

Amherst County
Department of Planning and Zoning
Matthew D. Rowe, Assistant Zoning Administrator / Planner

Variance Review
Staff Report
June 20, 2012

RE: Case #: 2012A-01
Tax Parcel #: 79-A-28A
Magisterial District: Court House
Lot Size: 1.411 Acres
Zoning: A-1 Agricultural Residential

Applicant:

Jessie Sue Pacyga
530 Sardis Road
Amherst, VA 24521

Agent/Attorney:

Stephen R. Eubank
P.O. Box 428
Amherst, VA 24521

Request:

The applicant has submitted a variance request from Section 804.d of the Zoning & Subdivision Ordinance to reduce the rear property line setback from fifty (50) feet to approximately twenty-eight (28) feet to legitimize an existing, non-conforming porch and deck that is attached to the rear portion of an existing single family dwelling.

Summary:

In accordance with Section 1006 of the Zoning & Subdivision Ordinance of Amherst County, Jessie Sue Pacyga has submitted a formal variance application to request a variance from Section 804.d of the Ordinance. The after-the-fact variance request is to reduce the rear property line setback from fifty (50) feet (as required per Section 804.d) to twenty-eight (28) feet to legitimize an existing, non-conforming porch and deck that is attached to the rear portion of an existing single family dwelling located on property within the A-1 Agricultural Residential District. The

1.411 acre property shares its side and rear property lines with parcel 79-A-28, which is a 100.806 acre undeveloped parcel that is comprised predominantly of dense hardwood forest and a small portion of active pasture area. Per Section 804.d of the Ordinance, A-1 Agricultural Residential District zoned properties which have property lines that adjoin properties in excess of ten (10) acres shall have a setback of fifty (50) feet for all structures from said applicable property line(s).

On April 26, 2012, Staff received a formal written complaint stating that the dwelling's attached structures and two sheds located on parcel 79-A-28A were not in compliance with the Ordinance. On May 2, 2012, Staff conducted a site inspection of the property under the supervision of Ms. Pacyga and confirmed the alleged violations. Staff researched the property further and discovered that the large shed was issued a Zoning Permit on November 29, 2006, which stated that the shed needed to only be fifteen (15) feet from the rear property line. Measurements taken during the site visit showed that the shed was approximately twenty (20) feet from the rear property line and met the approved permit's provisions.

The small shed was placed on the property without the issuance of a Zoning Permit. As of the writing of this report, the shed has been moved to a conforming location and has received the necessary permit(s). Staff also found a Zoning Permit approved on June 16, 2009 for an attached deck. The permit's attached proposed site drawing clearly shows that the porch was to be constructed at least fifty (50) feet from the rear property line, which was signed and attested by Ms. Pacyga.

On May 4, 2012, Staff issued a formal Notice of Violation for the small shed and attached deck and porch. The violation time frame was suspended on June 1, 2012, since Ms. Pacyga applied for a variance to rectify the outstanding item(s). Denial of the request by the Board of Zoning Appeals will re-activate the original Notice of Violation. Approval or partial approval of the request would result in a discontinuation of the Notice of Violation or an amendment to the original Notice of Violation.

The completed recent survey, shows that the nearest architectural projection is encroaching approximately twenty-two (22) feet into the rear property line setback, causing the structure to be considered an "error built" (term used in the Fairfax County, VA, Zoning Ordinance), non-conforming structure. This realization has resulted in the property owner's given variance request.

Additional Staff Comment(s):

When dealing with existing structures that are found to be in violation, a main consideration is the concept of what constitutes "undue hardships". A judge ruled in *Steele v. Fluvanna County Board of Zoning Appeals*, 246 Va. 502 (1993); in which a hardship was self-inflicted due to the owners constructing a house in violation of side yard setback requirements, although done inadvertently in reliance upon misplaced property line markers, that a self-inflicted hardship cannot be an undue hardship that justifies the granting of a variance.

In addition, on March 8, 2007, the Amherst County Board of Zoning Appeals unanimously denied a similar request from Carol W. Unroe. The request was for a variance to permit an existing porch addition that encroached twenty-five (25) feet into the required fifty (50) foot front yard/right-of-way setback. It is important to note that in this case, Ms. Unroe constructed the structure with no approved permits. The current request before the Board of Zoning Appeals from Ms. Pacyga is for a structure that was reviewed and appropriately approved and permitted by and from the Zoning Administrator/Planning Director.

