



TOWN OF WARRENTON

Community Development Department

PO BOX 341
WARRENTON, VIRGINIA 20188
<http://www.warrentonva.gov>
Landdevelopment@warrentonva.gov
(540) 347-2405

STAFF REPORT

June 6, 2023

Property Owner:	Travis and Jordyn Simoes Living Trust
Applicants:	Travis A. Simoes & Jordyn V. Simoes, Trustees
Application #	BZA #2023-2
Location:	576 Galina Way
PIN:	6983-79-2716-000
Acreage:	0.3785 Acres (16,489 square feet)
Zoning	Residential R-15
Comprehensive Plan Designation:	Low Density Residential
Land Use:	Residential - Single Family Detached
Request:	The Applicant is seeking approval of a Variance from Zoning Ordinance Article 2-19, to allow the construction of a fence greater than four feet in height within a front setback.
Recommendation:	Staff recommends that the Board of Zoning Appeals deny the variance request, as the applicant has not proven, by a preponderance of the evidence, that the four-foot high fence height limitation within the front yard setback area unreasonably restricts the utilization of the property as a single family residence; that granting a variance to increase the fence height to six feet would not alleviate a hardship due to the physical condition of the property or improvements thereon at the time of the effective date of the Ordinance; and a text amendment to the Ordinance has already been adopted by Town Council to address the issue of fence height within the secondary front yard setback on corner lots.

REQUEST

The applicant is requesting a variance from Article 2-19 of the Zoning Ordinance to construct a fence greater than four feet in height within the front setback of the subject property. Section 2-19 of the Zoning Ordinance permits the following with regards to fence height:

2-19.1 Fences and walls may be erected up to a height of six (6) feet in all zoning districts, except for fences or walls that extend within the required front setback, unless otherwise restricted by the ARB within the Historic District. Within the area bounded by the front setback and the side lot lines, fences and walls shall not exceed four (4) feet in height, unless otherwise restricted by the provisions of this Ordinance. Excluded are walls or fences encompassing swimming pools or other uses which are required by law.

2-19.2 Fences along the secondary front yard of a corner lot shall meet the side yard setback requirements within the front setback if they exceed four (4) feet in height.

The proposed location for the proposed six-foot high fence is along the Meadowview Lane right-of-way, to replace an existing four-foot-high fence. The existing fence is located between 1.6 feet off the right-of-way line to 0.9 feet within the right-of-way area. As shown on the fence location drawing submitted by the applicant, the proposed six-foot high fence is to be located from 1.6 feet off the Meadowview Lane right-of-way, to just within the property line.

As fences up to six feet in height are permitted in all zoning districts except within a front setback, approval of the application would grant a variance of up to 12 feet from the required 12-foot setback for a six-foot fence, which is equivalent to a two-foot height variance for a fence located in the front setback.

