

Notice of Public Hearing of the Amherst County Board of Zoning Appeals

The Amherst County Board of Zoning Appeals will conduct a public hearing during its regular meeting commencing at 7:00 P.M. on Thursday, January 10, 2019, in the Amherst County Administration Building, 153 Washington Street, Amherst, Virginia, 24521, to consider the following request:

No. 2018-484: Request by Florence Gaines for approval of three variances from Section 901.02.4 and Section 804. The purpose of the request is to allow a carport (accessory structure) to be placed in the front yard of a residential lot.

The first requested variance is for a carport which will reduce the setback from the front yard requirement of 50 feet to 25 feet and the second requested variance will reduce the side yard setback of 15 feet to 2 feet.

The purpose of the third variance is to allow the applicant to place the carport in the front yard of a residential lot. The property is located at 187 Lamont Drive and is further identified as tax map number 148D-3-2.

The proposed application is available for review Monday through Friday from 8:30 A.M. to 5:00 P.M. in the Planning/Zoning office at the above address.

Accommodations for disabled persons may be made by calling 434-946-9400 or (TTD) 434-946-9335 at least three (3) days prior to the hearing date.

Jeremy S. Bryant
Director of Community Development





Amherst County
Division of Planning and Zoning
Jeremy S. Bryant, Director of Community Development

Variance Review
Staff Report
January 10, 2019

RE: Case #: 2018-484
Tax Parcel #: 148D-3-2
Magisterial District: Amelon
Lot Size: .473
Zoning: R-1 Limited Residential District

Applicant:

Edward and Florence Gaines
187 Lamont Drive
Madison Heights, VA 24572

Property Owner:

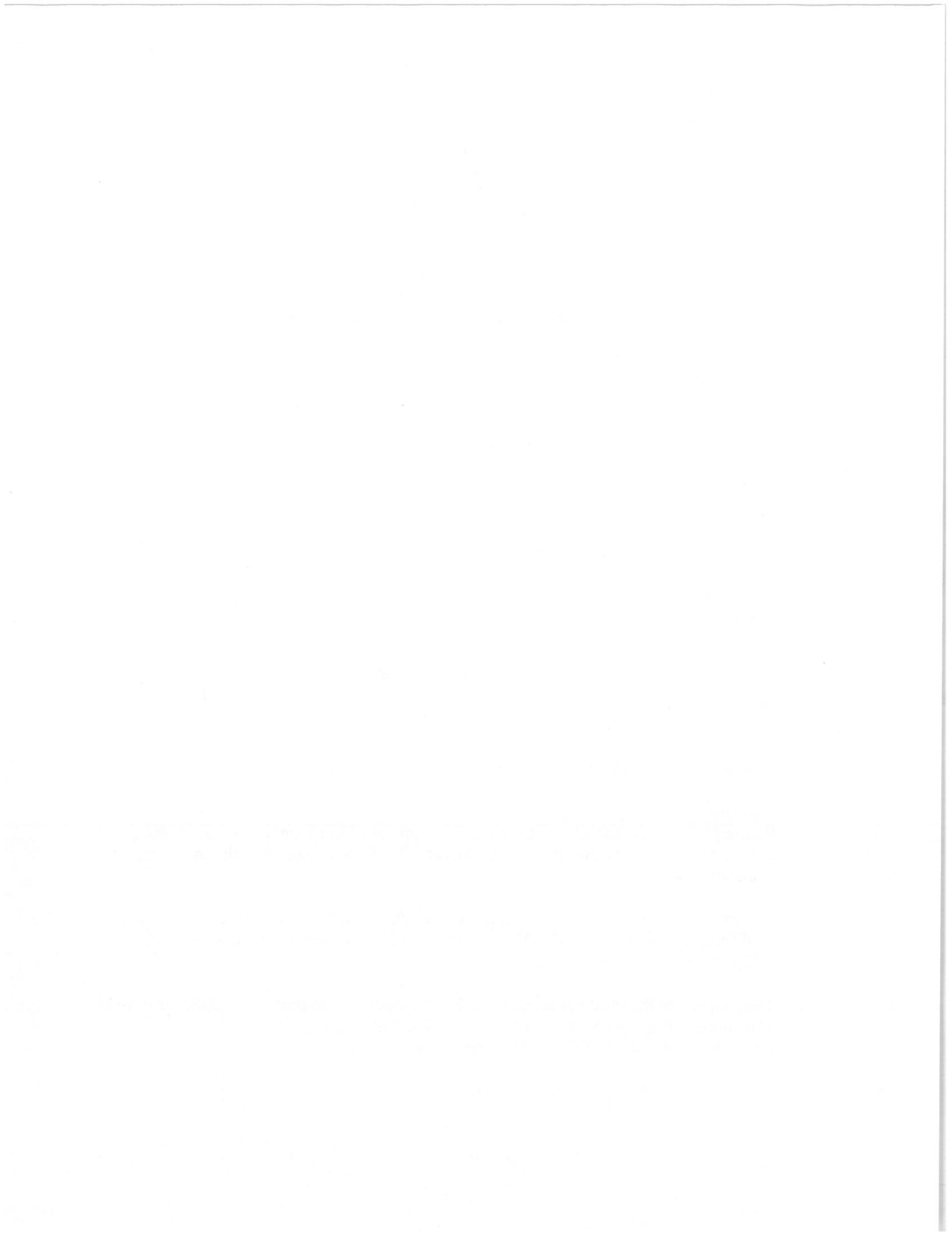
Edward and Florence Gaines
187 Lamont Drive
Madison Heights, VA 24572