Each and every case before the Board of Zoning Appeals must be considered on its own merits, and not on prior decisions, although it should be consistent in its decision making within the limits of the Code of Virginia §15.2-2309.

Procedure for Review:

Under Section 403 of the Zoning & Subdivision Ordinance, “...no building or part thereof shall be erected, constructed, moved or structurally altered except in conformity with the regulations” listed in the Ordinance. The original Zoning Permit for the structure was approved by the Planning Director/Zoning Administrator (Jeremy S. Bryant) based upon the submitted information, which was in conformance with the requirements of the Ordinance. Unfortunately, the structure was not constructed in the approved location, resulting in what the Board of Zoning Appeals may consider to be a self created hardship.

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 in question is zoned for single-family residential development, and is currently in use for that purpose. A denial of the request by the Board of Zoning Appeals would require the applicant to remove the encroaching structure(s) that is presently attached to the home. As stated previously in the “Staff Comment(s)” section of this report, a self-inflicted hardship cannot be an undue hardship that justifies the granting of a variance.

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

The rear yard setback requirements apply to all lots in the A-1 zoning district. However, A-1 Agricultural Residential District zoned properties which have property lines that adjoin properties in excess of ten (10) acres shall have a setback of fifty (50) feet for all structures from said applicable property line(s), compared to a twenty-five (25) foot setback if adjoining properties are ten (10) acres or less. Staff must mention that it is rare for a property to be surrounded by another single parcel that is in excess of ten (10) acres that is not under common ownership. All structures permitted after the adoption date of the current Zoning & Subdivision Ordinance (circa 1987) are required to meet all setbacks and restrictions for the A-1 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 property is zoned appropriately for non-dense residential uses, and the existing structure is considered to be a single-family dwelling. The structure(s) meets all other side and rear property line setbacks, and the surrounding property is vacant and is comprised of dense hardwood forest with a northern sloping terrain. The existing structure meets the A-1 Agricultural Residential District's twenty (25) foot setback, that is applicable if the adjoining properties are ten (10) acres or less. With the mentioned rationale, Staff believes that the granting of the variance request will not change the character of the district and will not be of substantial detriment to adjacent property.

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 owner applied for and received a zoning permit, and made a concerted effort to follow the requirements of the Zoning & Subdivision Ordinance. The structure's encroachment was not detected until a recent complaint and the resulting land survey showing the property's physical improvements. All other items of violation have been successfully addressed as of the writing of this report.

However, since the variance request is for an existing structure that is in violation of the Ordinance, the property/structure cannot be considered to have been acquired in good faith for the purpose of this proceeding. (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 property is not affected by any of the mentioned conditions. The only building constraint on the property are the required fifty (50) foot building setbacks along the road/right-of-way and all other property lines since they adjoin a single parcel (79-A-28) that exceeds ten (10) acres in size that entirely surrounds the property.

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. 79 – A – 28A to reduce the rear property line setback from fifty (50) feet to approximately twenty-eight (28) feet to legitimize an existing, non-conforming attached deck and porch structure(s).
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 Plan

November 29, 2006 Approved Zoning Permit

June 16, 2009 Approved Zoning Permit

May 4, 2012 Notice of Violation

ZONING PUBLIC NOTIFICATION

Case: 2012A-01

Board/Commission: Board of Zoning Appeals

Public Hearing Dates: July 12, 2012 - Board of Zoning Appeals

Applicant: Jessie Sue Pacyga
 530 Sardis Rd.
 Amherst, VA 24521

Property Owner
 Jessie Sue Pacyga
 530 Sardis Rd.
 Amherst, VA 24521

Tax Map Number: 79-A-28A

Adjoining Property Owners:

Tax Map # 79-A-28	Tax Map # 79-A-26A	
Jean T. Burley	Lewis and Jane Tomlin	
370 Sardis Rd	535 Sardis Rd	
Amherst, VA 24521	Amherst, VA 24521	
Tax Map # 79-A-19B		
Terrence and Heather Conner		
537 Sardis Rd		
Amherst, VA 24521		
Tax Map # 79-A-19		
Asa and Violette Tomlin		
537 Sardis Rd		
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 Bennett
Adm asst
June 24, 2012

(Signature)

(Title)

(Date)

