



# TOWN OF WARRENTON

## Community Development Department

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

### STAFF REPORT

**November 20, 2024**

<b>Property Owner(s) / Applicant:</b>	ATKINS HOMES, LLC/ Dan Atkins
<b>Application #</b>	BZA #2024-4
<b>Location:</b>	57 Madison Street
<b>PIN:</b>	6984-50-4270-000
<b>Acreage:</b>	0.2097 Acres (9,136 Square Feet)
<b>Zoning:</b>	Residential (R-10)
<b>Comprehensive Plan Designation:</b>	Low Density Residential; Old Town Character District Overlay
<b>Land Use:</b>	Vacant
<b>Request:</b>	The Applicant is seeking approval of a Variance from Zoning Ordinance Article 3-4.2.4 to allow construction of a single-family home within the required side yard setback area.

---

### REQUEST

The applicant is requesting a variance from Article 3-4.2.4 of the Zoning Ordinance to construct a 2,926 square foot single-family home, and a 192 square foot attached rear deck within the required 10-foot side yard setbacks resulting in a variance of approximately 2 feet on each side.

Staff are unable to administratively approve requests for encroachments into required setbacks for primary structures. Staff can only administratively approve encroachments for accessory structures such as decks, porches, and HVAC equipment as permitted by article 2-18 of the Zoning Ordinance.

