

## **NOTICE OF MEETING**

### **AMHERST COUNTY BOARD OF ZONING APPEALS**

The Amherst County Board of Zoning Appeals will hold a public hearing on Thursday, April 9, 2015, 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.

2015A-01      Request by C.T. Wingfield, agent for Mr. & Mrs. James C. Irvin, for approval of a variance from Section 804(a) of the Amherst County Zoning & Subdivision Ordinance to reduce the setback from the boundary line of land within the P-1 Public Lands District, owned in conjunction with any current or designated future site of a lake or reservoir by the Amherst County Service Authority, from two hundred (200) feet to seventy (70) feet, to allow for the construction of a single-family dwelling. The request is referenced by a drawing submitted by the applicant. The property is zoned R-1 Limited Residential District and is located adjacent to 249 Graham Creek Road (Route 676) and is further identified as tax map number 136-A-93.

# ZONING PUBLIC NOTIFICATION

Case: 2015A-01

Board/Commission: Board of Zoning Appeals

Public Hearing Dates: April 9, 2015

Applicant: C.T. Wingfield  
3975 S. Amherst Hwy  
Madison Heights, VA 24572

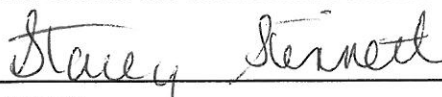
Property Owner  
James C. Irvin  
249 Graham Creek Rd  
Madison Heights, VA 24572

Tax Map Number: 136-A-93

Adjoining Property Owners:

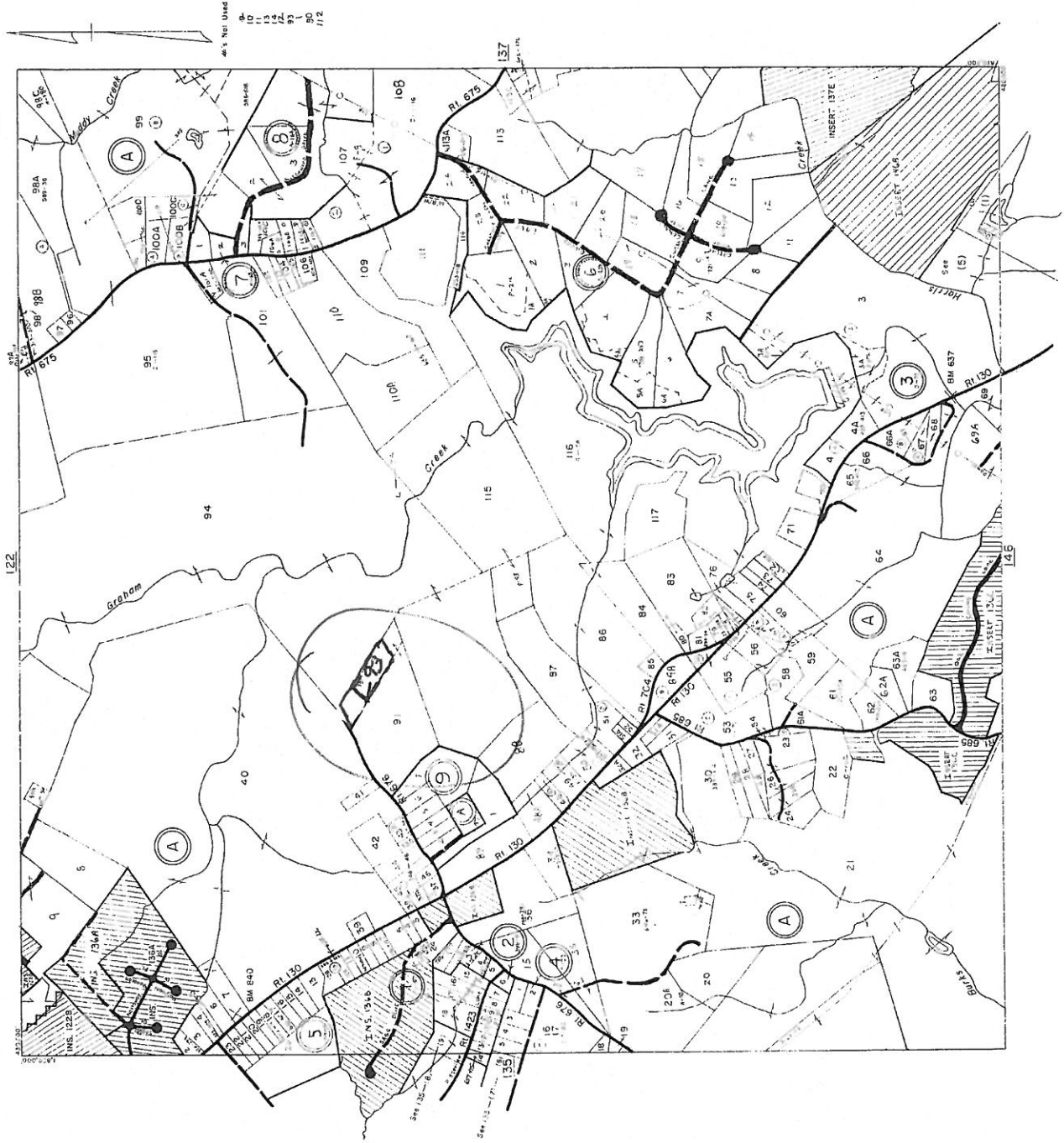
Tax Map # 136-A-91		
Shannon H. & Frank Knight Mayo Jr		
188 Graham Creek Rd		
Madison Heights, VA 24572		
Tax Map # 136-A-94,110A,115		
Amherst Cty Service Authority		
PO Box 100		
Madison Heights, VA 24572		
Tax Map # 136-A-40		
Raymond & Malcom Wills		
2002 Elon Rd		
Madison Heights, VA 24572		