AMHERST COUNTY



COURTHOUSE
EDLAK DISTRICT

SECTION 79

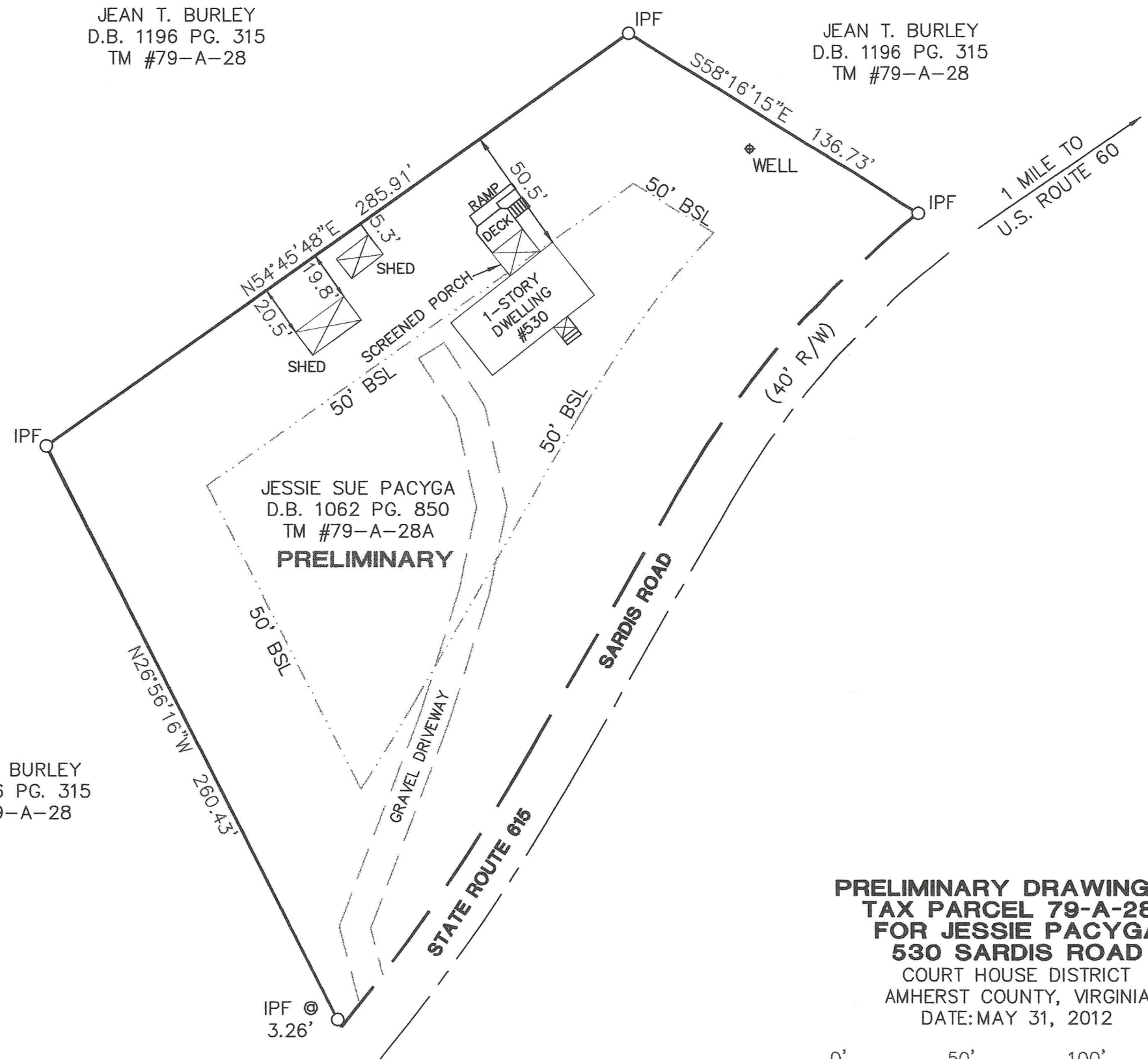
REVISED: 12/31/88

MAGNETIC NORTH
MAY 31, 2012

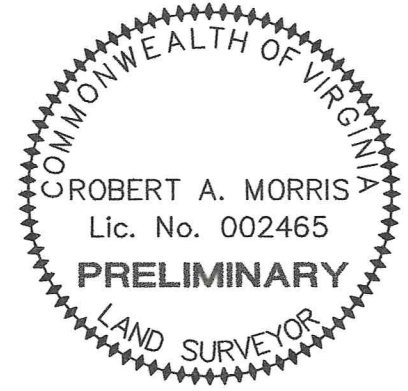
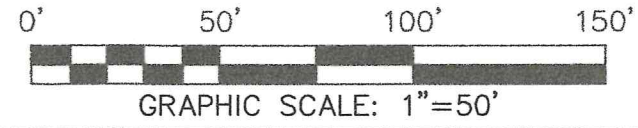
JEAN T. BURLEY
D.B. 1196 PG. 315
TM #79-A-28