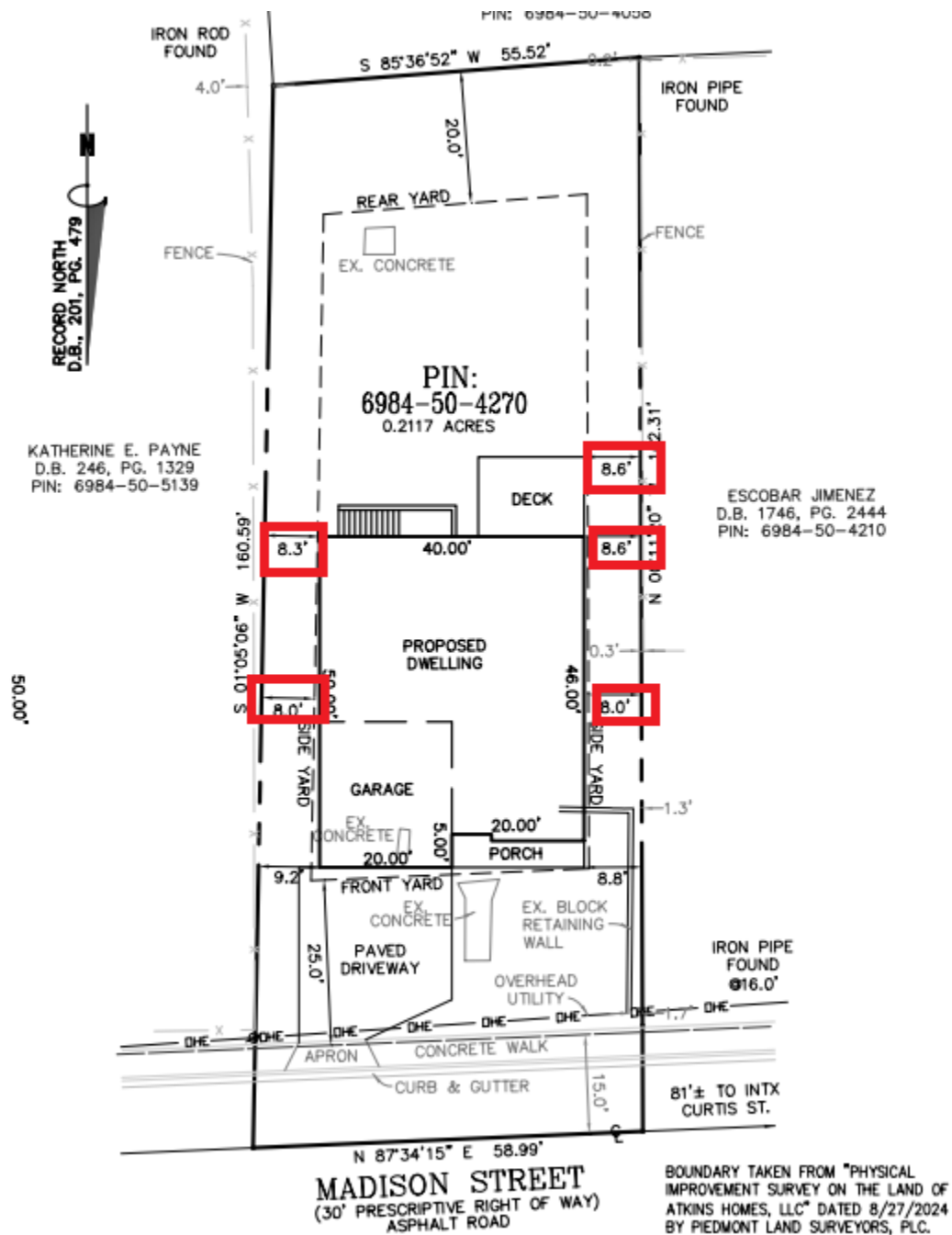
Staff Report, Board of Zoning Appeals

BZA #2024-4

December 3, 2024

### House Location Plan

Submitted by Dan Atkins, Applicant

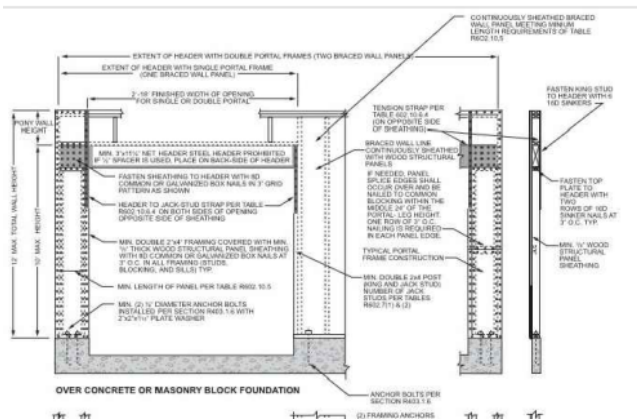


This image shows the proposed home location on the existing lot, with the proposed 8-foot side yard setback shown in red in the image above.

# **Proposed Elevations** *Submitted by Dan Atkins, Applicant*

## **SQUARE FOOTAGE DATA**

FIRST FLOOR LIVING.....	1,326.0 SQ FT
SECOND FLOOR LIVING.....	1,600.0 SQ FT
UN-FINISHED BASEMENT.....	1,326.0 SQ FT
GARAGE.....	440.0 SQ FT
FRONT PORCH (FIRST FLOOR).....	30.0 SQ FT
REAR PORCH (FIRST FLOOR).....	192.0 SQ FT
<b>TOTAL FINISHED LIVING.....</b>	<b>2,926.0 SQ FT</b>
<b>TOTAL CONSTRUCTION.....</b>	<b>4,914.0 SQ FT</b>



The image above shows the proposed elevations for the home, and includes square footage data for each floor, and all accessory structures. The first and second floors of the home are 2,926 square feet combined, the unfinished basement is 1,326 square feet, the garage is 440 square feet, and both front and rear porches are 222 square feet combined.

## **BACKGROUND**

The subject property was originally part of an estate sale in the early 1900's but has been a legal lot of record since 1958, as shown in Deed Book 201 Pages 479-480, and is identified as 9,136 square feet or 0.2097 acres. The lot remained as so in a most recent and subsequent sale of the parcel in 2000, to Levi and Lucia Byrd, as shown in Deed Book 865, Page 862.

