



TOWN OF WARRENTON

Community Development Department

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STAFF REPORT

September 11, 2024

Property Owner(s) / Applicant:	PRKLOT, LLC/ Scott Wayland
Application #	BZA #2024-3
Location:	671 Falmouth Street
PIN:	6983-68-5113-000
Acreage:	2.125 Acres (92,565 Square Feet)
Zoning:	Industrial (I)
Comprehensive Plan Designation:	Greenway and Makers District
Land Use:	Commercial/ Industrial
Request:	The Applicant is seeking approval of a Variance from Zoning Ordinance Article 2-19.1, to allow the construction of a portion of 8' fencing to screen the rear portion of the site from view.
Recommendation:	Staff recommends the Board of Zoning Appeals approve BZA #2024-3 per the pattern motion of approval dated October 1, 2024.

REQUEST

The applicant is requesting a variance from Article 2-19.1 of the Zoning Ordinance to construct an 8' fence along the front of the property to increase site security and screen work vehicles and equipment stored in an existing pole barn on the site. Staff is unable to administratively approve requests for fencing that exceed 6' in height regardless of the location on the property. The fence material is proposed to be board & batten with a steel frame.

"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."

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Existing and Proposed Fence location



Example of Fence Material



BACKGROUND

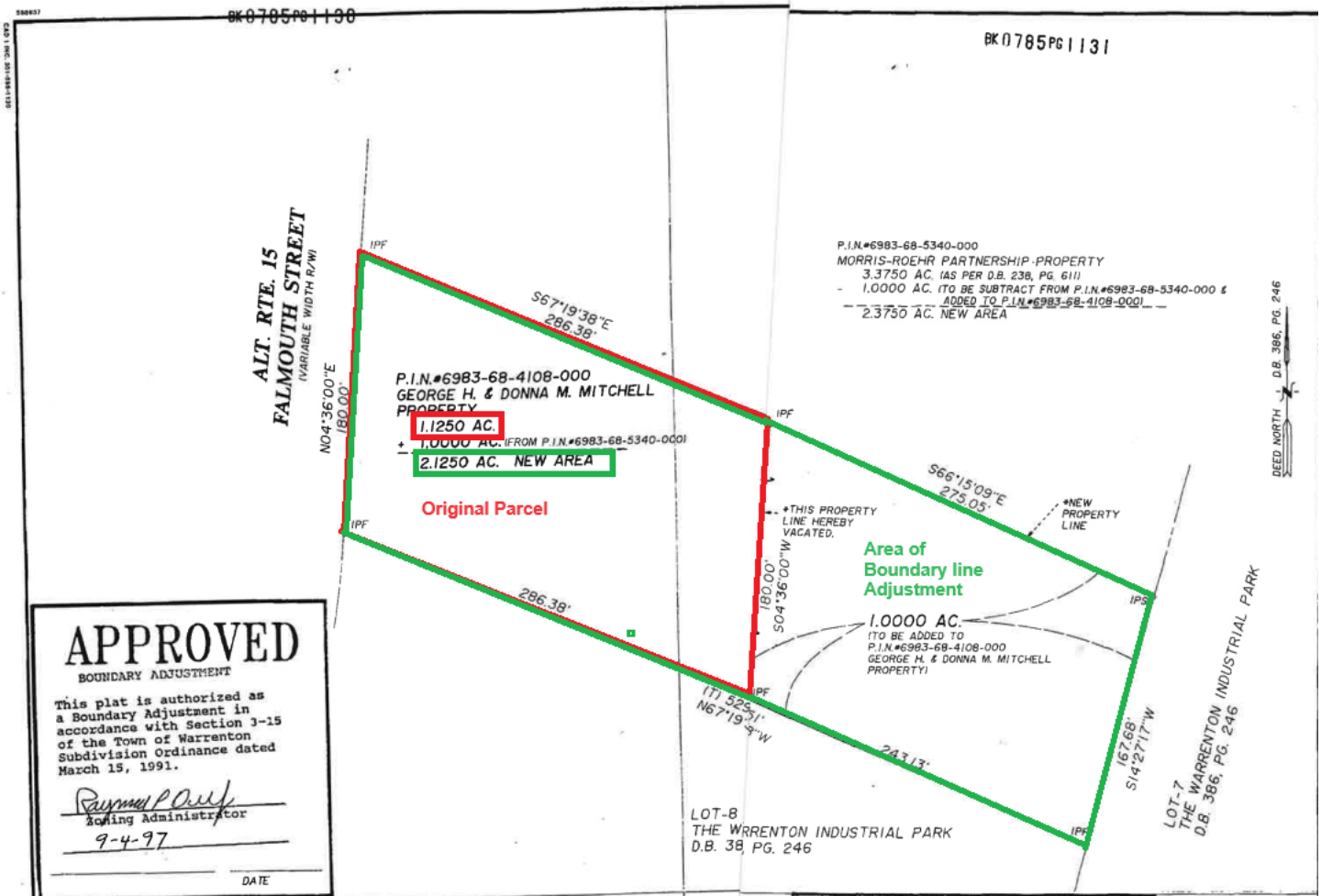
The subject property was originally a portion of the 100- acre property known as the Hitchcock property in 1963, which was part of an estate sale in deed book 223 page 572. The property was then subdivided and sold in deed book 238 page 611, as a lot containing 4.5 acres, with a smaller 1.1250-acre lot shown with a metes and bounds description.