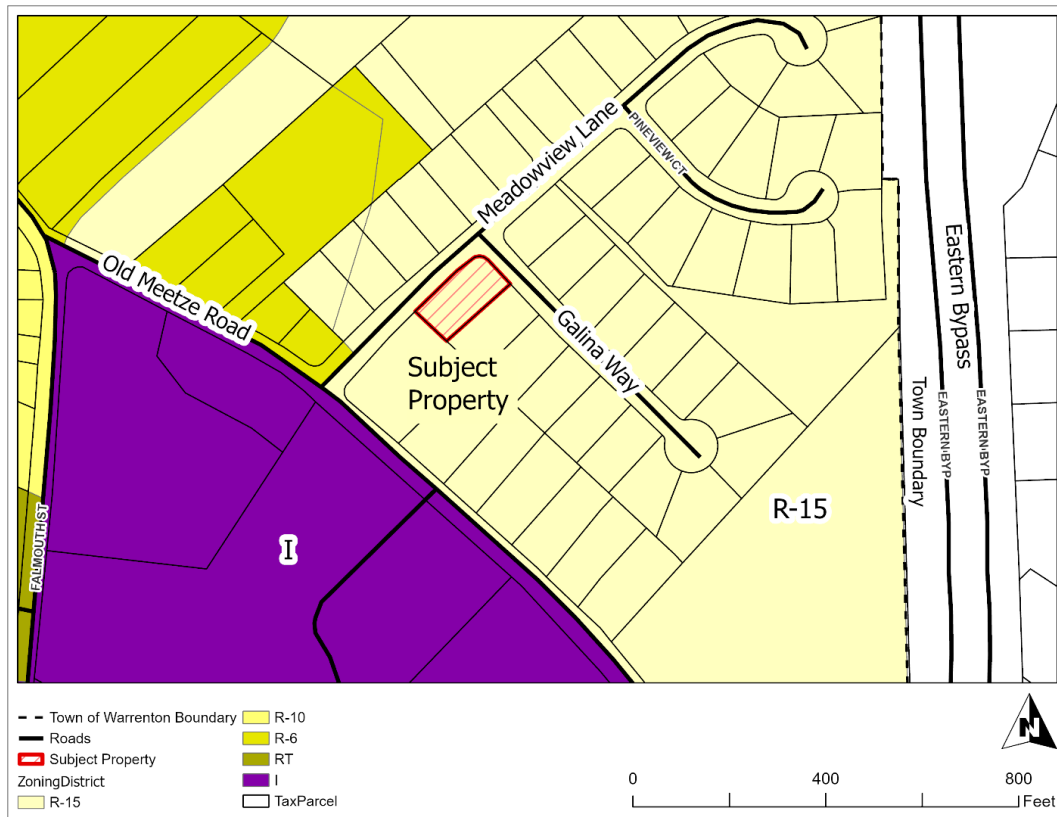
The applicant states that the six-foot high fence is needed to increase the safety and security of the applicant and neighborhood children, as well as to provide a visual barrier to increase privacy of the pool and hot tub area. The applicant states that granting a variance to increase the permissible height of the fence by two feet, to a height of six feet, would not pose a negative impact to pedestrians or drivers along Meadowview Lane.

BACKGROUND

The subject property was created as Lot 47 of the Monroe Estates subdivision via deed dated October 23, 2002, recorded in Deed Book 982, Page 940 in the Land Records of Fauquier County. The single-family home was constructed in 2004 according to Fauquier County Real Estate records. The applicant acquired the subject property on May 13, 2021, via deed recorded in Deed Book 1685, Page 1938. Adjacent uses are single-family detached dwellings.

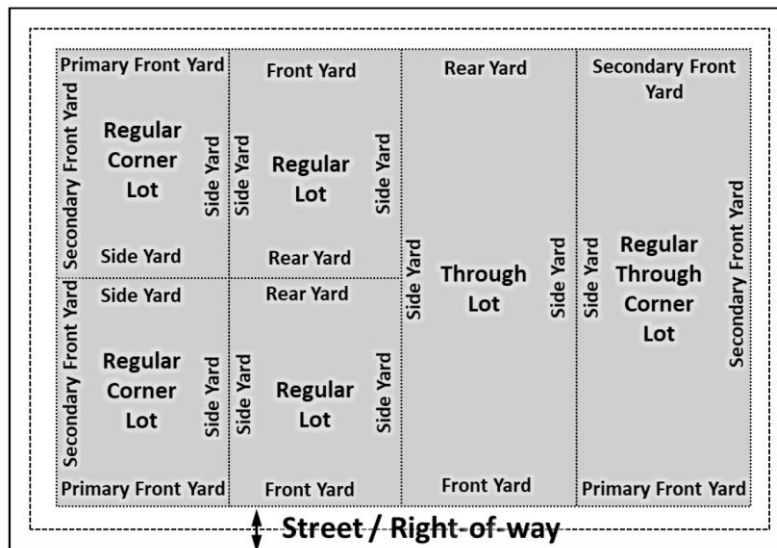
The property is zoned Residential (R-15) and has remained R-15 since prior to the creation of the Monroe Estates subdivision in 2002. The lot is 0.3785 acres (16,489 square feet) in size and has street frontage on both Meadowview Lane and Galina Way.