JEAN T. BURLEY
D.B. 1196 PG. 315
TM #79-A-28

JEAN T. BURLEY
D.B. 1196 PG. 315
TM #79-A-28



**PRELIMINARY DRAWING OF
TAX PARCEL 79-A-28A
FOR JESSIE PACYGA
530 SARDIS ROAD
COURT HOUSE DISTRICT
AMHERST COUNTY, VIRGINIA
DATE: MAY 31, 2012**



BUFFALO RIVER SURVEY COMPANY
575 CAMPBELLS MILL ROAD
AMHERST, VIRGINIA 24521
PHONE: 434-660-7381

Zoning Office Use Only : Zoning Permit #: 801-06 Date Issued: 11/24/06 Approval: JSB



Application For Residential/Commercial Zoning/Construction Permit

Amherst County - Zoning / Building Inspections

(Check All appropriate boxes)

- | | | | |
|---|---|---|---|
| <input checked="" type="checkbox"/> Residential | <input checked="" type="checkbox"/> New | <input checked="" type="checkbox"/> Single Family | <input type="checkbox"/> Garage |
| <input type="checkbox"/> Commercial | <input type="checkbox"/> Alteration | <input type="checkbox"/> Multifamily | <input type="checkbox"/> Deck |
| <input type="checkbox"/> Demolition | <input type="checkbox"/> Addition | <input type="checkbox"/> Basement | <input type="checkbox"/> Other <u>MODULAR</u> |

Property Information

Project Location & Directions: 160 W LEFT ONTO SARDIS Rd

Landowner(s): JESSIE PACYGA Phone: 434-546-2745

Mailing Address: _____

Applicant (If other than owner): _____ or 381-6033

Applicant Address: PO BOX 4163 Lynchburg VA 24502 Phone: 434-546-2745

Project Description

Briefly but thoroughly, describe the proposed work

Include distances to lot lines, if applicable

STORAGE Shed with SETBACK FROM HOUSE - 15' REAR 15' BOTH SIDES 50'
PUTTING A ONE LEVEL MODULAR & SHED ON
1.411 ACRES lot distance will be 50 FT REQUIRED SET BACKS
FROM ALL PROPERTY LINES.

**** Sign Certification On Back Of Form

Zoning Office Use Only

Tax Map #: 79-A-28 Zone: A-1 Acreage: 1.411 Use: Modular, no Basement, no garage, 3 BR, 2 BA

Zoning Case # _____ Results: _____

Set Backs: Setbacks are applied to steps, porches, decks, etc..

Front: 50 Ft. Sides: Left: 50 Ft. Right: 50 Ft. Rear: 50 Ft.

VDOT R-0-W STORAGE SHED - 12x12 - FRONT HOME - 15' REAR - 15'
BOTH SIDES - 50'

Contractor:	Address:	Phone:	License Number:
Electrician:	Address:	Mobile:	License Number:
Plumber:	Address:	Phone:	License Number:
Mechanical/HVAC:	Address:	Mobile:	License Number:
Drywall:	Address:	Phone:	License Number:
Mechanic Lien Agent:	Address:	Mobile:	Phone:



APPROVED

Application for Zoning Permit
Amherst County, Virginia

Section A (Please print in blue or black ink)

Permit No: 216-09

Last (Name of Applicant)		First		MI	
<u>PACYGA</u>		<u>JESSIE</u>		<u>S</u>	
Mailing Address					
<u>530 SARDIS Rd</u>		<u>Amherst</u>	<u>VA</u>	<u>24521</u>	
City		State	Zip Code		
Property Address					
<u>434-946-9580</u>		<u>Amherst</u>	<u>VA</u>	<u>24521</u>	
City		State	Zip Code		
Telephone Number (s)					
<u>SAME</u>		Home		Business	
Last (Name of Property Owner, if different)		First		MI	
				<u>MI</u>	

