



COUNTY OF AMHERST



Department of Community Development

Division of Planning & Zoning

Dylan M. Bishop, Assistant Zoning Administrator/Planner

**Variance Review
Staff Report
February 14, 2019**

RE: Case #: 2019-018
Tax Parcel #: 21-A-62
Address: 511 Dillard Hill Road
Magisterial District: Temperance
Lot Size: 1.75
Zoning: A-1 Agricultural Residential District

Applicant:

Terry L. Thompson
3316 Patrick Henry Highway
Piney River, VA 22964

Property Owner:

Judith M. Critzer
67 Featherstone Drive
Lyndhurst, VA 22952

Request:

Request by Terry L. Thompson for approval of a variance from Section 804. The purpose of the request is to place a single-family dwelling within the front yard setback.

The requested variance is for a single-family dwelling which will reduce the setback from the front yard requirement of 50 feet to 32 feet.

The property is located at 511 Dillard Hill Road and is further identified as tax map number 21-A-62.

Staff Comment(s):

Terry Thompson is considering purchasing the property located at 511 Dillard Hill Road. There is currently a singlewide manufactured home located on the property. Mr. Thompson is proposing to remove the manufactured home, and replace it with a stick-built single-family dwelling. The existing manufactured home is already 32 feet from the front property line, and is considered a nonconforming structure. When a nonconforming structure is moved, it loses its "grandfathered" status and thereafter must conform to current yard dimension requirements (Section 601). Because the applicant desires to remove the manufactured home and replace it with a new build, the current front yard setback of 50 feet applies.

State Code §15.2-2307 addresses the protected rights regarding the replacement of manufactured homes:

Nothing in this section shall be construed to prevent the land owner or home owner from removing a valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home. The owner of a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.

Terry Thompson is applying for a variance which will reduce the setback from the front yard requirements of 50 feet to 32 feet.

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; the residence is the principle use on the parcel and one accessory structure lies within the rear yard (staff has no knowledge of this structure). The northern portion of the lot is heavily wooded, is bounded on the east by Dillard Hill Road, and on the west by a creek. The southern portion of the lot is where the drainfield is located. The proposed location for the dwelling likely cannot be moved due to these features.

"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 lots that have frontage on Dillard Hill Road range in size from 1 acre to over 140 acres. These lots are deeper than the subject parcel, are not bounded as closely by a creek, and therefore do not share the same characteristics as other lots in the area.

- 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.

There is an existing dwelling on the property which Mr. Thompson is requesting to remove and upgrade. The proposed setback would remain the same that it has been since at least 1994.

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 applicant is considering purchasing the property from the current owner, dependent upon the ruling of this case. The manufactured home was existing on the lot when it was purchased by the current owner, therefore staff believes the property was 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 lot is a very narrow lot that is bounded by a creek on the west, Dillard Hill Road on the east, an existing drainfield to the south, and a wooded area to the north.

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.

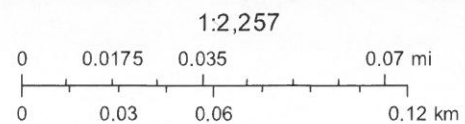
Should the Board of Zoning Appeals approve this request; Staff recommends the following conditions:

1. The variance is granted for Tax Map Parcel 21-A-62 for a single-family dwelling that will reduce the setback from the front yard requirements of 50 feet to 32 feet.
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:
Tax Parcel Map
Variance Request Application
Site Sketch

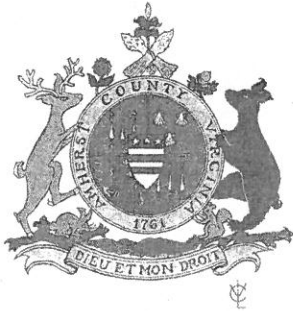


January 15, 2019



The GIS data is proprietary to the County, and title to this information remains in the County. All applicable common law and statutory rights in the GIS data including, but not limited to, rights in copyright, shall and will remain the property of the County. Information shown on these maps are derived from public records that are constantly undergoing change and do not replace a site survey, and is not warranted for content or accuracy.

2019-018



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.

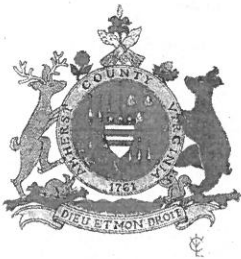
FILING/FEES/DEADLINES

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

APPEAL

A decision by the BZA may be appealed in accordance with Section 1402.06 of the Amherst County Zoning Ordinance. If you choose to appeal this decision, such action shall occur within 30 days of the date of the Board's action.



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

TERRY L. THOMPSON
Applicant Name
3316 Patrick Henry Hwy VA. 22964
Applicant Address City/Town State Zip Code
434-942-8179
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

JUDITH CRITZER
Property Owner Name
67 Featherstone Drive Lynchburg VA 22952
Property Owner Mailing Address City/Town State Zip Code

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

Location of Property

511 Dillard Hill Rd. Lowersville VA 22967 21-A-62
Street Address Tax parcel ID number

General Description of Property

2/3 grass, rolling 5% + - grade

When and how did you acquire the property?

