

## NOTICE OF MEETING

### AMHERST COUNTY BOARD OF ZONING APPEALS

The Amherst County Board of Zoning Appeals will hold a public hearing on Thursday, May 14, 2015, in the Amherst County Administration Building, 153 Washington Street, Amherst, VA, at 7:00 PM on the following request. Information pertaining to the request is on file and available for public review at the Planning Department in the Amherst County Administration Building weekdays, between 8:30 AM and 5:00 PM. Accommodations for persons with a sight, speaking or hearing disability will be made by this office if notified a minimum of four working days prior to the hearing date. Telephone 434-946-9303.

2015A-02 Request by Charles S. Schrader Jr., for approval of two (2) variances from the Amherst County Zoning & Subdivision Ordinance. The first variance is from Section 804(a), to reduce the setback from the centerline of Amber Ridge Drive, from seventy-five (75) feet to seventy (70) feet. The second variance is from Section 710.06(1) (a), to reduce the setback from a perennial stream on the rear of the property from seventy-five (75) feet to seventy (70) feet, to allow for the construction of a single-family dwelling. The request is referenced by a drawing submitted by the applicant. The property is zoned A-1 Agricultural Residential District and is located on lot 8 of Amber Ridge Subdivision and is further identified as tax map number 122-3-8.



**Amherst County**  
**Department of Planning and Zoning**  
**Jeremy S. Bryant, Director of Planning and Zoning**

**Variance Review**  
**Staff Report**  
**May 14, 2015**

**RE: Case #:** 2015A-02  
**Tax Parcel #:** 122-3-8  
**Magisterial District:** Elon  
**Lot Size:** 5 Acres  
**Zoning:** A-1 Agricultural Residential District

**Applicant:**  
Charles S. Schrader Jr.  
156 Briarcliff Lane  
Madison Heights, VA 24572

**Property Owner:**  
Charles S. Schrader Jr.  
Lot 8 Amber Ridge Subdivision  
Madison Heights, VA 24572

**Request:**  
Request by Charles S. Schrader Jr., for approval of two (2) variances from the Amherst County Zoning & Subdivision Ordinance. The first variance is from Section 804(a), to reduce the setback from the centerline of Amber Ridge Drive, from seventy-five (75) feet to seventy (70) feet. The second variance is from Section 710.06(1) (a), to reduce the setback from a perennial stream on the rear of the property from seventy-five (75) feet to seventy (70) feet, to allow for the construction of a single-family dwelling. The request is referenced by a drawing submitted by the applicant. The property is zoned A-1 Agricultural Residential District and is located on lot 8 of Amber Ridge Subdivision and is further identified as tax map number 122-3-8.

**Summary:**

Request by Charles S. Schrader Jr., for approval of two (2) variances from the Amherst County Zoning & Subdivision Ordinance. The first variance is from Section 804(a), to reduce the setback from the centerline of Amber Ridge Drive, from seventy-five (75) feet to seventy (70) feet. The second variance is from Section 710.06(1) (a), to reduce the setback from a perennial stream from seventy-five (75) feet to seventy (70) feet, to allow for the construction of a single-family dwelling. The request is referenced by a drawing submitted by the applicant. The property is zoned A-1 Agricultural Residential District and is located on lot 8 of Amber Ridge Subdivision and is further identified as tax map number 122-3-8.

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):**

The parcel is traversed by a perennial stream that splits the parcel into two halves. The perennial stream is located within the Graham Creek Watershed, and the County requires a seventy-five (75) foot setback from the stream. The ordinance states that, *“A buffer strip of dense perennial vegetation, preferably natural, shall be maintained adjacent to any permanent tributary and shall be no less than seventy-five (75) feet in width on each side of the tributary, measured from the crest of the stream bank...”* The owner of the parcel is proposing to construct a single-family dwelling on the parcel.