Location and Zoning Map



Both Meadowview Lane and Galina Way consist of a 50-foot-wide right-of-way dedicated for public street purposes as a part of the Monroe Estates subdivision in 2002. As the subject property has street frontage on both Meadowview Lane and Galina Way, the lot is a Regular Corner Lot per Ordinance Section 2-13 *Methods of Measuring Lots, Yards and Related Terms*.

Figure - Section 2-13.2 Regular lots, determination of front yard



On regular corner lots, all sides along streets are considered front yards, where the primary front yard is the shortest boundary fronting on a street and the secondary front yard is the longest boundary fronting on a street as stated in Ordinance Section 2-13.2.2 *Regular lots, determination of front yard* and further stated in Section 2-13.9. Therefore, the primary front yard for the subject property is along Galina Way, and the secondary front yard is along Meadowview Lane.

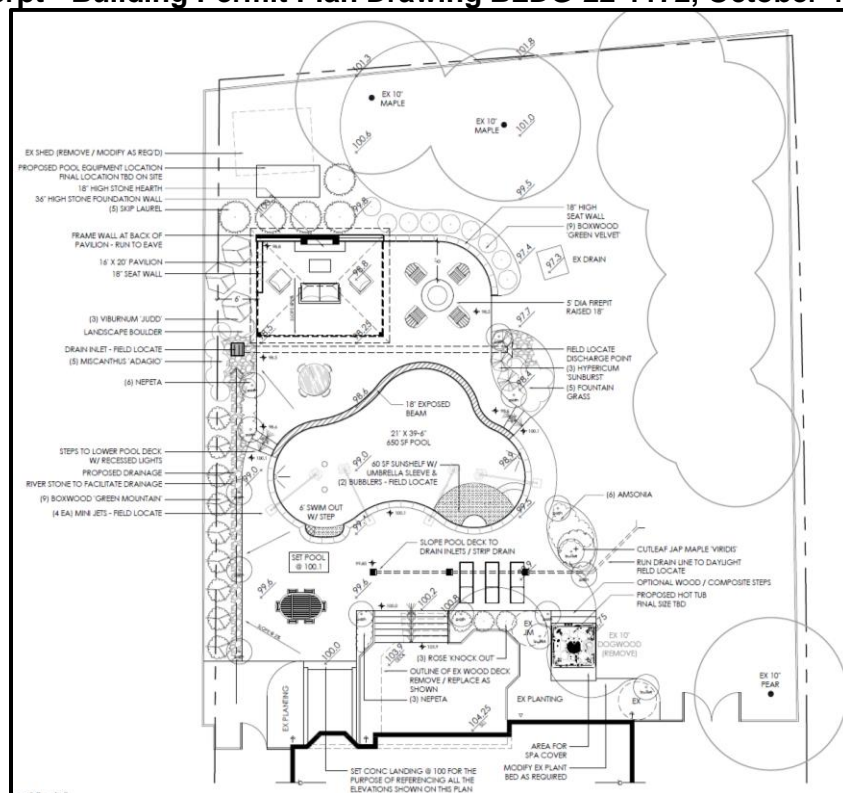
Section 2-19.2 of the Ordinance permits a setback reduction for corner lots, specifically for fences. Section 2-19.2 states:

Fences along the secondary front yard of a corner lot shall meet the side yard setback requirements within the front setback if they exceed four (4) feet in height.