Purchased from Judith Critzer - in person - if
Variance is Approved. Will be

Current Use(s) of Property

Storage Shed 1- Family dwelling, garden spot

Proposed Use(s) of Property

1- family dwelling, garden, shed storage

Total Acreage: 1.75

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: Build a 26' wide X 50' Single Family Home

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	32'	50'	18'
Side yard setback:				
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.

yes it would, reason being with the lay of the land Any other site other than the present site where the existing 14'W x 70' Long is located now is not feasible. Drainfield is to the South. Stream in back

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

I have no reason to believe this variance will affect any adjoining properties. I have personally contacted all adjoining owners and they have no concerns.

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.

If granted, this variance allowing me to build my home on this site will enhance the aesthetics and value of this community, no detriment

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.

NON KNOWN

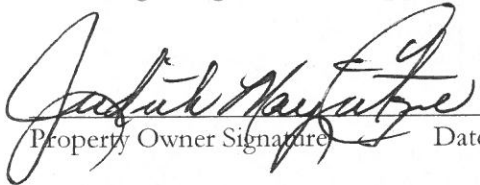
Application fee and other requirements

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).

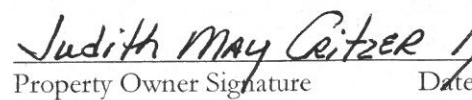
A survey plat of the property by a certified land surveyor must accompany this application. The scale should be 1"=100'.

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.



Property Owner Signature Date

 1/03/19

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. 2019-018

Actions Taken:

Jonathan Pugh

County Official Receiving Application

Jonathan Pugh

Public Hearing fee received by

Application returned for correction/additional information

Amended application received by

Public Hearing advertised in

Adjacent property owner(s) notified by mail

Action by Planning Commission (if applicable)

Action by Board of Zoning Appeals

11/9/19
Date

11/9/19
Date

Date

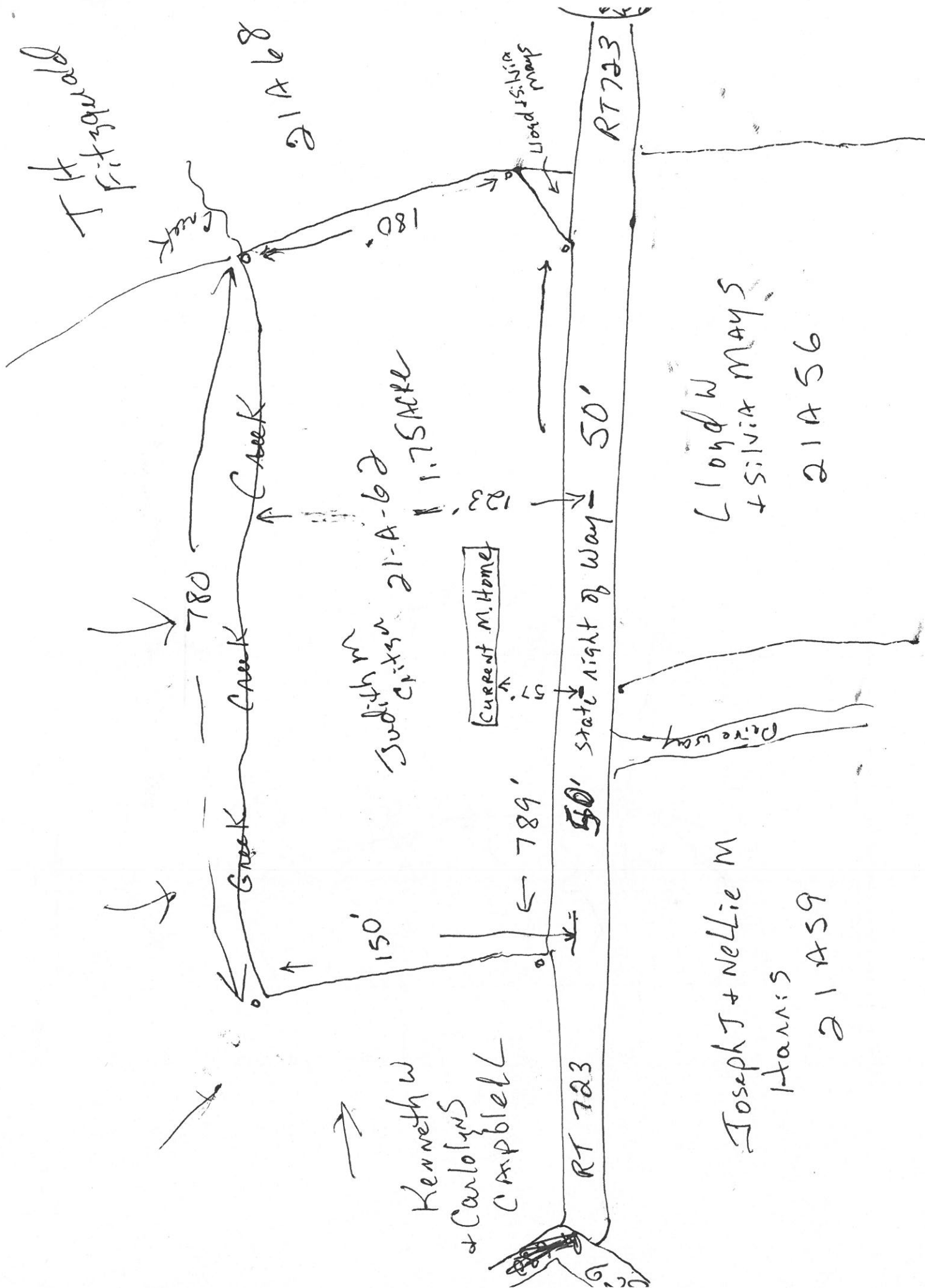
Date

Date(s)