Request:

Request by Edward and Florence Gaines for approval of three variances from Section 804 and Section 901. The purpose of the request is to allow a carport in the front yard of a residential lot.

The first requested variance is for a carport which will reduce the setback from the front yard requirements of 50 feet to 25 feet and the second requested variance will reduce the side yard setback of 15 feet to 2 feet.

The purpose of the third variance is to allow the applicant to place the carport (accessory structure) in the front yard on a residential lot. The property is located at 187 Lamont Drive and is further identified as tax map number 148D-3-2.



Staff Comment(s):

On July 20, 2018 the Department of Community Development received a complaint that a carport was placed across the property line at 187 Lamont Drive. Staff reached out to the owners of 187 Lamont Drive (Gaines) and informed them of the complaint and potential situation. The Gaines believed that the carport was on their property. As a result of the conflicting opinions, staff met independently with both the property owner and the complainant to try and help sort out the situation. After visiting the property on numerous occasions, staff was unable to verify either property owners' claims. The Gaines chose to hire a surveyor (Saunders Surveyors) to determine where the carport was in relation to the side property line. Saunders Surveyors informed Amherst County staff that the carport did in fact cross the property line by more than five feet. Staff informed the Gaines that the carport did in-fact cross the property line and that it was in violation of the Zoning Ordinance.

Edward and Florence Gaines are applying for multiple variances. The first requested variance will reduce the setback from the front yard requirements of 50 feet to 25 feet; the second requested variance will reduce the side yard setback of 15 feet to 2 feet; the third variance is to allow the applicant to place the carport (accessory structure) in the front yard on a residential lot.

The Zoning Ordinance does provide an exemption for certain size carports. It states:

A single carport with a maximum size of two hundred fifty-six (256) square feet provided that such carport (i) is located no closer than fifteen (15) feet to the rear lot line, (ii) is located at a distance from the front lot line equal to at least half of the required front yard setback in Section 804 for the district in which the lot is located, and (iii) no other carports are located on the subject parcel. Additional carports constructed on the subject parcel shall be subject to the zoning permit process.