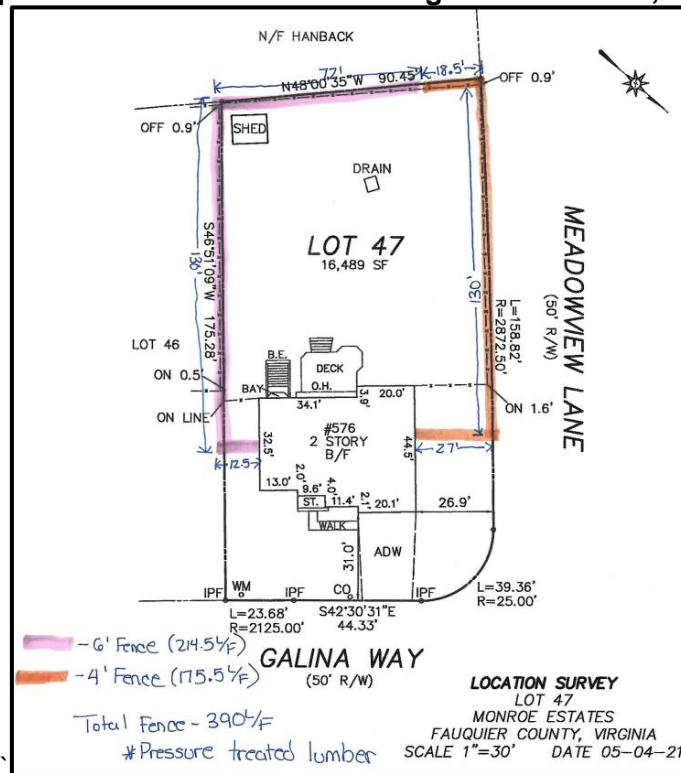
Within the R-15 district, the minimum required side yard setback is 12 feet, as found in Section 3-4.1.4 *Lot and Yard Regulations*. Given the setback reduction permitted for fences in Section 2-19.2, the subject property is permitted to have a fence up to four feet in height to within 12 feet of the Meadowview Lane right-of-way; any fence greater than four feet high must be set back at least 12 feet from the property line.

Within the secondary front yard setback off Meadowview Lane, the applicant may install a four-foot-high fence with the approval of a Zoning Permit. On October 4, 2022, the applicant submitted a Building and Zoning Permit to construct a swimming pool, hot tub, pavilion, outdoor kitchen and four-foot-tall fence, permit number BLDG-22-1172. As a part of this permit, the applicant was authorized to construct a 4-foot-tall fence along Meadowview Lane, and a six-foot-tall fence along the rear and opposite side property line to fully enclose the back yard area.

Excerpt - Building Permit Plan Drawing BLDG-22-1172, October 4, 2022



Excerpt – Approved Fence Location Drawing BLDG-22-1172, March 14, 2023



A fence, or other barrier to prevent access, is required around all swimming pools per the Virginia Uniform Statewide Building Code (USBC). The minimum height of a fence is regulated by the *International Swimming Pool and Spa Code* and enforced by the Town of Warrenton Building Official. Code Section 305.2.1 *Barrier height and clearances*, subsection 1.1 states:

The top of the barrier shall be not less than 48 inches (1219 mm) above grade where measured on the side of the barrier that faces away from the pool or spa. Such height shall exist around the entire perimeter of the barrier and for a distance of 3 feet (914 mm) measured horizontally from the outside of the required barrier.

The minimum required barrier around a pool is four feet, as measured from the ground surface to the top of the barrier. The four-foot-tall fence that was approved for the subject property along Meadowview Lane as a part of the Building Permit on March 3, 2023, effectively mitigates safety concerns as required by the Building Code.

ANALYSIS

Staff has reviewed the requested variance against the Virginia State Code and the Town of Warrenton Zoning Ordinance to determine if the request meets the criteria required to grant the variance. Below are the variance criteria along with staff's analysis on how the application either meets or does not meet each criterion. The BZA must determine if the application has provided sufficient proof that the request meets the standards for a variance as defined by the Virginia State Code. Virginia State Code and the Zoning Ordinance define a variance as:

Variance – In the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the Ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the Ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

In granting a variance, the BZA may impose such conditions regarding a proposed structure's location, character, and other features or use as it may deem necessary in the public interest. The BZA may require a guarantee or bond to ensure compliance with the imposed conditions. The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinances. Per the Virginia State Code,

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would:

1. Unreasonably restrict utilization of the property, or

The subject property is developed with a single family detached residence, a by-right permitted use within the R-15 Zoning district. Since the subject property is considered a Corner Lot, with frontage on two public streets, the Ordinance allows a setback reduction specifically for fences located within the secondary front yard, which in this case is along Meadowview Lane. Along Meadowview Lane, a fence that is no more than four feet high may be located within 12 feet of the right-of-way line. Outside of and behind this reduced 12-foot-wide setback, the height of a fence is permitted to extend to a height of six feet.