In order to construct a dwelling on the western half of the parcel, the owner would have to construct a road to cross the perennial stream, which is located in the protected watershed district. Additionally, the western half of the parcel has considerably steep topography and constructing a dwelling may be problematic.

The owner wishes to build a single-family dwelling on the eastern portion of the parcel that would be seventy (70) feet from the centerline of Amber Ridge Drive and seventy (70) feet from the perennial stream. According to the drawing submitted by the applicant, the collective setback requirements that surround this property yield a buildable area of fifty (50) feet. The applicant wishes to build a dwelling that is 59.5 in width (including attached deck). The square footage of dwellings located in Amber Ridge Subdivision is subjected to private home owner’s association rules and regulations. According to the homeowners association, a dwelling that is for a story and one half must be a minimum of 2,200 square feet in total size. The applicant is proposing a dwelling that is 2,412 in finished square footage. The applicant informed staff that architectural plans have already been purchased and those plans were approved by the homeowners association in the winter of 2015, according to the applicant *“the house that is going to be built is just barely above the required square footage house that can be built per the HOA regulations”*.

**Procedure for Review:**

Under §15.2-2309 of the Code of Virginia, 1950, as amended, and Sec. 1402.03 (b.) of the County Code, no variance shall be authorized by the Board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship.

The property is zoned A-1 Agricultural Residential District. According to the proposed drawing, the applicable setbacks from both the side and rear yard will be met. The required setback from the front and stream setback would not be met, and the applicant is seeking equal relief from the front yard and stream setback.

The combined setbacks yield a fifty (50) foot buildable area, but according to the applicant the dwelling must be a minimum of 2,200 square feet according to the Amber Ridge Subdivision home owners association. The applicant is proposing to construct a dwelling that is 2,412 in finished square footage.

“The threshold question for the BZA in considering an application for a variance...is whether the effect of the zoning ordinance upon the property under consideration, as it stands, interferes with “all reasonable beneficial uses of the property, taken as a whole.” If the answer is in the negative, the BZA has no authority to go further.”  
*Cochran*, 267 Va. At 767, 594 S.E.2d at 578.

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

According to the Amherst County GIS, of the parcels located within Amber Ridge Subdivision, four (4) parcels are traversed by this perennial stream. Two (2) of the parcels already have a dwelling on their parcel. The only other vacant parcel that contains the perennial stream is to the north of the parcel in question, and that parcel to the north appears to have adequate space for a dwelling to meet all setback requirements. Therefore, the hardship is unique and appears to not be shared generally by other properties in the same zoning district and the same vicinity.

- 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 authorization of the variance should not be of a substantial detriment to the adjacent property because two (2) variances sought are equally split by the applicant. The variance from the front yard setback is five (5) feet and the variance from the stream is also five (5) feet. The setback from the side and rear requirement will be met by the applicant.

#### 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 2014. The lot is vacant and does not contain any buildings or structures. 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 lot totals five (5) acres in size. The narrowness of the lot is caused by a perennial stream that traverses the lot equally (in-general). The stream is located in the Graham Creek Watershed, and requires that a seventy-five (75) foot setback be maintained from the crest of the stream bank. The lot also slopes downward from Amber Ridge Drive to the stream and does have some topographical conditions.**

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. 122-3-8 to reduce the setback from the centerline of Amber Ridge Drive, from seventy-five (75) feet to seventy (70) feet and from Section 710.06(1) (a), and to reduce the setback from a perennial stream from seventy-five (75) feet to seventy (70) feet, to allow for the construction of a 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



pd dk



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

Charles S. Schrader Jr.  
Applicant Name

156 Briercliff Ln. Madison Heights Va. 24592  
Applicant Address City/Town State Zip Code

434-426-5522 csspoint@aol.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

Same  
Property Owner Name

Same  
Property Owner Mailing Address City/Town State Zip Code

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

Location of Property

Lot 8 Amber Ridge Subdivision 122 3 8  
Street Address Tax parcel ID number

General Description of Property

5 acre lot in Amber Ridge Subdivision

When and how did you acquire the property?

