

## **NOTICE OF MEETING**

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

The Amherst County Board of Zoning Appeals will hold a public hearing on Thursday, July 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-03      Request by Joseph A. Covington, for approval of multiple variances from Sections 804 and 602.02(2) of the Zoning & Subdivision Ordinance to reduce the front yard setback from the centerline of Muddy Branch Road from seventy-five (75) feet to approximately thirty-five (35) feet, to reduce the rear yard setback from fifty (50) feet to approximately twenty-three (23) feet, and to expand the existing nonconforming structure by greater than fifty (50) percent of the original nonconforming structure, to allow for an addition to an existing single-family dwelling. The request is referenced by drawings submitted by the applicant. The property is located at 266 Muddy Branch Road (Route 692), and is further identified as being tax map parcel number 65-A-10.



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

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

**RE: Case #:** 2015A-03  
**Tax Parcel #:** 65-A-10  
**Magisterial District:** Temperance  
**Lot Size:** 1.01 Acres  
**Zoning:** A-1 Agricultural Residential District

**Applicant:**  
Joseph A. Covington  
266 Muddy Branch Road  
Amherst, VA 24521

**Property Owner:**  
Same as Applicant

**Request:**

Request by Joseph A. Covington, for approval of multiple variances from Sections 804 and 602.02(2) of the Zoning & Subdivision Ordinance to reduce the front yard setback from the centerline of Muddy Branch Road from seventy-five (75) feet to approximately thirty-five (35) feet, to reduce the rear yard setback from fifty (50) feet to approximately twenty-three (23) feet, and to expand the existing nonconforming structure by greater than fifty (50) percent of the original nonconforming structure, to allow for an addition to an existing single-family dwelling. The request is referenced by drawings submitted by the applicant. The property is located at 266 Muddy Branch Road (Route 692), and is further identified as being tax map parcel number 65-A-10.

**Summary:**

Request by Joseph A. Covington, for approval of multiple variances from Sections 804 and 602.02(2) of the Zoning & Subdivision Ordinance to reduce the front yard setback from the

centerline of Muddy Branch Road from seventy-five (75) feet to approximately thirty-five (35) feet, to reduce the rear yard setback from fifty (50) feet to approximately twenty-three (23) feet, and to expand the existing nonconforming structure by greater than fifty (50) percent of the original nonconforming structure, to allow for an addition to an existing single-family dwelling. The request is referenced by drawings submitted by the applicant. The property is zoned A-1 Agricultural Residential District and is located at 266 Muddy Branch Road (Route 692), and is further identified as being tax map parcel number 65-A-10.

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, the original dwelling was constructed in 1922. 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 Section 804 of the Zoning Ordinance for the front yard and rear yard setbacks. Additionally, 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 existing structure is 1,110 square feet which would yield an allowed expansion of 555 square feet. The proposed addition will be a total of 722 square feet. The proposed addition is therefore greater than fifty (50) percent of the original structure and a variance from this requirement is required.

The owner wishes to build an addition to the existing single-family dwelling on the property that would be thirty-five (35) feet from the centerline of Muddy Branch Road and twenty-three (23) feet from the rear property line. The required setbacks in Section 804 are seventy-five (75) and fifty (50) feet, respectively. The width of the property in relation to the required setbacks, including being bordered on the rear by a 68.06 acre parcel which results in the fifty (50) foot setback, would not allow for an addition to be constructed in any location without the need for a variance. According to the applicant, when the property was purchased in 2005 he was the sole occupant. The applicant is now married and has two sons and needs the addition for more space for the growing family.

**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 zoned A-1 Agricultural Residential District. According to the proposed drawing, the applicable setbacks from both the front and rear yard would not be met and could not be met in any location for an addition to the existing dwelling.**

The proposed addition is 722 square feet. According to the applicant, the addition is needed for additional space for a growing family. The proposed addition is greater than fifty (50) percent of the size of the existing dwelling.