Date

Date

Date



T + 2 square ft

21A68

Lloyd + Silvia Mays

RT 723

Judith M Crissan 21-A-62 1.75 Acre

Current M. Home

Lloyd W Mays + Silvia Mays

21A56

Joseph J + Nellie M Harris

21A59

Kenneth W + Carolyn Campbell

RT 723

Drive Way

50' state right of way 50'

789'

123'

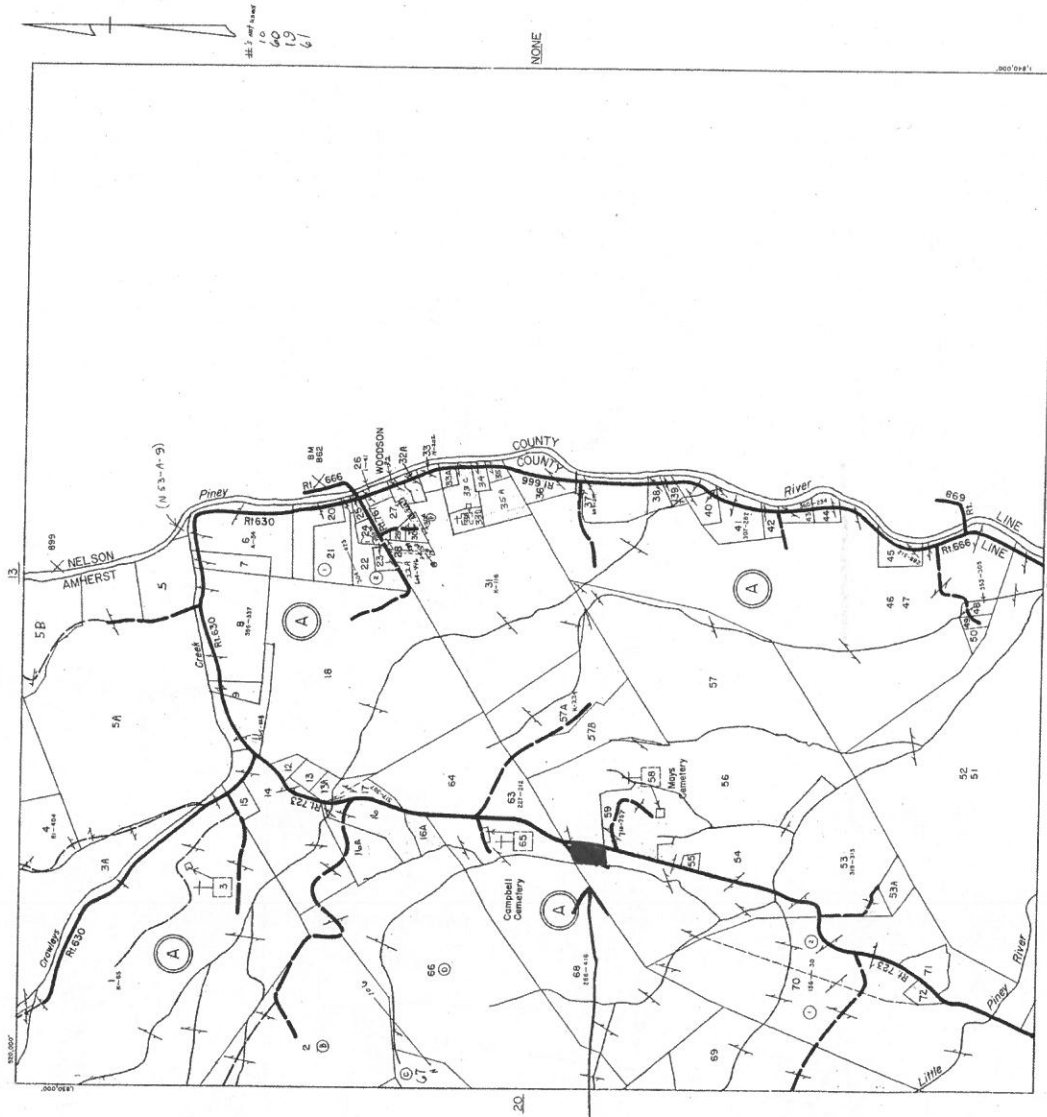
180'

780'

Creek

Creek

AMHERST COUNTY



SECTION 21

DISTRICT

REVISOR: DECEMBER 31, 1988