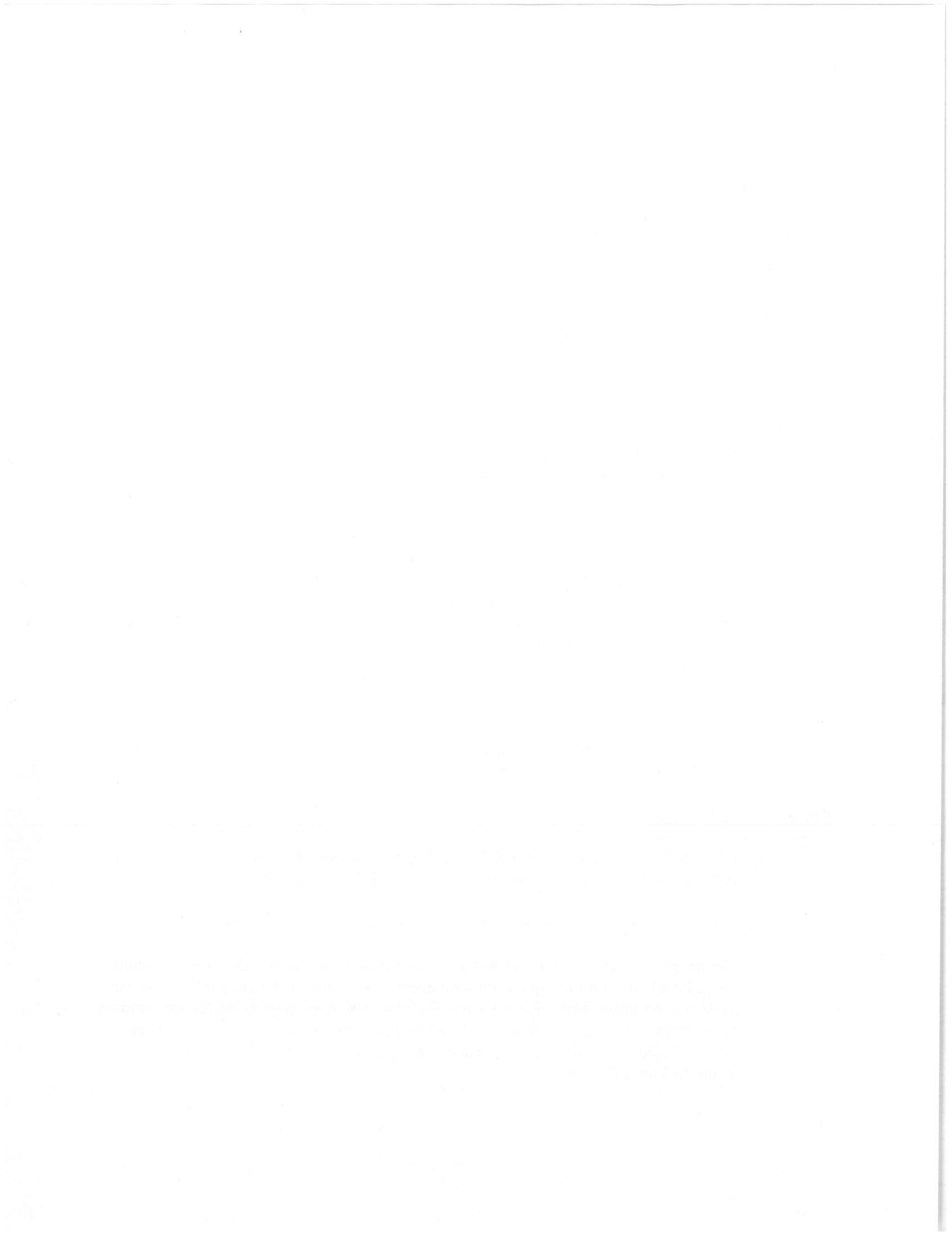
The exemption is for carports that have a maximum size of 256 square feet, the Gaines carport is 24'x21' in size and 504 square feet, therefore it does not meet the exemption.

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 R-1 Limited Residential District, the single-family dwelling 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 features an underground pool that has been filled in and is not in use. The topography on the side and rear yard are steep, therefore, placing a carport in the side or rear yard would be virtually impossible.



“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.

A majority of the lots that have frontage on Lamont Drive range from approximately ½ acre to ¾ acre in size. Many of the dwellings are one-story ranch style homes with driveways that are in the front yard. The topography on each lot is unique and no lot sponsors the same characteristics.

- 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.

Metal carports are becoming more common in Amherst County. Many of the dwellings in the vicinity have driveways that are exclusively in the front yard as defined by the Zoning Ordinance.

