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

Variance Review
Staff Report
May 11, 2017

RE: **Case #:** 2017A-02
Tax Parcel #: 152-A-20
Magisterial District: Madison
Lot Size: 0.98 Acres
Zoning: A-1 Agricultural Residential District

Applicant:
Earl A. & Barbara T. Wood
135 Flossie Drive
Madison Heights, VA 24572

Property Owner:
Same as Applicant

Request:
Request by Earl A. & Barbara T. Wood, 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 Flossie Drive from seventy-five (75) feet to twenty-four (24) 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 135 Flossie Drive (Private Street), and is further identified as being tax map parcel number 152-A-20.

Summary:

Request by Earl A. & Barbara T. Wood, 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 Flossie Drive from seventy-five (75) feet to twenty-four (24) 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 135 Flossie Drive (Private Street), and is further identified as being tax map parcel number 152-A-20.

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 1954. 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 setback. 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 941 square feet which would yield an allowed expansion of 470 square feet. The proposed addition will be a total of 2,336 square feet, including a proposed deck. 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 twenty-four (24) feet from the centerline of Flossie Drive. The required setback in Section 804 is seventy-five (75) feet from the centerline. The entire existing structure lies within the required setback; therefore any addition to the dwelling would require a variance. According to the applicants, they have lived in the dwelling for five (5) years and purchased the property twenty (20) months ago. The owners wish to renovate and construct the proposed additions to the dwelling to make the home more handicap-accessible for the owners and other family members. The applicants also stated that there are drainage problems in the basement that can be helped with the proposed addition.

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 lot area of this property does not meet the minimum acreage requirements in Section 801 which requires A-1 lots to have a minimum of one (1) acre. Currently, the dwelling is a legal non-conforming structure. According to the proposed drawing, the applicable setbacks from the front yard setback would not be met and could not be met in any location for an addition to the existing dwelling.

The proposed addition is 2,336 square feet, including a proposed deck. The proposed addition is greater than fifty (50) percent of the size of the existing dwelling. According to the applicants, the addition is needed to make the dwelling more handicap-accessible and prevent drainage problems.

"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 property containing the existing dwelling is 0.98 acres, which is less than the minimum acreage requirements in Section 801 for the A-1 Agricultural Residential District. According to the applicant and the Amherst County GIS, most properties in the area are larger tracts and are not constrained by setbacks.

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 closest neighboring dwelling is approximately 300 feet from the proposed addition. The applicants stated that the neighbors are supportive of the proposed addition. The addition will not result in any additional traffic or change of use of the property. 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 1954 and will not be of a substantial detriment to adjacent properties.

<u>Additional Considerations:</u>

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 1954. The existing structure has served as a single-family dwelling since its construction. The applicants have lived in the dwelling for five (5) years, purchased the property in 2015 and have lived in the dwelling with the same footprint since that time. 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 front yard setback from the centerline of Flossie Drive cannot be met due to the location of the existing dwelling that was constructed prior to setback requirements. 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. 152-A-20 to reduce the front yard setback from the centerline of Flossie Drive from seventy-five (75) feet to approximately twenty-four (24) 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

2017A-02

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

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

EARL A. & BARBARA T. WOOD

Applicant Name

135 FLOSSIE DR. MADISON HEIGHTS VA. 24572

Applicant Address | City/Town | State | Zip Code

434-933-8424 | ZAPPERONE@gmail.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

EARL A. & BARBARA T. WOOD

Property Owner Name

135 FLOSSIE DR. MADISON HEIGHTS VA. 24572

Property Owner Mailing Address | City/Town | State | Zip Code

434-933-8424 | ZAPPERONE@Gmail.Com

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

Location of Property

152-A-20

Street Address | Tax parcel ID number

General Description of Property

When and how did you acquire the property?

PURCHASED 7-2016

Current Use(s) of Property Single Family Residential

Proposed Use(s) of Property Single Family Residential

Total Acreage: .98

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: Construct Front Deck on Front of house of 8FT. Currently Front of house is NOT 75 FT From Driveway

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	24'	75'	51'
Side yard setback:				
Rear yard setback:				
Public street frontage:				
Other (write in):	601.02#2	941 sq.ft	<50%	Proposed 2,336 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.**

Home has severe drainage Issues
Construction of home is NOT Conducive to Handicapped
Drainage Problems have Caused severe indoor Mold

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

None of the above problems are shared
By Neighbors

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.**

No detriment of any kind to Surrounding
Properties

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.

See attached letter

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.

Earl A Ward 3/28/17

Property Owner Signature Date

Barbara Ward 3/28/17

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. 2017A-02

Actions Taken:

Jeremy Bryant	3/28/17
County Official Receiving Application	Date
Stacey Sterrett	3/28/17
Public Hearing fee received by	Date
Application returned for correction/additional information	Date
Amended application received by	Date
Public Hearing advertised in	Date(s)
Adjacent property owner(s) notified by mail	Date
Action by Planning Commission (if applicable)	Date
Action by Board of Zoning Appeals	Date

Application for Zoning Permit
Amherst County, Virginia

Section A *(Please print in blue or black ink)* Permit No:_____

Last *(Name of Applicant)*	First	MI
Wood	Barbara	T.
Wood	Earl	A.