Deed book 238, Page 611



The subject property as it exists today, was created from a boundary line adjustment in 1997 with adjacent property parcel # 6983-68-5340-000 to form a lot of 2.1250 acres.

Deed book 785, page 1128



ANALYSIS

Staff attended a presentation by Sans Anderson, PC, a local legal practice, regarding recent case law updates for variances, and the ruling made by the court system. The Vallerie Holdings vs. County of Louisa case represents a turning point in how local governments are able to define a "reasonable utilization of the property" when granting or denying a variance application.

This case law, which was agreeable with the Supreme Court of Virginia, indicated that the 2015 update to Virginia State Code Section § 15.2-2309 was intended to expand the availability of a variance, setting a lower bar for the property owner. The case law indicated the BZA shall issue a variance if the effect of the Zoning Ordinance is to limit the use or enjoyment of the property in a way that is irrational, capricious, or not fair or sensible under the circumstances in which it is presented.

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 with the staff's opinion on how the application meets each criterion. The BZA will need to determine if the application has provided sufficient proof that the request meets the standards for a variance as defined by 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 fencing proposed to be installed will screen the existing pole barn on the property as well as provide additional safety measures for the staff, vehicles, and equipment located on site. Currently, the zoning ordinance allows for fencing up to 6' to be administratively approved; However, the 6' fencing would not be adequate to screen the existing structures on site due to their pre-existing height.

