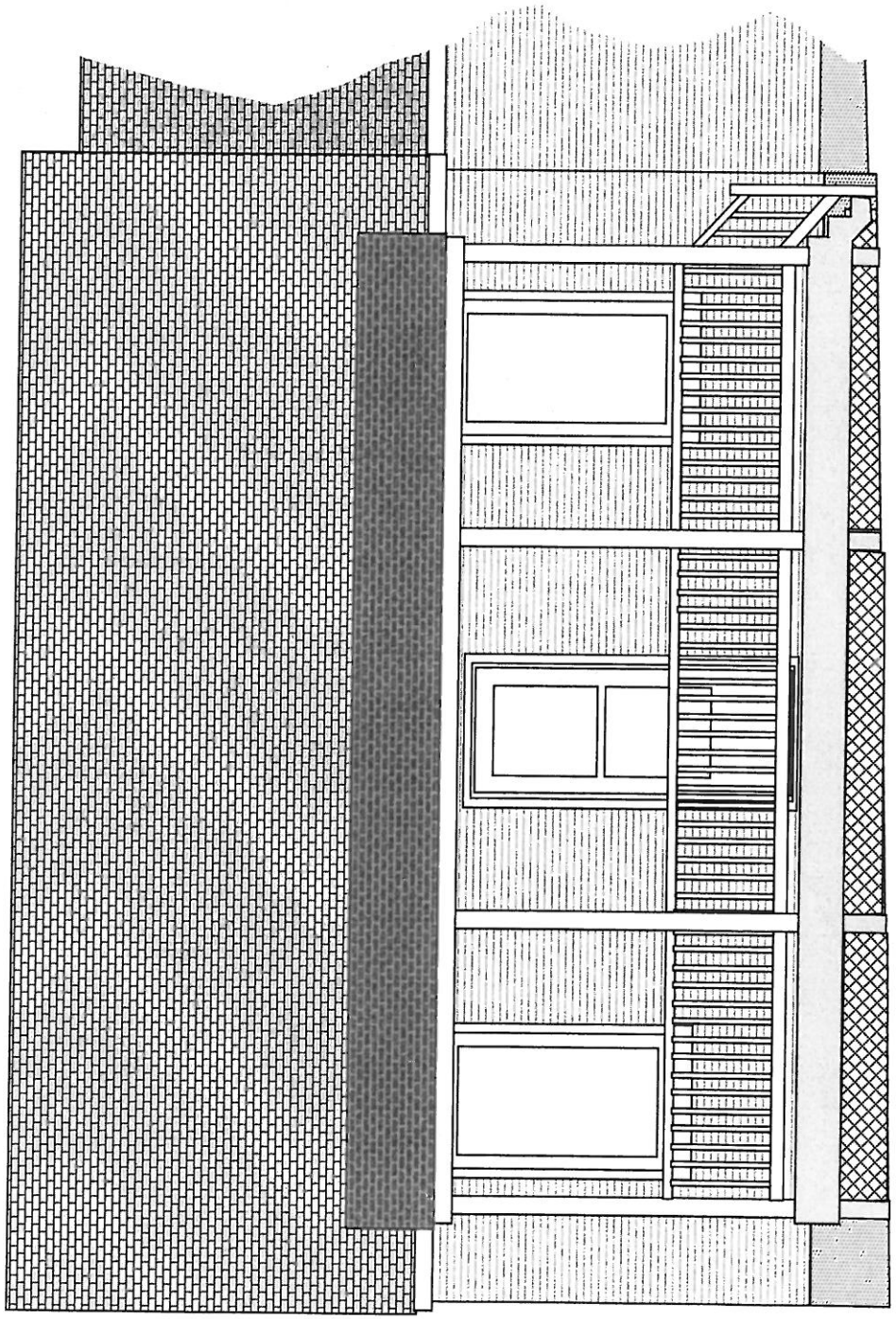
Kenneth Campbell, Building Official

TOTAL FEES: 153.00

REQUIRED SIGNATURES

Margaret T. Shaw-Fry  
OWNER/CONTRACTOR

CRIPPLED



## 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.

Rentel Talin 10/18/2013

Property Owner Signature

Date

Property Owner Signature

Date

Agent Signature

Date

Agent Signature

Date