Additional Considerations:

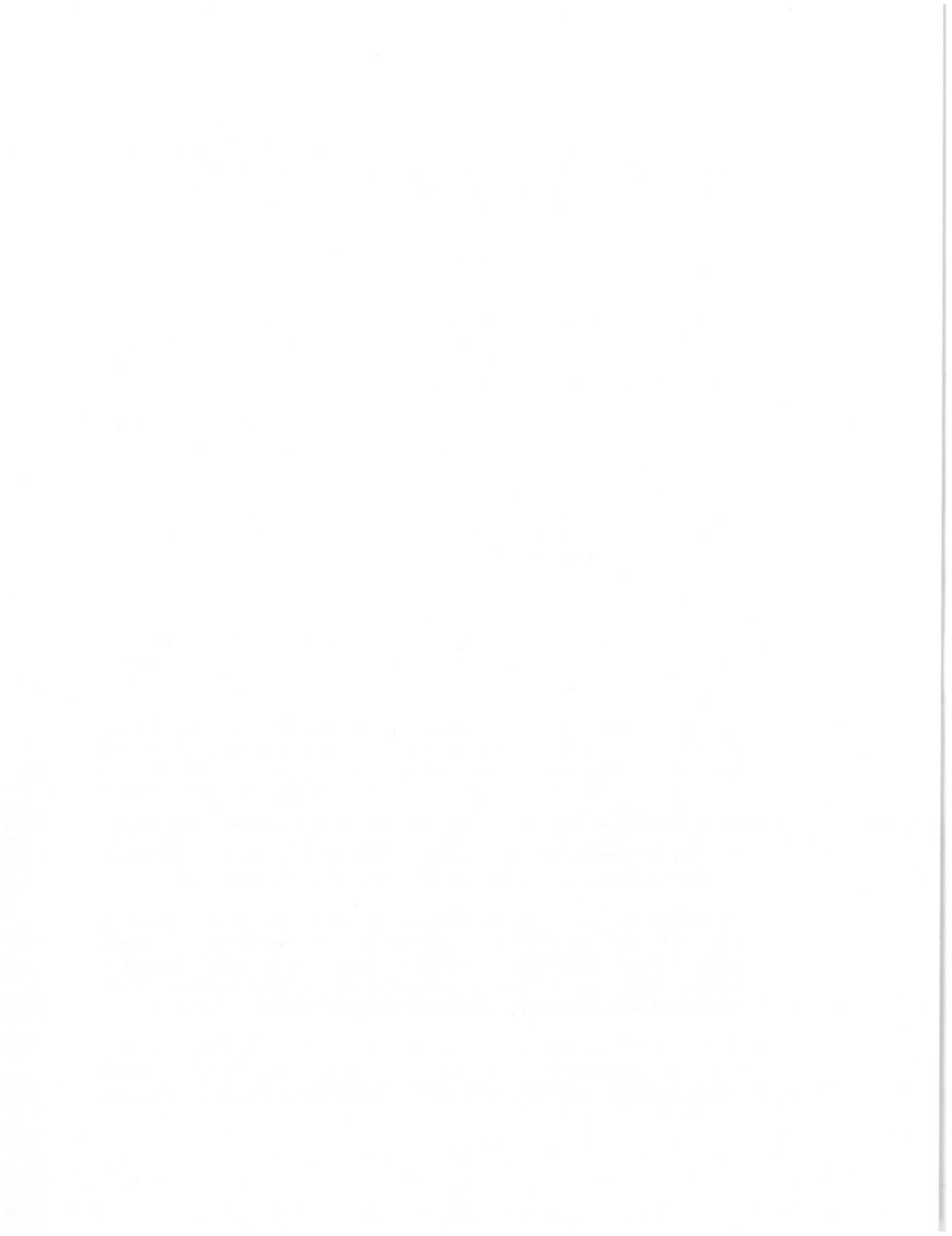
It is important to note, that § 15.2-2309 of the Code of Virginia, 1950, as amended, also declares that the requesting property owner must have “*acquired the property in good faith*”;

The property was acquired by the owner in 2001, the carport was added to the lot in 2018 and therefore, staff believes that 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 small lot that does not conform to the minimum size requirement found in the R-1 Limited Residential District. Lots with public water and on-site sewage in the R-1 Limited Residential District should be at a minimum .51 acres in total size. Said lot is only .47 acres in size. The lot is also constrained because the side and rear yard are steep and is left with topographical challenges.