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) 12-01-06 Date lot surveyed (if applicable) _____
 Name of subdivision _____ Tax Map # 79-A-28A
 Deed Book/Page No. 1062 Pg 850
 Lot area: 1.411 acres.
 Lot width: _____ ft.
 The lot is served by (check all that applies):
 Public water: _____ Public sewer: _____
 Private well: Septic system:
 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)

Directions to project site (from Amherst County Administration Building):
60 West 4.5 miles left on SARDIS Rd
APPROX 1 mile down on right

Section C (Please fill in the blanks where applicable)

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

Type of building: DECK 12x16 Existing floor area: _____ sq. ft.
Proposed floor area: _____ sq. ft. Number of dwelling units proposed: _____

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

Area of land disturbance: _____ (Total area of all clearing, grading, excavating, transporting, and filling activities including 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: _____

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

Current use: HOME Proposed use: Add DECK

Provide details about type of business, machinery and equipment involved, hours of operation, no. of employees, etc. Attach separate sheet, if necessary: _____

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.

Jessie Tacyga
Applicant's Signature

6-16-09
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.

ZONING DISTRICT A-1 DO NOT WRITE IN THIS SPACE - OFFICE USE ONLY
 REQUIRED YARDS: FRONT 50' SIDE 50' REAR 50'

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 The proposed deck must meet the fifty (50) foot setback requirement.

APPROVED/DENIED BY ZONING ADMINISTRATOR
[Signature]
 SIGNATURE

6/16/09
 DATE

FORMERLY
W. BURLEY
34, PG. 14
79-A-28

SIDUE
06 ACRES
X RECORDS

INFIELD LINE DATA

BEARING	LENGTH
N 82°51'39" W	75.14'
N 14°38'36" W	98.46'
N 82°54'59" E	52.31'
S 77°54'31" E	41.56'
S 03°51'42" E	102.58'

251.48' (TIE)

CURVE TABLE

RADIUS	ARC	CHORD	CHORD BEARING
359.00'	141.88'	140.96'	S 31°18'49" W
800.00'	128.55'	128.41'	S 24°35'42" W

PREPARED WITHOUT
TITLE AND DOES NOT
INDICATE ALL
PROPERTY.

FLOOD ZONE
SHOWN IN FLOOD
INSURANCE E.M.A. FLOOD

PREPARED FROM AN
ASSET PER DATE OF
NO VISIBLE
DEFECTS EXCEPT

"A-1"