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)  
March 11, 2015 (Date)

AMHERST COUNTY



SECTION 136

ELON DISTRICT



**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**

C.T. Wingfield

Applicant Name

3975 S AMHERST HWY    Madison Heights    VA    24572  
Applicant Address                      City/Town                      State                      Zip Code

434-660-0170                      434-929-8027                      wct21@msn.com  
Applicant phone number                      Applicant fax number                      Applicant E-Mail

You are the (x) 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

James C. Irvin

Property Owner Name

249 Graham Creek Rd.    Madison Heights    VA    24572  
Property Owner Mailing Address                      City/Town                      State                      Zip Code

434-386-6447  
Property owner telephone number                      Property owner fax number                      Property owner E-Mail

**Location of Property**

Graham Creek Rd.                      136-A-93  
Street Address                      Tax parcel ID number

**General Description of Property**

2.87 Acres - Unimproved Lot

**When and how did you acquire the property?**

1999 - Purchase from private individual

Current Use(s) of Property  
Single Family Residential

Proposed Use(s) of Property  
Single Family Residential

Total Acreage: 2.87

Check all categories that apply:

Public water \_\_\_\_\_ Private wells X  
Public sewer \_\_\_\_\_ On-site septic systems X 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:		2.87 acres		
Lot width:		212.62'		
Front yard setback:				
Side yard setback:	804(a)	70'	200'	130' <del>155'</del> NE line
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.

2.872 Acres cannot be improved by sideline setback of 200'. Set back line is shown  
in yellow on attached plat.

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

Hardship is not shared generally as adjacent properties are improved.

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 character of the district will not be changed by the granting of the variance.

The subject lot will be improved residentially.

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.

 2-20-15  
\_\_\_\_\_  
Property Owner Signature                      Date

\_\_\_\_\_  
Property Owner Signature                      Date

 2-20-15  
\_\_\_\_\_  
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. 2015A-01

Actions Taken:

Austin Mitchell  
County Official Receiving Application

3-2-15  
Date

Stacey Starnett  
Public Hearing fee received by

3-2-15  
Date

Application returned for correction/additional information

Date

Amended application received by

Date

New Era Progress  
Public Hearing advertised in

Date(s)

S. Starnett

3-11-15

Adjacent property owner(s) notified by mail

Date

Action by Planning Commission (if applicable)

Date

Action by Board of Zoning Appeals

Date





**Wingfield Real Estate, Inc.**  
**Atlantic Coast Auction & Realty Group**

3975 S Amherst Hwy Ste 201  
Madison Heights, VA 24572

Office: 434 929 1623  
Fax: 434 929 8027

[www.wingfield-online.com](http://www.wingfield-online.com)  
[www.atlanticcoastauctions.com](http://www.atlanticcoastauctions.com)

February 20, 2015

Board of Zoning & Appeals  
Amherst, VA 24521

Dear Board of Zoning & Appeals:

I, Gloria Irvin, POA for James Irvin, give consent for C. T. Wingfield to act as  
my agent for this Board of Zoning and Appeals hearing.

A handwritten signature in dark ink, appearing to read "Gloria Irvin".

Gloria Irvin, POA for  
James Irvin





**Amherst County**  
**Department of Planning and Zoning**  
**Austin R. Mitchell, Assistant Zoning Administrator/Planner**

**Variance Review**  
**Staff Report**  
**April 9, 2015**

**RE: Case #:** 2015A-01  
**Tax Parcel #:** 136-A-93  
**Magisterial District:** Elon  
**Lot Size:** 2.872 Acres  
**Zoning:** R-1 Limited Residential District

**Applicant:**  
C.T. Wingfield  
3975 S. Amherst Hwy.  
Madison Heights, VA 24572

**Property Owner:**  
James C. Irvin  
249 Graham Creek Road  
Madison Heights, VA 24572

**Request:**  
Request by C.T. Wingfield, agent for Mr. & Mrs. James C. Irvin, for approval of a variance from Section 804(a) of the Amherst County Zoning & Subdivision Ordinance to reduce the setback from the boundary line of land within the P-1 Public Lands District, owned in conjunction with any current or designated future site of a lake or reservoir by the Amherst County Service Authority, from two hundred (200) feet to seventy (70) feet, to allow for the construction of a single-family dwelling. The request is referenced by a drawing submitted by the applicant. The property is zoned R-1 Limited Residential District and is located adjacent to 249 Graham Creek Road (Route 676) and is further identified as tax map number 136-A-93.