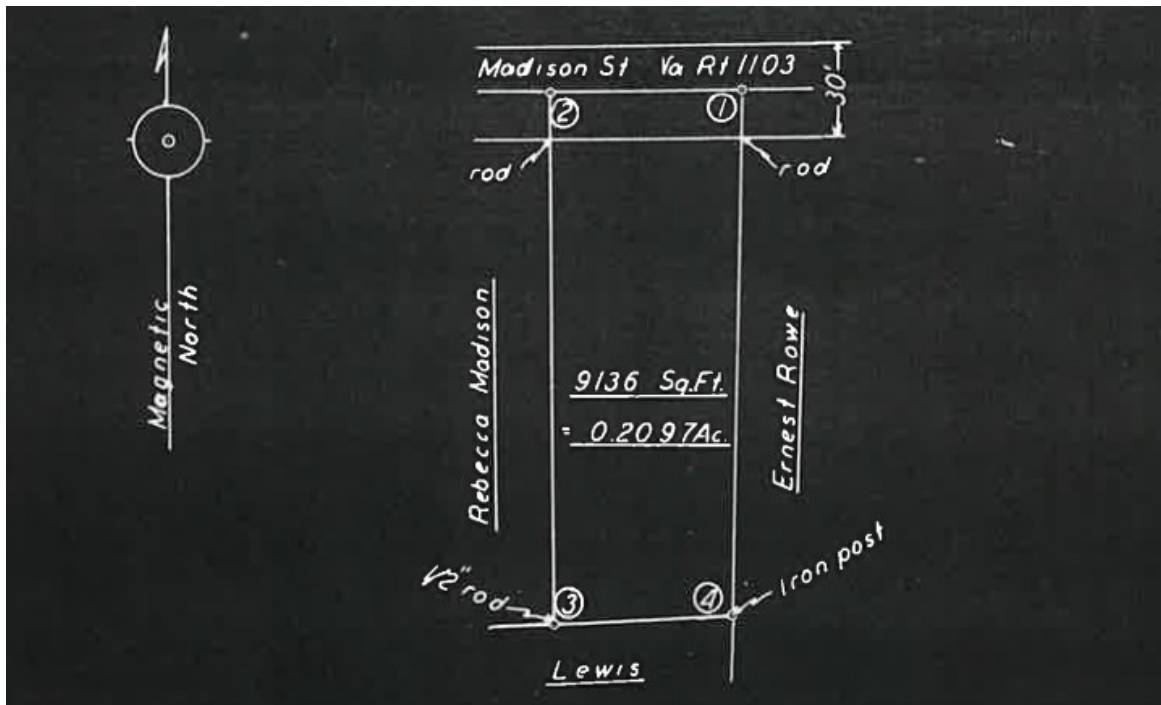
In 1958, shown in Deed Book 201 Pages 479-480, the lot is described as having a 58.99-foot frontage along Madison Street, which did not conform to the 1955 Zoning Ordinance's minimum required lot frontage of 75 feet. This frontage requirement (75 feet) did not change in subsequent Zoning Ordinance adoptions in 1959, 1976, and 1991, making the existing lot legally non-conforming to the current (2006) Zoning Ordinance requirements.

The applicant, Mr. Dan Atkins, purchased the property in September of 2024 from the Byrd's with the intent to develop the property with a single-family home.