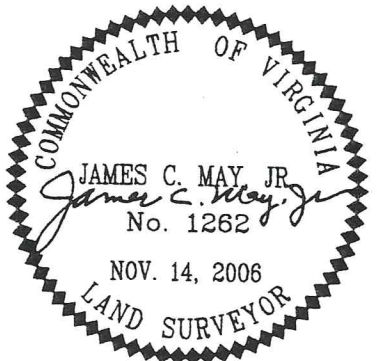
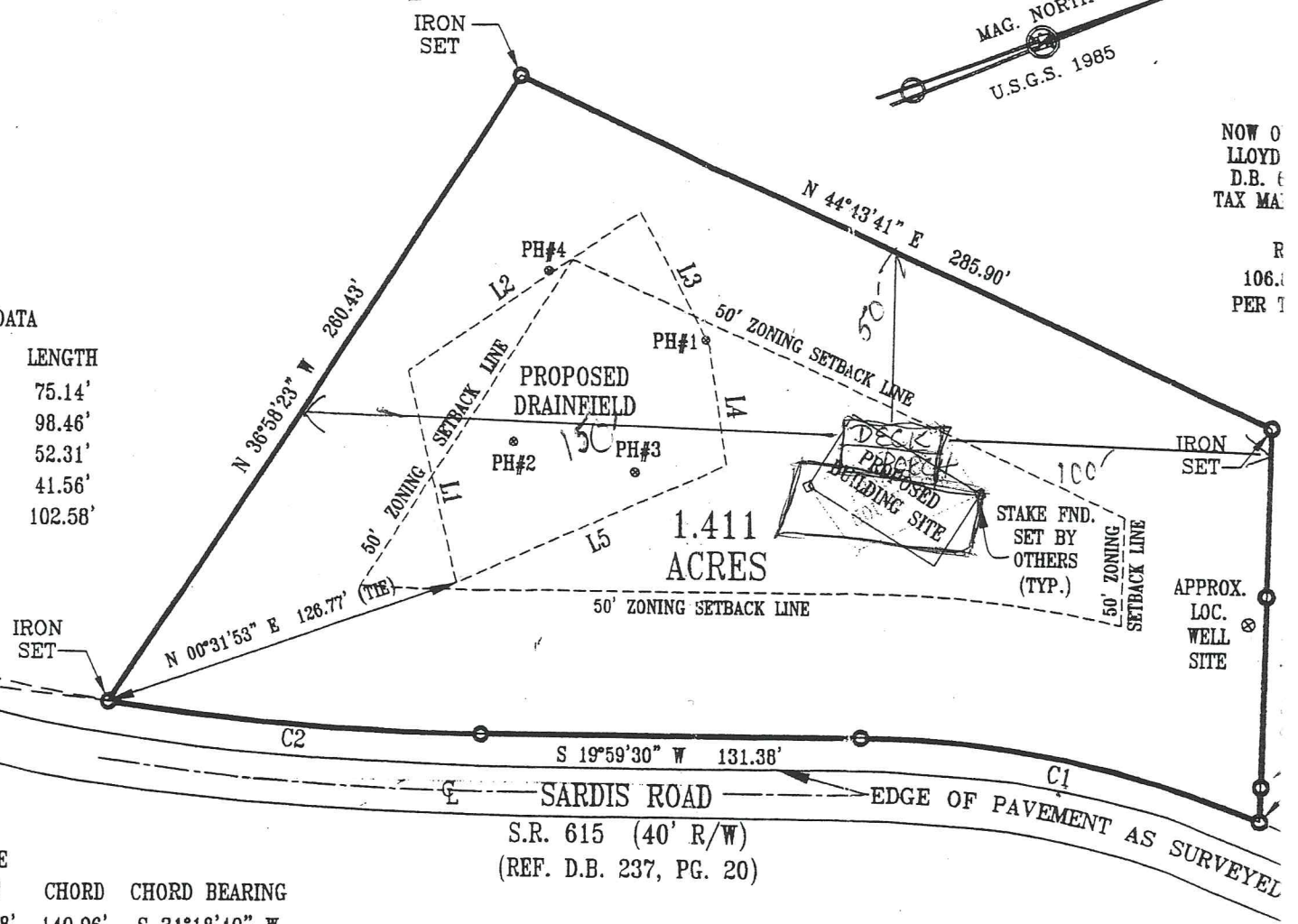
APPROVED :

AMHERST COUNTY SUBDIVISION AGENT	DATE
AMHERST COUNTY SUBDIVISION AGENT	DATE
AMHERST COUNTY HEALTH DEPARTMENT	DATE



NOW O
LLOYD
D.B. 6
TAX MA

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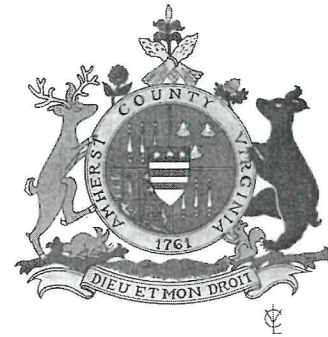
JAMES C. MAY AND ASSOCIATES
ENGINEERS-SURVEYORS-PLANNERS
P.O. BOX 718, LYNCHBURG, VA.
434-528-1005 (FAX 434-846)

SOURCE OF TITLE:
SCALE: 1" = 60' | DATE: NOV
FOR: JESS

May 4, 2012

SENT VIA CERTIFIED MAIL

Jessie S. Pacyga
530 Sardis Road
Amherst, VA 24521



**RE: NOTICE OF VIOLATION – Non-Permitted / Non-Conforming Structures
A-1 Agricultural Residential District
530 Sardis Road
Tax Map Parcel # 79-A-28A**

To Whom It May Concern:

The Amherst County Department of Planning and Zoning recently received a complaint about unpermitted/non-conforming structures on your property. On **May 2, 2012**, Staff conducted an on-site inspection of the property under your supervision and confirmed the violation complaint. You are hereby notified that you are in violation of **Sections 403, 804 and 1003** of the Zoning Ordinance.