The property was purchased on Oct. 7<sup>th</sup>, 2014 from John E. Lane w/ Adastra LLC. Paid in full.

**Current Use(s) of Property**

also current use.

**Proposed Use(s) of Property**

Private residence

Total Acreage: 5

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: change the required setbacks

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	70'	75'	5'
Side yard setback:				
Rear yard setback:				
Public street frontage:				
Other (write in):	710.06(a)	70'	75'	5'

Section 15.2-2309 of the Code of Virginia requires the Board of Zoning Appeals to make the following findings before a variance can be granted. Please read the factors listed below carefully and in your own words, describe how your request meets each factor. If additional space is needed, use an additional sheet of paper. Justification shall be based on the following three (3) criteria:

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

See Attachment A

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

See Attachment A

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.

See Attachment A

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.

N/A

**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'.



\*\*\*\*\*DO NOT WRITE BELOW THIS LINE - OFFICE USE ONLY\*\*\*\*\*

For use by the County of Amherst Department of Planning and Zoning

Case No. 2015A-02

**Actions Taken:**

Stacey Swinett  
County Official Receiving Application

3-24-15  
Date

Stacey Swinett  
Public Hearing fee received by

3-24-15  
Date

Application returned for correction/additional information

Date

Amended application received by

Date

Amherst New Era Program  
Public Hearing advertised in

Date(s)

S Swinett  
Adjacent property owner(s) notified by mail

4-17-15  
Date

Action by Planning Commission (if applicable)

Date

Action by Board of Zoning Appeals

Date

## Attachment A

1. There is a stream running directly through the center of Lot 8 in Amber Ridge Subdivision as seen on the GIS Map. It was taken into account to build on the back side of the land but due to the wet, soggy ground and the topography it is not reasonable due to the setbacks we would face on the back side of the property (both creek and land setbacks). After meeting with Jeremy Bryant from the Planning and Zoning Department, it was determined that from the middle of the road to the creek bank we had approximately 200'. With the required 75' setback from the middle of Amber Ridge road and the required 75' setback from the creek, it left approximately 50' of land that could be used for a lot. The house plans (including decks) is 59' 1½" depth. If it were not for the creek, I would have plenty of land to choose a building site. Currently I need about 10' to build the house according to the plans. I have spent countless hours measuring the front of the lot trying to find a place that will accept the building plans but this area is the best I have found and would require the least variance. I understand the importance of the creek and water supply it supplies. I would like to request a variance (a) split the 10' between the creek and the road. Instead of a 75' setback from the middle of road and 75' setback from the creek, I am requesting a setback of 70' from the middle of the road and a 70' setback from the creek. The house that is going to be built is just barely above the required square footage house that can be built per the HOA regulations.

2. The creek runs through several adjacent lots but as seen on the GIS map it bends away from the road at both sides of my property (Lot 8). The land owners to the left and right of Lot 8 have plenty of room to meet the required setbacks. This is the only lot in the subdivision that the creek directly affects both on the front side and back side of the property. As stated before, the back side of the property was walked and several builders advised that the wet ground and topography would make it nearly impossible to build a safe, permanent residence on. The creek also directly influences where a building site can be done on the back side of the property as shown on the GIS map.

3. The location as seen on the GIS map shows that even with the variance approval, the building site would be more than 50' from both the left and right side property lines. Even with the requested variance, I still have to build a house that is approved by the Amber Ridge HOA (ARHOA). The

Info  
Owner Name: SCHRADER  
CHARLES S JR &  
ASHLEIGH D  
Parcel ID: 122 3 8  
Acreage: 5

Amherst

Amherst

50'

70'

70'

59 1/2'