**“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 applicant and the Amherst County GIS, most properties in the area are larger tracts and are not constrained by setbacks. Additionally, this tract is narrower than other properties in the vicinity. It appears that the existing dwelling is the only dwelling on Muddy Branch Road that would require a variance to construct any addition.

- 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 adjacent to a vacant field (TM# 65-A-11) on the rear. The applicant owns the property across Muddy Branch Road. The addition will not result in any additional traffic or change of use of the property. Additionally, staff notes that other structures on Muddy Branch Road are similar in size, and use, as the proposed addition to the existing dwelling. Staff believes that the granting of the variance request will not change the character of the district, since the single-family dwelling has existed since 1922 and 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”*;

According to the Commissioner of the Revenue, the original dwelling was constructed in 1922. The existing structure has served as a single-family dwelling since its construction. The applicant purchased the property in 2005 as the sole occupant and has lived in the dwelling with the same footprint since that time. The occupant now has a wife and two sons and the family is in need of more space. 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 setbacks from the centerline of Muddy Branch Road and from the rear property line cannot be met due to the narrowness of the lot. The said setback is so great that the requirement does not allow the applicant to build an addition to the existing dwelling in any location.**

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. 65-A-10 to reduce the front yard setback from the centerline of Muddy Branch Road from seventy-five (75) feet to approximately thirty-five (35) feet, to reduce the rear yard setback from fifty (50) feet to approximately twenty-three (23) feet, and to expand the existing nonconforming structure by greater than fifty (50) percent of the original nonconforming structure, to allow for an addition to an existing 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

# ZONING PUBLIC NOTIFICATION

Case: 2015A-03

Board/Commission: Board of Zoning Appeals

Public Hearing Dates: July 9, 2015

Applicant: Joseph A. Covington  
266 Muddy Branch Rd  
Amherst, VA 24521

Property Owner  
Joseph A. Covington  
266 Muddy Branch Rd  
Amherst, VA 24521

Tax Map Number: 65-A-10

Adjoining Property Owners:

Tax Map # 65-A-8	Tax Map # 65-A-2A	
Joseph A. Covington	Family Cemetary	
266 Muddy Branch Rd		
Amherst, VA 24521		
Tax Map # 65-A-11		
Floyd & Iris Evans		
254 Long Branch Dr		
Amherst, VA 24521		
Tax Map # 65-A-7,9 & 65-1-1,2		
Wayne & Barbara Bailey		
127 Cherry Hill		
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.

\_\_\_\_\_  
Stacey Stinnett (Signature)

Administrative Assistant (Title)  
22-Jun-15 (Date)

# AMHERST COUNTY



SECTION 65

TEMPERANCE DISTRICT

REVISED 2/3/78

MADE BY THE VIRGINIA DEPARTMENT OF HIGHWAYS



Covington

266 Nuddy Branch Rd

Property line

more than  
50'