The property is currently improved with a four-foot-tall fence along Meadowview Lane, and a Zoning Permit has been issued to permit the construction of a new four-foot-tall fence to replace the existing fence in the same location. The Building Code requires the provision of a fence around a swimming pool; however, the minimum required fence height to meet code requirements is four feet. A four-foot-tall fence within the Meadowview Lane secondary front yard setback will therefore not restrict the applicant's ability to construct or use a pool within their back yard area as an accessory use to the primary residential use of the property.

Staff does not find that the applicant has proven by a preponderance of the evidence that the four-foot-high fence height limitation within the front yard setback area unreasonably restricts the utilization of the property as a single-family residence. The four-foot-tall fence meets the building code requirement, and the applicant has the option to adjust the location of the fence to be outside of the 12-foot setback area should a six-foot tall fence be desired. Staff therefore recommends that the BZA deny the requested variance based on the absence of evidence that constructing the permitted four-foot-tall fence instead of a six-foot tall fence within the secondary front yard setback constitutes an unreasonable restriction on the applicant's use of the property as a residence.

OR

2. *that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the Ordinance, or*

A *hardship*, is “something that causes or entails suffering or privation” (Merriam-Webster, 2023). Within the context of a Variance, an applicant must demonstrate that a variance would relieve a hardship or lessen an unequitable condition due to a physical condition of the property that equates to privation.

The subject property does not contain any physical restrictions on developable area such as steep topography, irregular shape, significant drainageways, restrictive easements or other physical conditions that would unduly impact the ability of the property owner to use the property for residential purposes. The specific condition of the property from which the applicant is seeking relief is that the property is a corner lot, with two front yard setbacks, which prohibits a six-foot high fence within 12 feet of one property line.

Numerous residential lots within the Town are corner lots, where they have frontage on at least two public streets. Within the Monroe Estates subdivision, there are a total of eight lots that are corner lots with two front yard setbacks. Within a 2,000-foot radius of the subject property, there are an additional 19 lots that consist of corner lots with both a primary and secondary front yard setback. The condition of the property is not unique or uncommon.

The physical condition of the property, as a corner lot developed with a single-family residence, does not equate to privation or hardship. The lot size and shape are such that the property owner is in the process of further developing the property with a pavilion, pool, hot tub, and other accessory structures, none of which are impacted by the physical condition of the property. Staff does not find that the Ordinance provision that restricts the height of a fence to no more than four feet high within 12 feet of Meadowview Lane to be a hardship. Staff therefore recommends that the BZA deny the requested variance based on the absence of evidence that constructing the permitted four-foot-tall fence instead of a six-foot tall fence within the secondary front yard setback constitutes a hardship.

OR

3. *alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability."*

The applicant's justification does not include a request for the variance to provide a reasonable modification to the Ordinance requirements for a person with a disability.

In addition to the three points above, no variance shall be authorized by the BZA unless it is determined that the request meets all five of the following criteria as listed in Zoning Ordinance Section 11-3.11.1 2. - *Standards for Variances*:

- a) *The property interest for which the variance is being requested was acquired in good faith, and any hardship was not created by the Applicant for the variance.*

The property was acquired in good faith by the applicant on May 13, 2021. This standard is met by the applicant.

- b) *The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.*

Meadowview Lane is the sole access point for the Monroe Estates subdivision, and serves 46 homes, including the homes located on both Galina Way and Pineview Court. The subject property is the first lot along the right side of Meadowview Lane, where all vehicular traffic entering the subdivision area must pass by the secondary front lot line. The Ordinance requires all fences that are located within the minimum required front yard to be no more than four feet in height.

Fences greater than four feet in height could impact the line of sight for vehicles approaching the Meadowview Lane and Galina Way intersection. Therefore, staff recommends that the BZA should consider any potential impacts that could be generated by permitting an increase in the allowable height of the fence from four (4) feet to six (6) feet along Meadowview Lane. It is unclear whether this standard is met by the applicant.