**Summary:**

Request by C.T. Wingfield, agent for Mr. & Mrs. James C. Irvin, for approval of a variance from Section 804(a) of the Amherst County Zoning & Subdivision Ordinance to reduce the setback from the boundary line of land within the P-1 Public Lands District, owned in conjunction with any current or designated future site of a lake or reservoir by the Amherst County Service Authority, from two hundred (200) feet to seventy (70) feet, to allow for the construction of a single-family dwelling. The request is referenced by a drawing submitted by the applicant. The property is zoned R-1 Limited Residential District and is located adjacent to 249 Graham Creek Road (Route 676) and is further identified as tax map number 136-A-93.

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 is bordered on the northeast by land that is zoned P-1 Public Lands District that is owned by the Amherst County Service Authority (ACSA) in conjunction with the existing Graham Creek Reservoir. According to aerial imagery, the property appears to contain an existing shed. Staff is not aware of how or when the shed was placed. The parcel is zoned R-1 Limited Residential District. When a parcel is adjacent to such ACSA property, the County requires that all structures shall be placed at a distance that is a minimum of two hundred (200) feet from the ACSA property. The setback requirement in the R-1 District is fifty (50) feet from the front property line, which would be the northwest boundary, fifteen (15) feet from the side property line on the southwest, and thirty-five (35) feet from the rear property line on the southeast boundary. According to a plat submitted by the applicant, the collective setback requirements that surround this property would only yield a narrow buildable area of approximately six (6) feet in width at its widest point, thereby prohibiting the owner from building a single-family dwelling on the property; therefore a variance from the regulations is sought by the applicant.

The owner wishes to build a single-family dwelling on the property that would be seventy (70) feet from the ACSA property. The proposed dwelling is referenced on a plot plan that was submitted, which indicates that the structure would meet setbacks from the R-1 Limited Residential District from the other three property boundaries. However, the dwelling cannot meet the requirements of two hundred (200) feet from the ACSA property. While the dwelling cannot meet the required setback, the dwelling would meet the setback requirement found in Section 710.06.1(e) of three hundred fifty (350) feet from the normal pool elevation of Graham Creek Reservoir. According to the Amherst County GIS, the proposed dwelling is over one thousand (1000) feet from the reservoir. The variance is requested to reduce the setback from the ACSA property while meeting the required setbacks in the R-1 Limited Residential District.

**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.

Currently, the property appears to contain a shed and borders ACSA property on one (1) side. The property is zoned R-1 Limited Residential District, and the applicable setbacks in that district will be met. The required setback from the ACSA property of two hundred (200) feet cannot be met due to the narrowness of the lot in relation to the setbacks from the ACSA property. The said setback is so great that the requirement does not allow the applicant to build a dwelling in any single location on the 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.

According to the Amherst County GIS, of the parcels that adjoin the ACSA property associated with the Graham Creek Reservoir, approximately half are also zoned R-1 Limited Residential District while the remaining adjoining parcels are zoned A-1 Agricultural Residential District. It appears that the parcel for which the variance is requested is the only parcel that does not currently contain a dwelling that would require a variance to construct a dwelling within the two hundred (200) foot setback from the ACSA property.

- 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 authorization of the variance should not be of a substantial detriment to the adjacent property because the applicant intends to meet the setback requirements prescribed in the R-1 Limited Residential District. Additionally, the location of the proposed dwelling would be greater than the three hundred fifty (350) foot setback requirement from the normal pool elevation of Graham Creek Reservoir that is required in Section 710.06.1(e) of the Zoning and Subdivisions Ordinance.

#### 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 property was acquired by the owner in 1999. According to the plat submitted by the applicant, there was a “basement living quarters” on the property in 1978, however this appears to have been removed. 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).

**The required setback from the ACSA property of two hundred (200) feet cannot be met due to the narrowness of the lot in relation to the setbacks from the ACSA property. The said setback is so great that the requirement does not allow the applicant to build a dwelling in any single location on the lot.**

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-A-93 to reduce the setback from the boundary line of land within the P-1 Public Lands District, owned in conjunction with any current or designated future site of a lake or reservoir by the Amherst County Service Authority, from two hundred (200) feet to seventy (70) feet, to allow for the construction of a single-family dwelling.
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