existing  
porch  
to be  
closed in

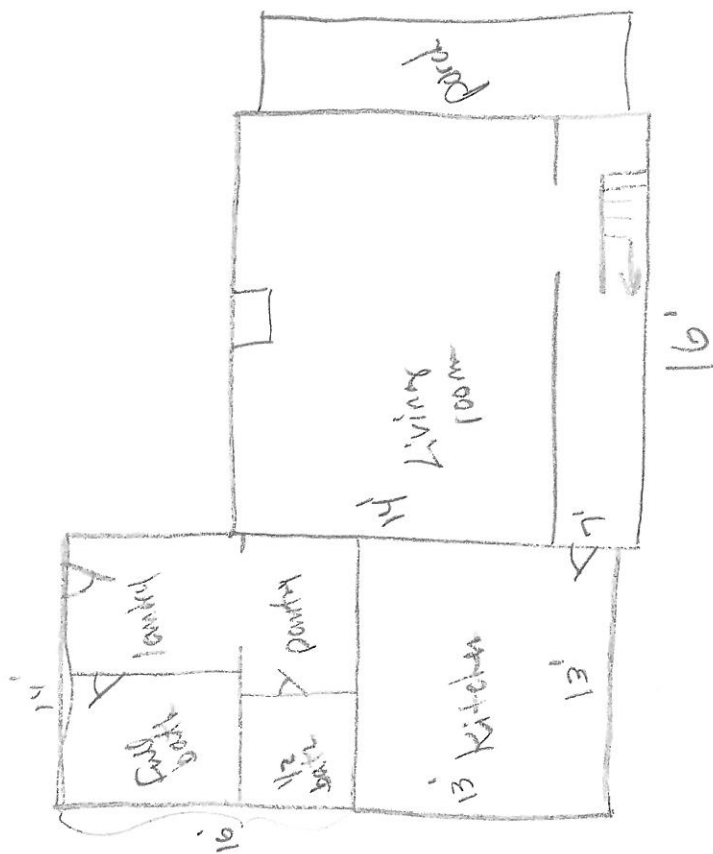


Nuddy Branch Road

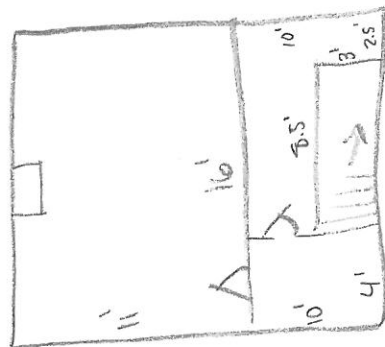


existing house

1110 sq ft

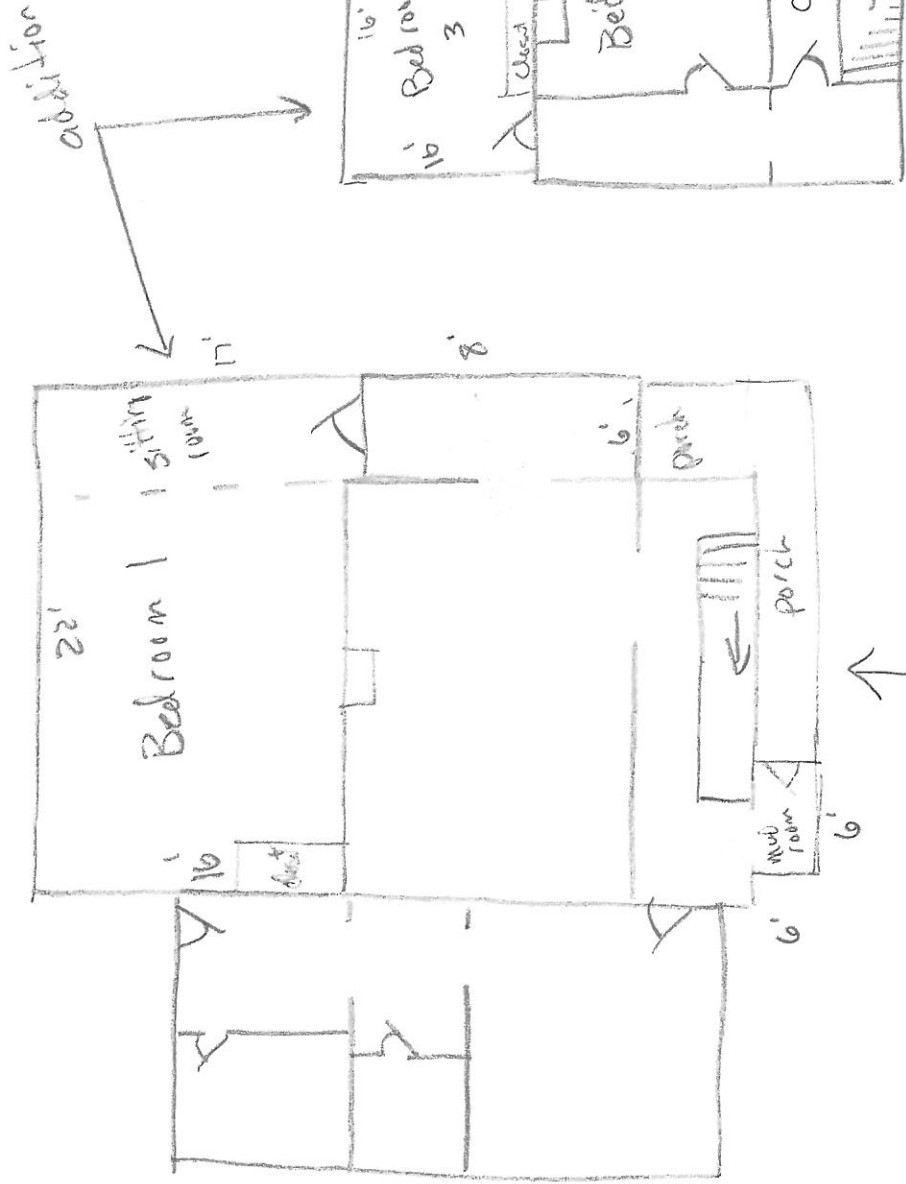


2<sup>nd</sup> floor



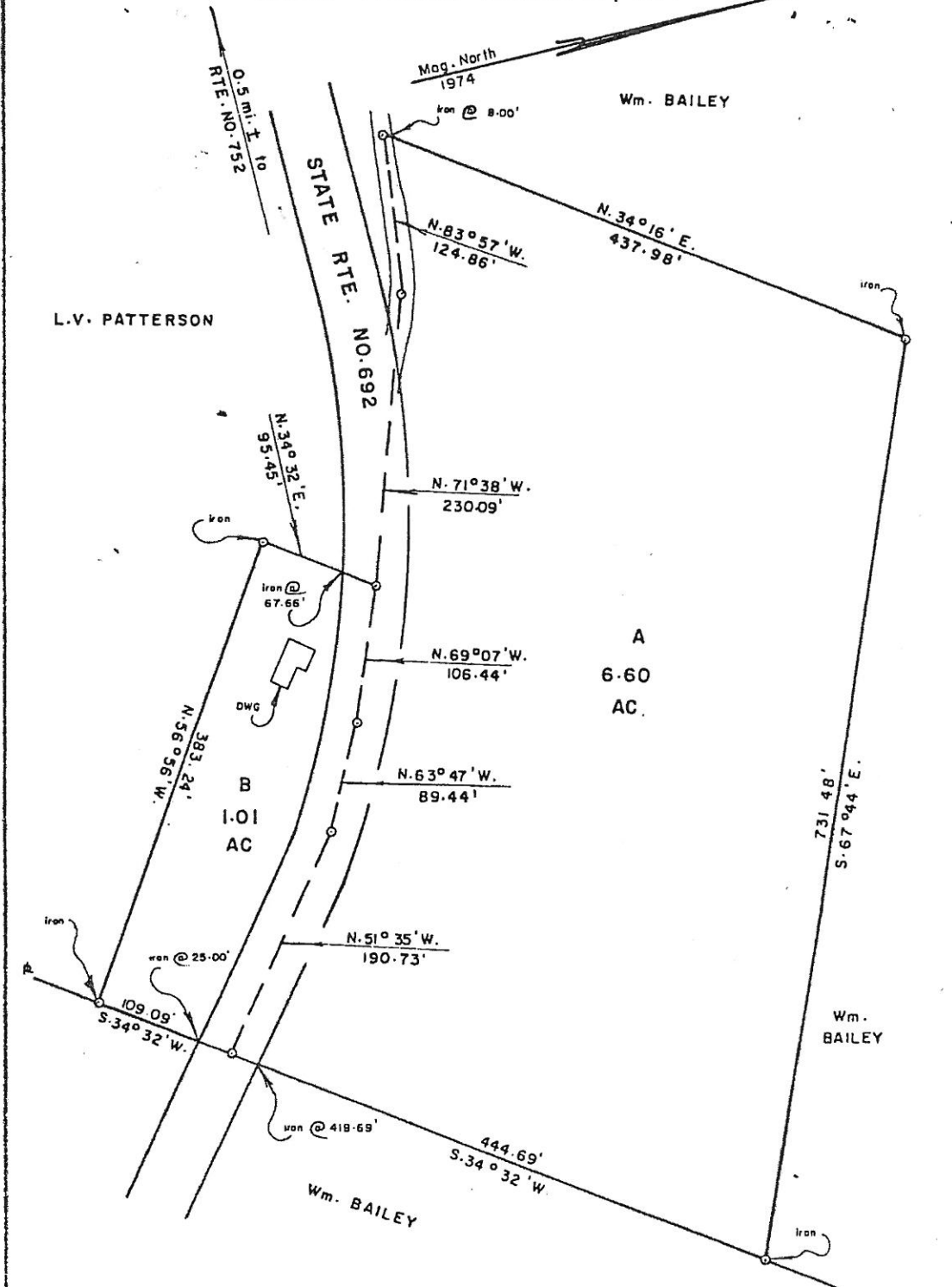
# proposed addition

722 sq ft  
 Includes proposed  
 addition in 2 story  
 plus proposed entry  
 room



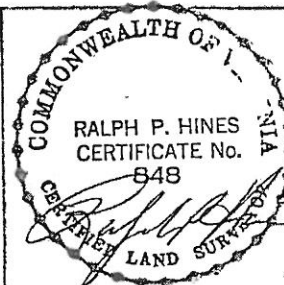
2nd Floor

# RALPH P. HINES SURVEYOR, INC.



To all parties interested in title to premises surveyed. This plat agrees with found monuments, deed descriptions, ground evidence, and local witnesses as near as possible.

SCALE 1 in. = 100 ft. DATE MARCH 21, 1974 TOTAL ACREAGE 7.61 AC.  
 REQUESTED BY WILLIAM BAILEY  
 OWNER WILLIAM BAILEY  
 LOCATED IN TEMPERENCE DISTRICT, AMHERST COUNTY, VIRGINIA  
 PURPOSE  
 To cut two parcels of land out of a 56 acre tract.





pd cl  
2015A-03

**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**

Joseph A. Covington  
Applicant Name

266 Muddy Branch Road Amherst VA 24521  
Applicant Address City/Town State Zip Code