Per Section 403, *“No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, constructed, moved, or structurally altered except in conformity with the regulations specified”* within the Ordinance. In addition, Section 1003 of the Ordinance states that the Zoning Administrator shall issue a zoning permit in conjunction with a building permit for any permitted use or structural alteration, provided such use or structural alteration is in conformance with the Ordinance and the Virginia Uniform Statewide Building Code. The site inspection revealed that a small wooden shed had been placed on the property without the approval of a Zoning Permit. Finally, Section 804 states that structures within the A-1 Residential Agricultural District must be placed fifty feet from the right-of-way and fifty feet from all property lines that adjoin property greater than ten acres in size. The entire parcel 79-A-28A is surrounded by parcel 79-A-28 which is comprised of 100.8 acres, causing the setback from all property lines to be a minimum of fifty feet. During the site inspection, the following measurements were taken for the following structures from the property’s rear lot line:

- Large Shed- The shed received an approved permit to be placed fifteen feet from the rear property line; the shed’s measured distance from the rear property line was twenty feet. Through the principle of statutory estoppel, given in Section 15.2-2311(C) of the Code of Virginia, 1950 as amended, a written decision or determination made by a Zoning Administrator shall not be subject to change, modification and/or reversal after sixty days have elapsed from the date of the written decision or determination where the person

affected by said decision acts in good faith and has relied upon said decision. Thus, by receiving the approval of the large shed on 11/26/2006, the criterion is met and the shed must be deemed compliant.

- Small Pre-Fabricated Shed- The shed was placed on the property without the issuance or approval of a Zoning Permit. The structure is eight feet from the rear property line. **The structure is not in compliance with the ordinance and must either be removed from the property, placed in a conforming location on the property through the submittal and approval of a Zoning Permit, or receive a formal Variance approval from the Board of Zoning Appeals.**
- Porch and Deck Attached to the Single Family Dwelling- A Zoning Permit was approved for the attached deck and enclosed porch by the Zoning Administrator on 6/16/2009, along with the required development sketch showing that the proposed deck and enclosed porch would meet all setbacks. During the inspection, the porch was measured to be forty feet from the rear property line and the deck was measured to be thirty feet from the rear property. **Since the required minimum setback from the property lines is fifty feet, these structures are deemed to be "error" built structures and are in non-compliance with the ordinance. The given structures must either be removed to alleviate the existing status of non-compliance or must receive a formal Variance approval from the Board of Zoning Appeals.**
- Staff also received complaints regarding the following features on the property: Wire fencing (associated with animals), clothesline, screened greenhouse-type feature on a wooden pallet/platform, animal steps and ramp-feature not meeting ADA compliance and not deemed pedestrian-usable by the Building Official. Since these features are considered to be temporary in nature and not permanent uses of the land (since they can be moved easily and/or are transportable, and are not considered to be buildings as defined in the Ordinance), this office does not regulate such features.

In order to correct this active violation, you are hereby ordered to take the necessary corrective action immediately as highlighted in the above bullet-point statements.

The property will be re-inspected for compliance on June 4, 2012 (30 calendar days from the date of this letter). If the violation has not been corrected by the mentioned re-inspection date, then this matter will be transmitted to the County Attorney's Office for possible future action. In accordance with Section 1002.04, *"Violation of the Zoning and Subdivision Ordinance of Amherst County, Virginia shall be deemed an infraction and shall be punishable by a civil penalty of one-hundred dollars (\$100.00)".* Further, *"Each day during which any violation of the provisions scheduled above is found to have existed shall constitute a separate offense. However, in no event shall any such violation arising from the same set of operative facts be charged more frequently than once in any ten day period, nor shall any such violation arising from the same set of operative facts result in civil penalties which exceed a total of three thousand dollars (\$3,000.00)".*

May 4, 2012

In accordance with § 15.2-2311 of the Code of Virginia, 1950, as amended, you may appeal this formal decision. If you choose to appeal this decision, such action shall occur within thirty (30) calendar days of the date of this letter and must be done so in a manner that conforms with Section 1008 of the Zoning & Subdivision Ordinance. If no appeal is initiated within thirty (30) calendar days of the date of this letter, the decision shall be final and unappealable.

If you have any questions regarding this matter, please feel free to contact me at (434) 946-9303 or mdrowe@countyofamherst.com. Thank you in advance for your cooperation.

Sincerely,



Matthew D. Rowe

Assistant Zoning Administrator/Planner

Cc: Jeremy S. Bryant, Zoning Administrator / Planning Director