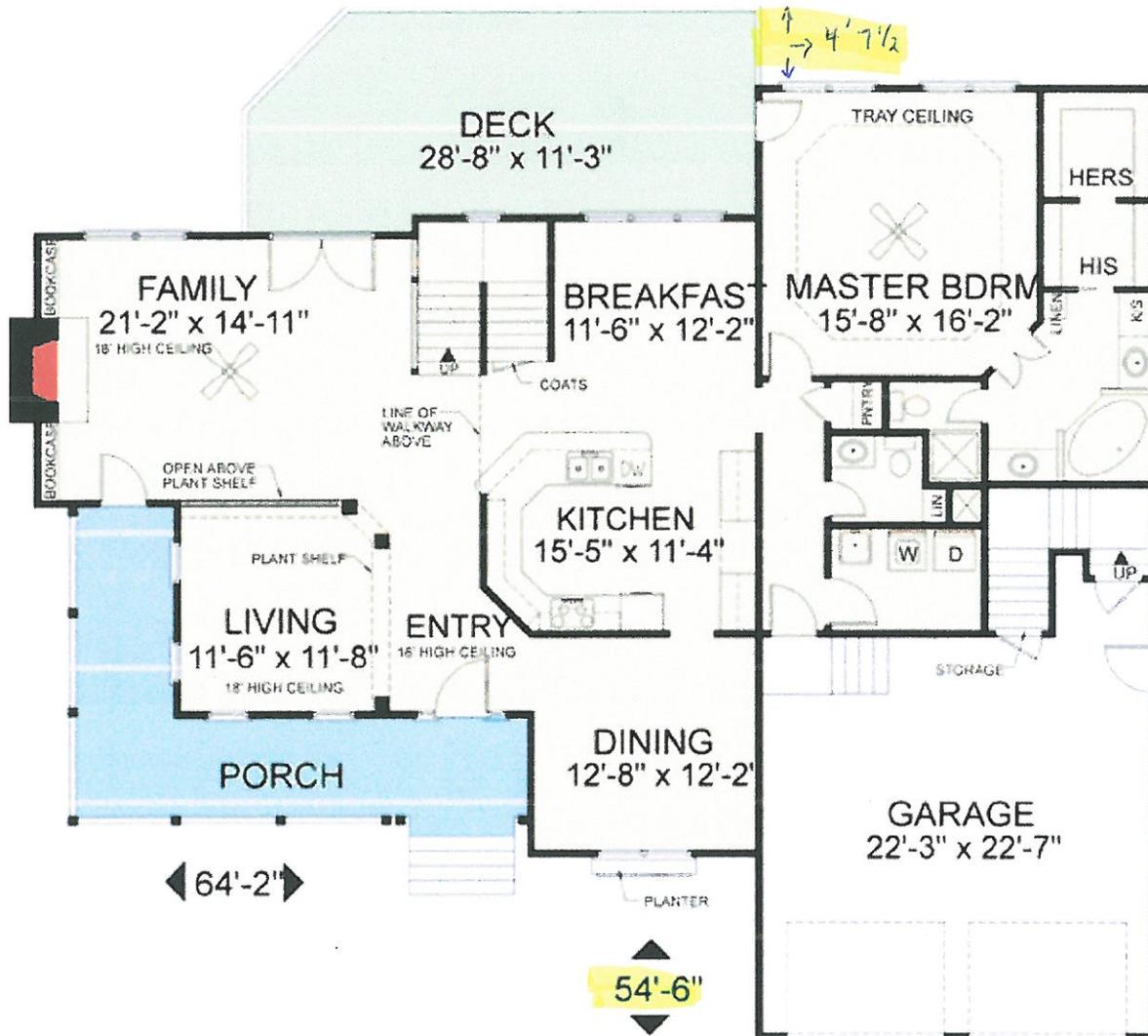
200'

50'