(434) 363-6307 joeycovington@hotmail.com  
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

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**

65 A 10  
Street Address Tax parcel ID number

Single family 1920's farm house  
General Description of Property

purchase Jan 20 2005  
When and how did you acquire the property?

**Current Use(s) of Property**residence**Proposed Use(s) of Property**residenceTotal Acreage: 1.01

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:	804	40'	75'	35'
Side yard setback:				
Rear yard setback:	804	27'	50'	23'
Public street frontage:				
Other (write in):	601.02.2	722 sq. ft.	555 sq. ft.	167 sq. ft.

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 attached page

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

other properties in the vicinity are large parcels and do not share this hardship.

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.

this authorization will not affect the adjacent property and the character of the district will not change.

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.

Joseph A. Covington 5/28/15  
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. 2015A-03

Actions Taken:

Jeremy Bryant  
County Official Receiving Application

6/1/15  
Date

Jeremy Bryant  
Public Hearing fee received by

6/1/15  
Date

Application returned for correction/additional information

Date

Amended application received by

Date

Amherst New Era Progress

6/25/15 & 7/2/15

Public Hearing advertised in

Date(s)

S. Steineth

6/22/15

Adjacent property owner(s) notified by mail

Date

Recommendation for approval

6/18/15

Action by Planning Commission (if applicable)

Date

Action by Board of Zoning Appeals

Date

# Variance / Covington

1. The strict application of the ordinance requiring 50' set back in the rear of my property would produce undue hardship.

When I purchased this property 10 years ago it was only me. But now I have a wife and 2 nine year old boys. My family has grown and so have my children.

We do not have enough space in what is a rather small farmhouse. We need to add a bedroom. Thank you for your consideration.