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 148D-3-2 for a carport that will reduce the setback from the front yard requirements of 50 feet to 25 feet and will reduce the side yard setback of 15 feet to 2 feet and will allow the applicant to place the carport (accessory structure) in the front yard on a residential lot.
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.

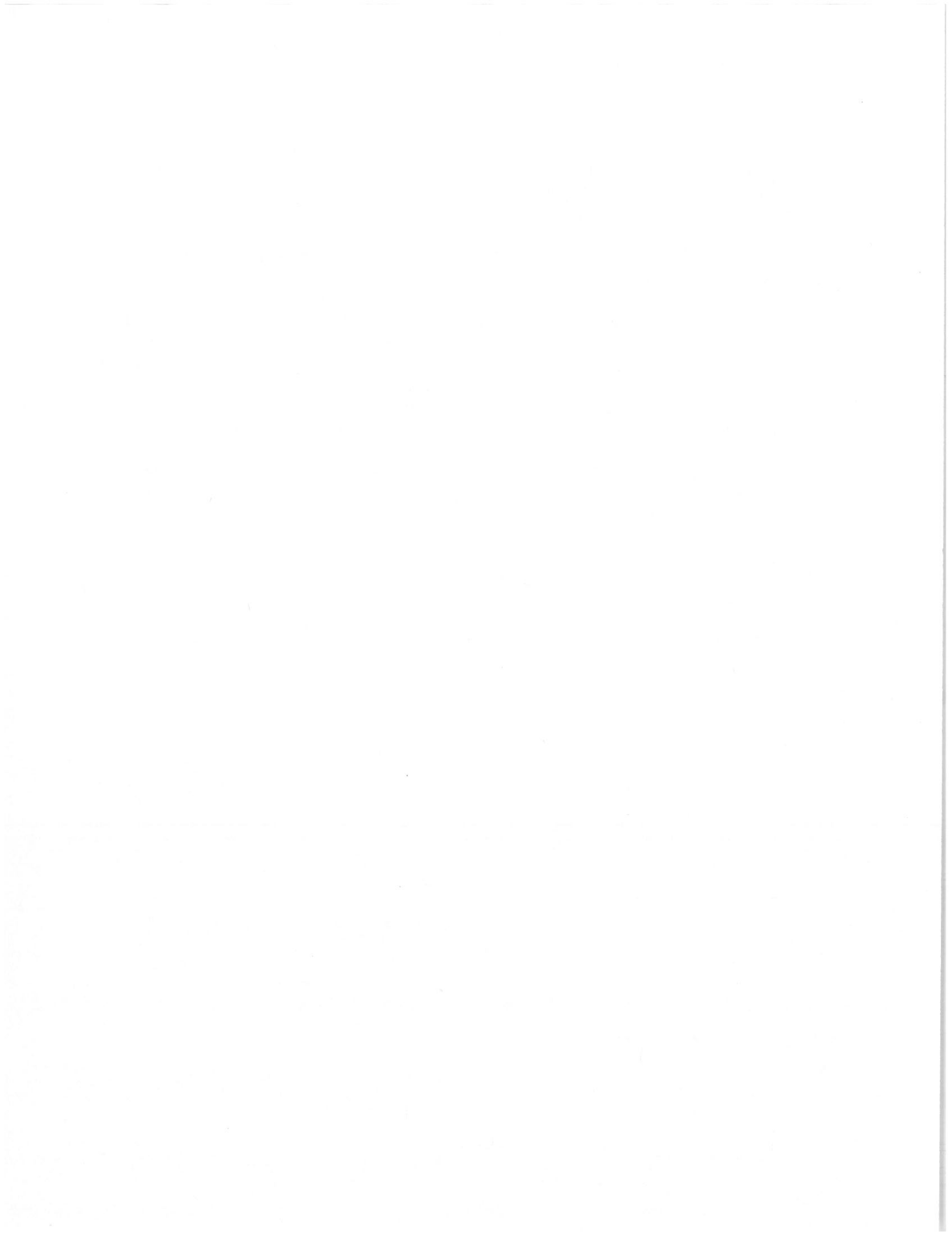
Attached:

Notice to Adjacent Property Owners

Tax Parcel Map

Site Sketch

Variance Request Application





2018-484

**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

Edward + Florence Gaines
Applicant Name

187 Lamont Drive Madison Heights Va. 24572
Applicant Address City/Town State Zip Code

434-929-2688 Florence.gaines@yahoo.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