Mailing Address	City	State	Zip Code
135 Flossie Drive	Madison Heights	Va.	24572

Property Address	City	State	Zip Code
135 Flossie Drive	Madison Heights	Va.	24572

Telephone Number(s) Home	Business	E-Mail Address
434-933-8424		zapperone@gmail.com

Last *(Name of Property Owner, if different)*	First	MI
Wood	Earl + Barbara	

Is the lot recorded? ..... Yes ☑ No ☐

If yes, complete section B

Section B (Please fill out as completely as possible)

Date lot recorded (if applicable)_____ Date lot surveyed (if applicable_____

Name of subdivision_____ Tax Map # 152-A-20

Deed Book/Page No._____

Lot area: .98 acres.

Lot width:_____ft.

The lot is served by (check all that applies): Public water:_____ Public sewer:_____

Private well: ✓ Septic system: ✓

Are the water and sewage systems adequate for the proposed use? (YES) NO

Is the lot a corner lot? YES (NO)

Does the lot have frontage on more than one street (i.e. double frontage)? YES NO

Does the owner of the property own any adjacent lots? NO

(If so, please include the locations and dimensions of adjacent lots on attached sketch)

Is the parcel of land located in a flood district? YES (NO) If so, what flood district?_____

Is the parcel of land located in a dam inundation zone? YES (NO) If so, what zone?_____

The erection, modification, replacement of a sign or sign structure requires approval of a sign permit.

Directions to project site (from Amherst County Administration Building):

_____

_____

Section C *(Please fill in the blanks where applicable)*

For construction of a new building (including accessory buildings and building additions):

Type of building: Residential SF Existing floor area: 1000 sq. ft.

Proposed floor area: 896 sq. ft. Number of dwelling units proposed: 1

Number of stories: 1 Height of structure (from finished grade): _____ ft.

Area of land disturbance: .98 acres sq. ft. (Estimate the total area of all clearing, grading, excavating, transporting, and filling activities on the site. Include proposed septic drainfield areas.)

Will the driveway exit on a private or public road? Private Road ✓ Public Road ___

If the driveway exits on a public road, provide the VDOT entrance permit number: N/A

For a change in use to an existing structure or property:

Current use: Dwelling Proposed use: Dwelling + additions

Provide details about type of business, machinery and equipment involved, hours of operation, no. of employees, etc. Attach separate sheet, if necessary: Regular construction tools, FRAMING & ROOFING Dailer

Attach a site plan, survey plat, or sketch showing the following:

(Note: construction of a primary building on any site will require a survey performed by a licensed professional)

I. The dimensions and shape of parcel(s) to be built upon including the location of existing public and private streets.

II. The location and dimensions of existing primary and accessory buildings.

III. The location and dimensions of proposed structures, accessory buildings, or additions/enlargements*

IV. Proposed front, rear, and side yard set back lines for all existing and proposed buildings or additions.

* *Where applicable, applicants will need to show the location of (1) existing public water and sewer facilities, including the point of connection to those facilities, or (2) proposed well and septic facilities including primary and reserve drainfield areas.*

I hereby certify that the foregoing information and attachments are true and accurate to the best of my knowledge.

Barbara Ward 03-28-17

Applicant's Signature **Date**

*Any zoning permit shall automatically expire twelve (12) months from the date of issuance if the persons, firm, or corporation to which the permit was issued has not clearly demonstrated that the permit is being exercised for the purpose for which it was issued, or if the work so authorized is suspended or discontinued for a period of twelve (12) months.

DO NOT WRITE IN THIS SPACE - OFFICE USE ONLY

ZONING DISTRICT_____ REQUIRED YARDS: FRONT_____ SIDE_____ REAR_____

CONFORMING:			
	LOT(S)	YES	NO
	EXISTING BUILDING:	YES	NO
	PROPOSED BUILDING:	YES	NO
	EXISTING USE:	YES	NO
	PROPOSED USE:	YES	NO

Is proposed development located within the WS District?_____ Does the project require a LDA permit? _____

COMMENTS_____

APPROVED/DENIED BY ZONING ADMINISTRATOR

SIGNATURE DATE

sie Drive, Madiso ×

www.homesnap.com/VA/Madison-Heights/135-Flossie-Drive

Downloads | Yahoo | gmail | Facebook | HT1000 System Con... | craigslist: lynchburg ... | my powersaw manu... » Oth

Snap any home to find out all a

Send the Homesnap download link to you

Enter Phone Number

Send

$455K

R 135 FLOSSIE DRIVE

Attachment to Zoning Permit Application

Earl A. Wood & Barbara Wood
135 Flossie Drive
Madison Heights, Va. 24572

Thank you for taking the time to review our application. We have lived at this address for 5 years and purchased it 20 months ago. As you can see from the pictures we have submitted with this application, the house is in dire need of updating. We plan to install new windows and siding but we also will need to make the house more handicapped accessible.
Due to my severe joint and muscle disease, at times I need to use a walker or wheelchair and since the house was built in 1954, the doors are just too narrow. We also have two daughters and a grandson who are handicapped and have major problems navigating in the house when they visit.