- c) *The condition or situation of the property is not of so general or recurring of a nature as to be adopted as an amendment to the Ordinance.*

The subject property is a Regular Corner Lot as defined by the Ordinance; including the subject property, a total of eight lots within the Monroe Estates subdivision are Regular Corner Lots and have both a primary front yard and a secondary front yard. Within 2,000 feet of the subject property, there are 19 properties that also have both a primary and secondary front yard. Corner lots are found widely throughout the Town and are a commonly occurring condition.

On December 9, 2014, the Town Council adopted a text amendment to the Ordinance to reduce the setback requirement for fences within the secondary front yard of a corner lot, case number ZOTA-14-04. This text amendment was initiated and passed to address the number of variance requests submitted to the BZA for fences of six feet in height within the front yard setback on corner lots. The background and justification for this text amendment states:

The request for the change to side setbacks for fences on corner lots is a result of two variance requests that were heard by the BZA this year. There has been an additional issue concerning side setbacks for a fence that was installed initially without a permit. This change is being recommended due to the increasing trend with requests for variances to the side setback for fences. Staff believes that the intent of the Ordinance to prevent obstruction of vision near intersections with fences on corner lots can still be met with maintaining the side setback requirement within the front setback area only and not along the entire side that faces the side street. There is a height restriction of four feet for fences within the front setback area bounded by the front and side lot lines.

The condition of the subject property, where the lot consists of a corner lot with both a primary and secondary front yard setback, is a commonly occurring condition. However, this condition was already addressed by a text amendment to the Ordinance to reduce the setback requirements for fences along the secondary front yard. Staff therefore recommends that the BZA deny the requested variance, as the condition of the property is of a recurring nature that has already been addressed by Town Council.

- d) *The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.*

Single-family dwellings, and those uses that are accessory and incidental to residential uses such as fences, are a by-right permitted use in the district and would not affect the current Zoning designation for the property. This standard is met by the applicant.

- e) *The relief or remedy sought by the variance application is not available through a special use permit process that is authorized in the Ordinance or the process for modification to the Zoning Ordinance at the time of the filing of the variance application.*

A Special Use Permit cannot provide relief from the limitation on fence height within the front yard setback. This standard is met by the applicant.

STAFF RECOMMENDATION

To grant a variance, the BZA must find that the application meets one of the first three criteria (1 - 3) listed above regarding unreasonable utilization, alleviating a hardship, or accommodating a person with a disability. In addition, the variance must also meet all five of the remaining criteria (a – e) noted above regarding good faith acquisition, no substantial detriment, not generally recurring, does not allow an unpermitted use, and is not available by other means.

Staff finds that the application submitted by the applicant does not meet either criteria 1 or 2 related to unreasonable utilization or alleviating a hardship, nor does the application meet standard c) where the condition is so generally recurring that a text amendment to the Ordinance is needed.

Staff recommends that the Board of Zoning Appeals deny the variance request, as:

Per Ordinance Section 11-3.11.1 *Variances Authorized*:

1. The provision of the permitted four-foot-high fence within the secondary front yard setback, instead of the requested six-foot-high fence, does not unreasonably restrict the use of the property as a single family residence;
2. There is no hardship present due to a physical condition of the property or improvements thereon at the time of the effective date of the Ordinance where such hardship would be alleviated by a six-foot-high fence instead of the permitted four-foot-high fence; and

Per Ordinance Section 11-3.11.2 *Standards for Variances*:

c) The condition of the property as a corner lot is a recurring condition within the Town, however a text amendment has already been adopted by Town Council to address this specific issue.

ATTACHMENTS

- A. Proposed Conditions of Approval / Proposed Motion for Denial
- B. Photographs – Existing Conditions
- C. Variance Application Materials
- D. Deed of Ownership – May 13, 2021
- E. Deed of Subdivision, Monroe Estates – October 23, 2002
- F. Building Permit - Pool, Hot Tub, Pavilion, Fence – October 6, 2022
- G. Building Permit Drawing – Pool, Hot Tub, Pavilion – October 4, 2022
- H. Building Permit Drawing – Approved Fence Location – March 14, 2023
- I. Zoning Ordinance Text Amendment – Fences – December 9, 2014