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

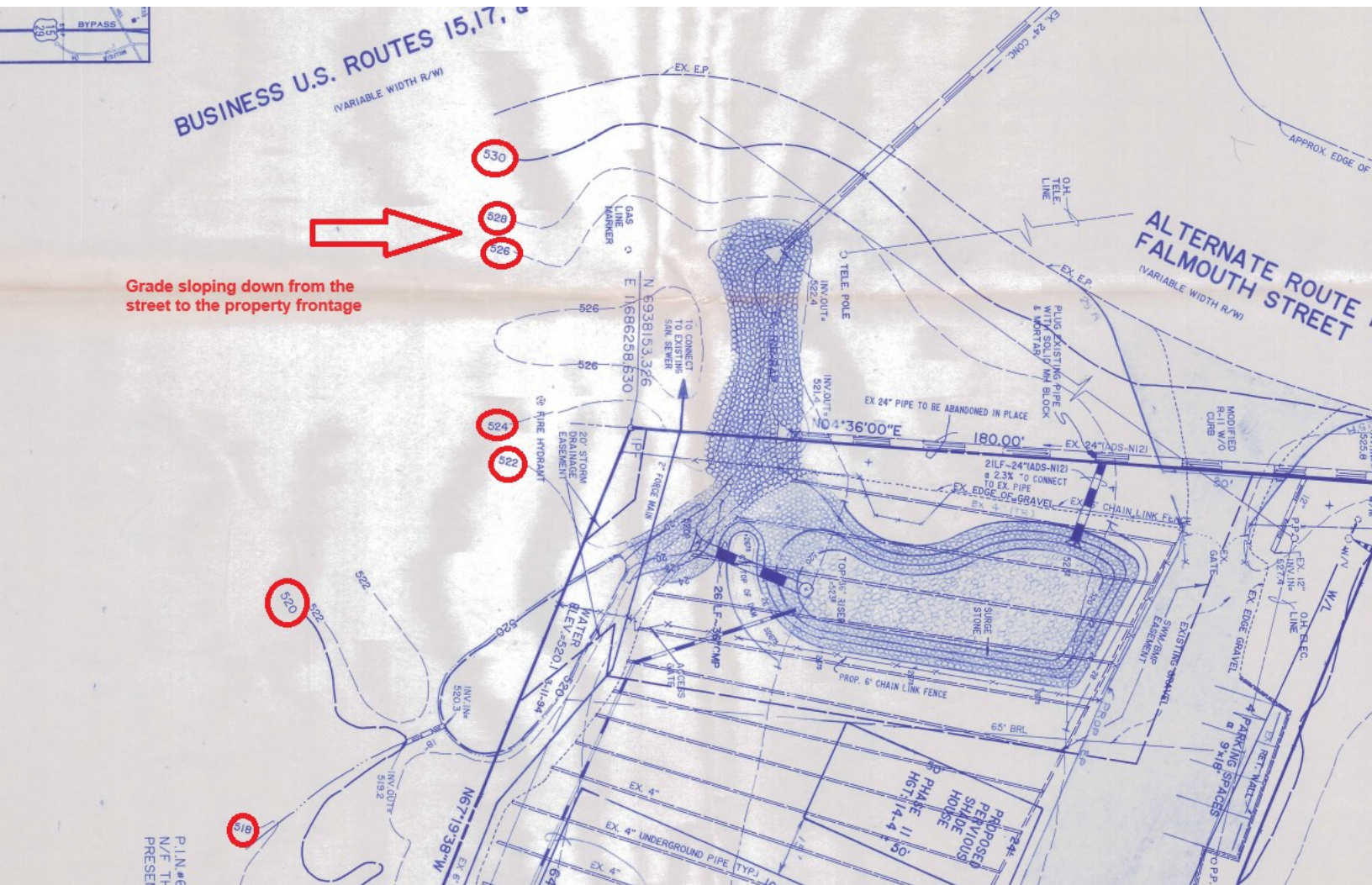
The property has a slight downward slope located along the majority of the parcel along Falmouth Street due to an existing stormwater facility that increases visibility of the property to oncoming traffic and pedestrians, making screening on-site facilities with a 6' fence difficult.

Front of the property viewed from the street



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Grade change from the previous Site Development Plan (Approved in 1994)



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."*

Not applicable.

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 in 2023 by purchase of the property recorded in deed book 1761 pages 2-3. The hardship was not created by the applicant, due to the age of the property, its pre-existing exterior storage areas, and the previous landscaping company who occupied the parcel.

- 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.*

The variance will not be detrimental to the adjacent properties, as the adjacent properties are also zoned Industrial, and currently occupied by various Commercial and Industrial uses such as an automotive repair shop, a veterinary clinic, a pet boarding facility, and a self-storage facility.

- 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.*

This property is unique in that the grade slopes downward toward the property due to a pre-existing Stormwater Facility. The unique nature of the property condition does not lend itself to an amendment of the Ordinance that would apply to all properties located within the Town.

- 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.*

A “contractor’s office and warehouse” is a by-right permitted use in the Industrial District, and would not result in a change in the zoning of the property as it exists today.

- 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.

STAFF RECOMMENDATION

To grant a variance, the BZA must find that the application meets one of the first three criteria 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 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 recommends that the variance application be granted due to the unique condition of the property. The limitation of a 6’ fence is a restriction on the reasonable use of the subject property, supported by the court finding in *Vallerie Holdings V. County of Louisa*; that the BZA shall grant a variance if the Ordinance limits enjoyment or use of the property in a capricious or unreasonable manner. A variance to increase the proposed fence height by 2’ will not be of substantial detriment to adjacent properties and will not result in a change in the use of the property. Staff recommends approving the Variance request to permit an increase in the

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proposed fence height with the condition that the fencing shall not exceed 8' in height at any point and the approval for an 8' fence does not include approval for outdoor uncovered storage, which currently requires a separate Special Use Permit approval from the Town Council.

ATTACHMENTS

- A. Proposed Conditions of Approval / Proposed Motion for Denial
- B. Maps – Location, Zoning, Aerial Imagery
- C. Photographs – Existing Conditions
- D. Lot Layout with fence location
- E. Variance Application Materials
- F. Deed of purchase-2023
- G. Historic Deeds
- H. 2004 Right of Way Agreement
- I. 1994 Site Development Plan- Mitchell Landscaping