187 Lamont Drive Madison Heights Va. 24572
Street Address Tax parcel ID number

General Description of Property

private residence

When and how did you acquire the property?

purchase 2001

Current Use(s) of Property

Private Residence

Proposed Use(s) of Property

Private

Total Acreage: .0473

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:

Allow Carport

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	25'	50'	25'
Side yard setback:	804	~ 2'	15'	13'
Rear yard setback:				
Public street frontage:				
Other (write in):	901	accessory structure in front yard	code does not allow	to allow the structure to be in the front yard

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 The Topography won't allow us to put it anywhere else
Mr. John Ruff said Eagle Carport is not gonna take it back.

1. That the strict application of this ordinance would produce undue hardship.

② Purchase Carport for 2,700 and this
would cause a terrible hardship because it
would cause this amount to move it and my husband is
70 yrs old and I'm 66 we don't have money like that.

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

I've seen Carports
like this in about 1/2 mile to 1 mile in the
same vicinity.

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.

Mrs. Parrish, Mes Pearle
Kevin & Lindsay Cash - Shelia & Angelo Henderson

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.

Private Residence

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.

Florence Gaines 8-21-18 Edward L. Gaines 8-21-18
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. 2018-484

Actions Taken:

S. Bennett
County Official Receiving Application

Date

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

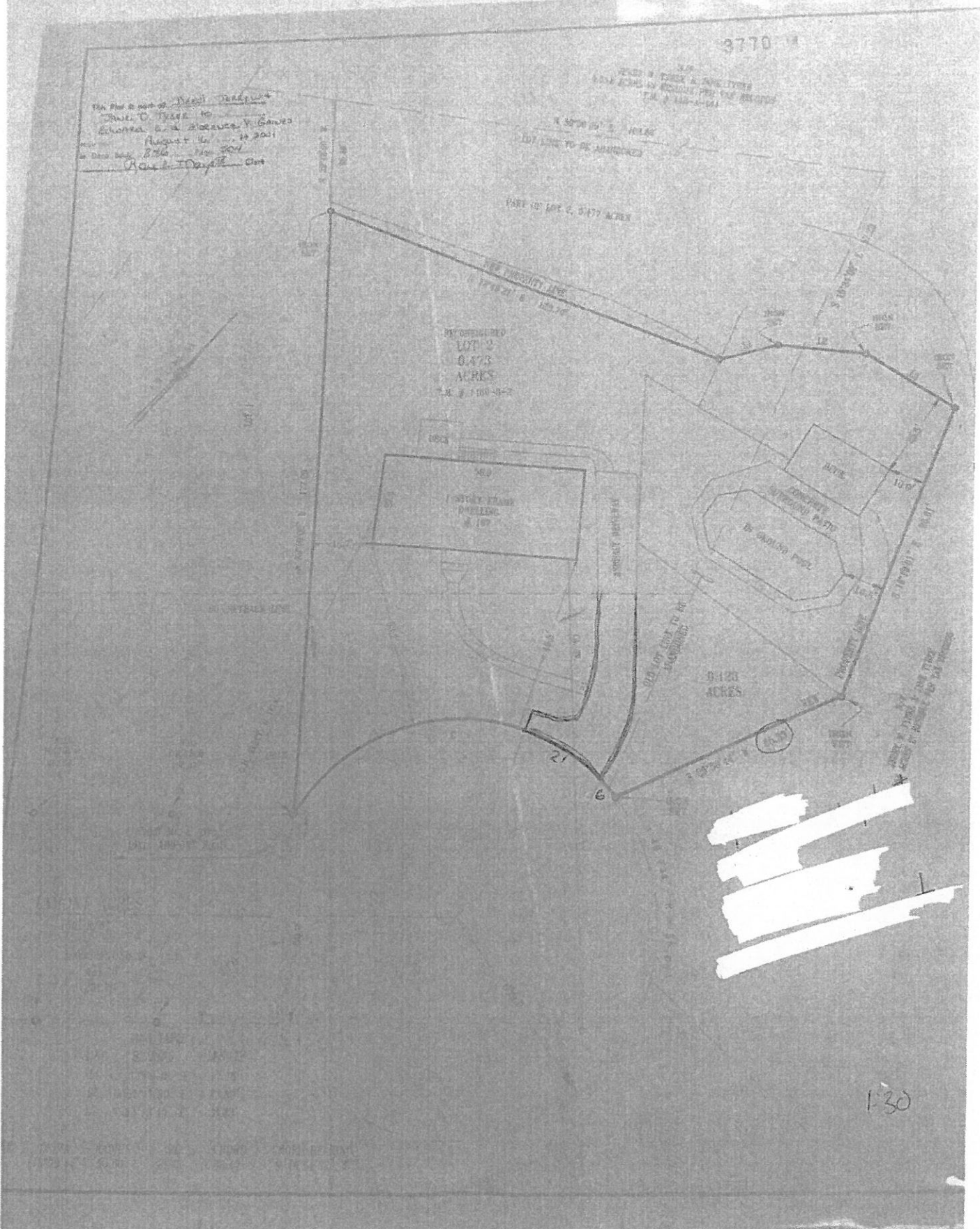
Date

Action by Planning Commission (if applicable)

Date

Action by Board of Zoning Appeals

Date



PUBLIC NOTIFICATION

CASE 2018-484