The house also has a severe drainage problem with water running downhill into the foundation and collecting in the basement. We are constantly pumping out the basement and fighting mold in the house. The addition and decks would stop that. When we purchased the property, we had no idea that there would be any zoning problems since we live pretty far off the main road and there are no immediate neighbors. Had we known there would be a problem, we would not have purchased the property, even though we love it here. When we went to get the building permit last Spring we were advised that we would need to request a variance because the front of our house is not 75ft from the driveway that we and two other neighbors use.

Since these improvements will increase the value of not only our property but that of the two neighbors, as well as make our living conditions healthier and more accommodating.

We have wonderful neighbors who support our plans and say they would be happy to write a letter of support should you desire.

Please approve our application as soon as possible so we may get started with the addition.

Earl & Barbara Wood
434-933-8424

PHOTOGRAPH ADDENDUM

Borrower or Owner Earl A. Wood
Property Address 135 Flossie Dr
City Madison Heights County Amherst State VA Zip Code 24572-4132
Client Embrace Home Loans / VA

FRONT VIEW OF SUBJECT PROPERTY

REAR VIEW OF SUBJECT PROPERTY

STREET SCENE OF SUBJECT PROPERTY

PHOTOGRAPH ADDENDUM

Borrower or Owner Earl A. Wood
Property Address 135 Flossie Dr
City Madison Heights County Amherst State VA Zip Code 24572-4132
Client Embrace Home Loans / VA

Basement

Basement

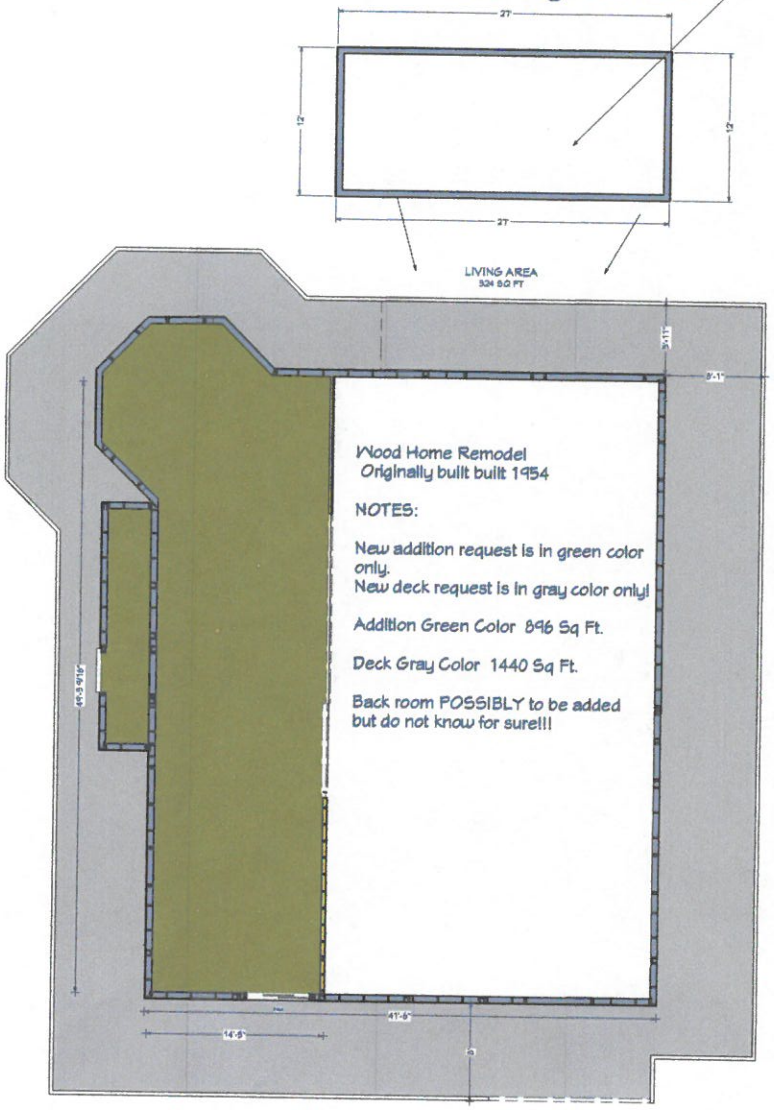
Shed 1

Sheds 2 and 3

Overhang

Opposite road view

Room addition possibly do not know right now!



AMHERST COUNTY TREASURER – PROPERTY TAXES FORM

Case #: 2017A-02 BZA variance

Case Request for: Earl A. & Barbara J. Wood

Date Contacted Treasurer Department: 3-28-17

Caller: Stacey Sterrett

Spoke with: Kay Rowe

Has Owner Paid All Property Taxes with Amherst County: YES ☑ NO ☐

If Not Please Include Comments:

AMHERST COUNTY

MADISON DISTRICT

SECTION 152

REVISED 12/31/88

PROPERTY TAX DIV. - VIRGINIA DEPT. OF TAXATION