50m

100m

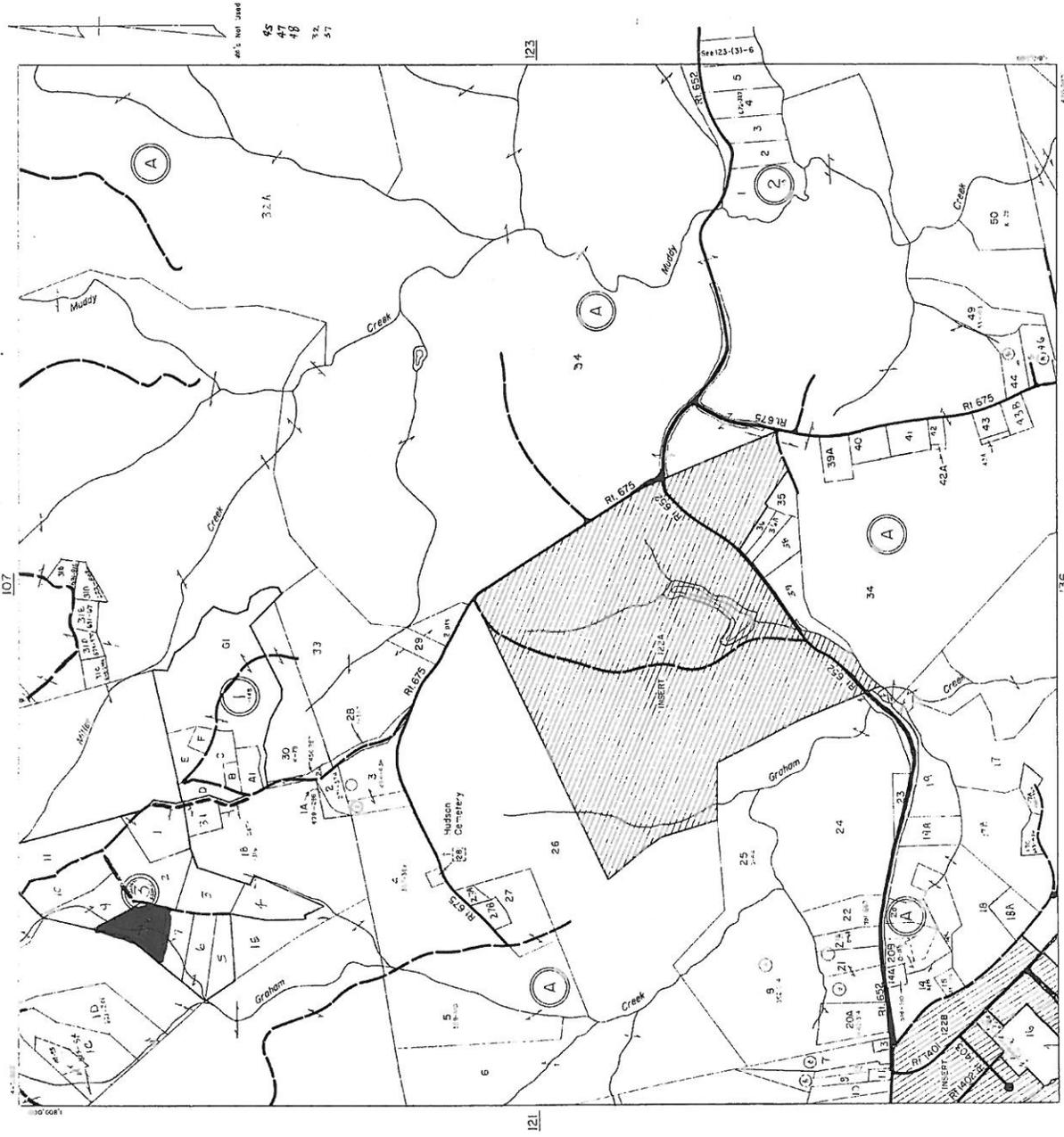




$$54'-6" + 4'-7\frac{1}{2}" = 59'-1\frac{1}{2}"$$

Square Feet =

AMHERST COUNTY



SECTION 122

ELON DISTRICT

REVISED 12/31/38