BOARD/COMMISSION

BOARD OF ZONING APPEALS

Hearing Dates:

January 10, 2019

APPLICANT

Florence & Edward Gaines
187 Lamont Ave *Dr*
Madison Heights VA 24572

PROPERTY OWNER/SITE ADDRESS

Florence & Edward Gaines
187 Lamont Ave
Madison Heights VA 24572

Tax Map #: 148D-3-2

Adjoining Property Owners

<u>NAME</u>	<u>ADDRESS</u>	<u>CITY</u>	<u>TAX PARCEL</u>
Joyce & Richard Pomper	200 Abbotts Dr	Madison Heights VA	148-A-141-144
Kelvin & Lindsey Johnson	179 Lamont Dr	Madison Heights VA	148D-3-1
George & Kimberly Dawson	218 Woodhaven Ct	Madison Heights VA	148C-3-3
Jeannie C Living Trust	10 Constant Rd	Hampton VA 23664	148D-3-4
Gloria Sandidge	184 Lamont Dr	Madison Heights VA	148D-3-3

COMMONWEALTH OF VIRGINIA)

COUNTY OF AMHERST) to wit:

This day in the County of Amherst, Dylan Bishop, Assistant Zoning Administrator on behalf of Amherst County, Virginia, personally appeared before me, Stacey Stinnett, a Notary Public in and for the County aforesaid, in the Commonwealth of Virginia, and made oath that she is the agent for Amherst County, Virginia: and that she duly caused a public hearing before the Board of Zoning Appeals on January 10, 2019 to be advertised in a newspaper with general circulation in Amherst County, Virginia, the New Era Progress and the News & Advance. The affiant has declared to me under penalty of perjury that the foregoing is true and correct and further the affiant declareth not.

Dylan M Bishop

(Signature)

Dylan Bishop
Assistant Zoning Administrator/Planner
December 27, 2018

(Title)

(Date)

This affidavit is subscribed and sworn before me this 28th day of December, 2018 by Stacey Stinnett, Planning & Zoning Administrative Assistant for Amherst County, Virginia, on behalf of Amherst County, Virginia, who is personally known to me. In testimony whereof I have set my hand on the day, month, and year aforesaid.

My Commission Expires:

July 31, 2020

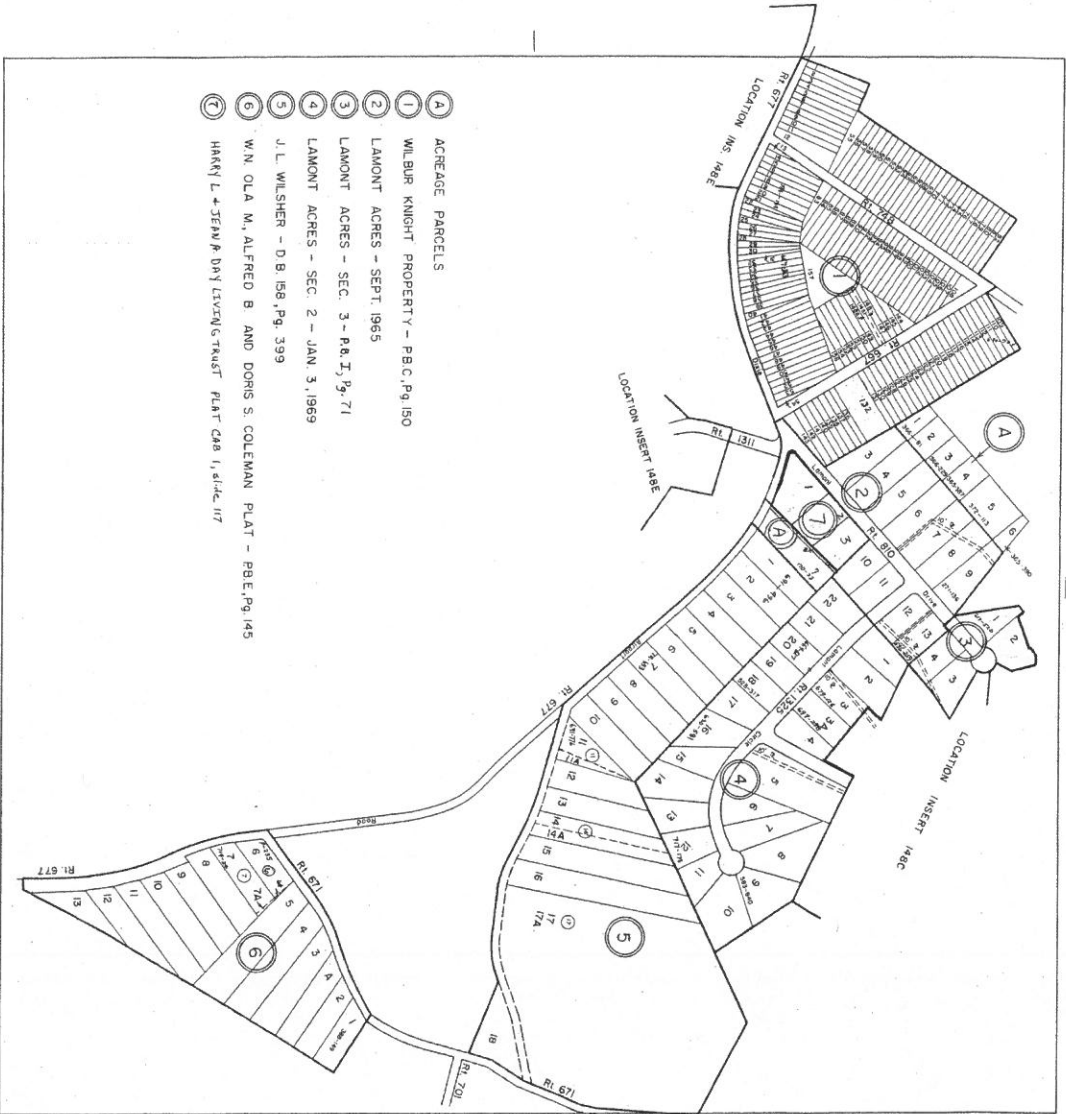
Stacey S Stinnett
Notary Public

7211620

Registration Number

STACEY GODSEY STINNETT
NOTARY PUBLIC
REGISTRATION # 7211620
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
JULY 31, 2020

AMHERST COUNTY



- ① ACREAGE PARCELS
- ② WILBUR KNIGHT PROPERTY - P.B.C. Pg. 150
- ③ LAMONT ACRES - SEPT. 1965
- ④ LAMONT ACRES - SEC. 3 - P.B.C. Pg. 71
- ⑤ LAMONT ACRES - SEC. 2 - JAN. 3, 1969
- ⑥ J.L. WILSHER - D.B. 158, Pg. 399
- ⑦ W.N. OLA M., ALFRED B. AND DORIS S. COLEMAN PLAT - P.B.C. Pg. 145
- ⑧ HARRY L. + STEPHEN DAY LIVING TRUST PLAT C48 1, dtd. 117



ETON DISTRICT

INSERT 148D