December 3, 2024

Deed book 201, page 479-480

February 27, 1958



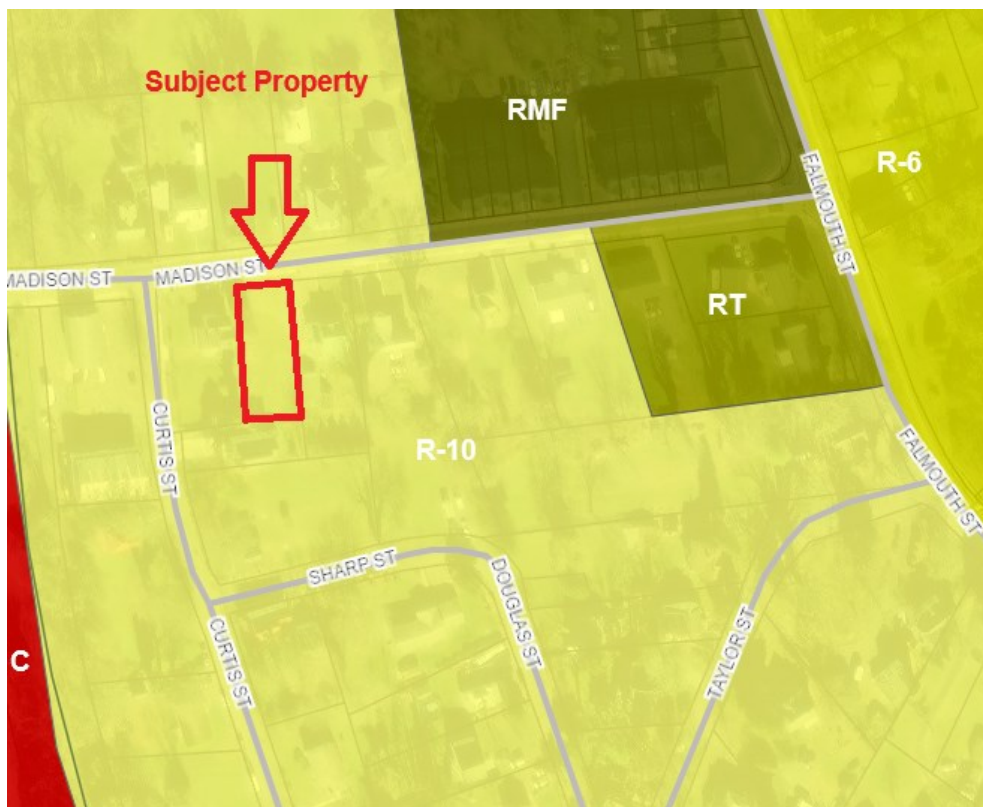
Deed book 865, Page 862

April 10, 2000

**ALL OF THAT** certain lot or parcel of land being situate in Centre Magisterial District, Fauquier County, Virginia, near the Town of Warrenton and fronting on Madison Street, Virginia, Route 1103, and described by metes and bounds on that certain plat and survey prepared by Fred Bartenstein, S.F.C., dated February 24, 1958, and attached to deed of trust recorded in Deed Book 201, page 479, in the Clerk's Office of the Circuit Court of Fauquier County, Virginia, containing 9,136 square feet, more or less or 0.2097 acre, more or less.

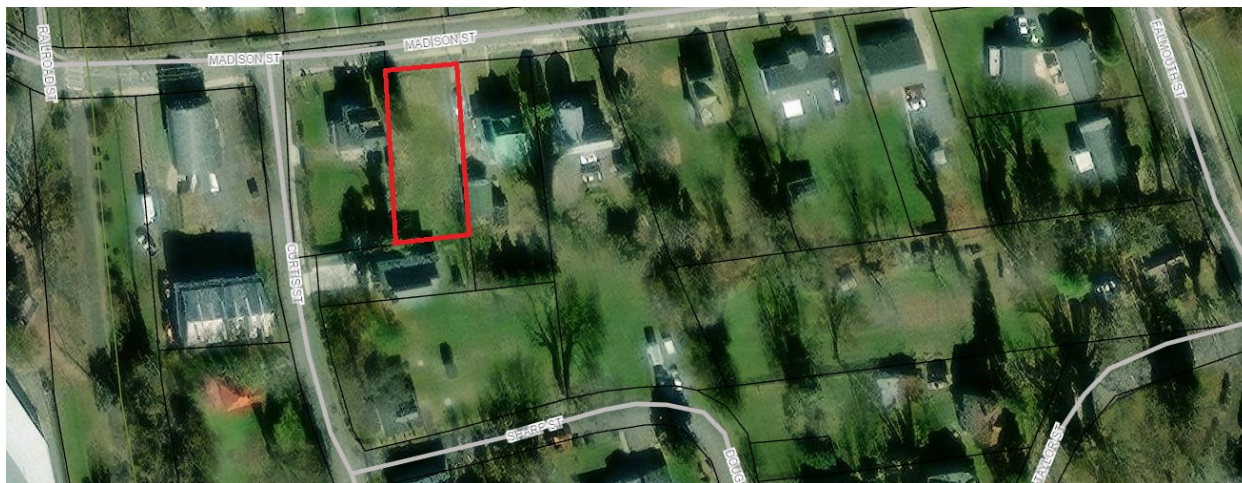


## Zoning Map and Location



The property is located on Madison Street, within the R-10 Zoning District, and is surrounded by existing single-family homes, also zoned R-10. There are existing townhomes down the street on the corner of Madison and Falmouth Street.

## Existing Conditions



The property is currently vacant and surrounded by existing single-family homes on both sides.

## **ANALYSIS**

### ***Recent Case Law***

Staff recently 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.

### ***Virginia State Code and the Town of Warrenton Zoning Ordinance***

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 § 15.2-2309,

*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*

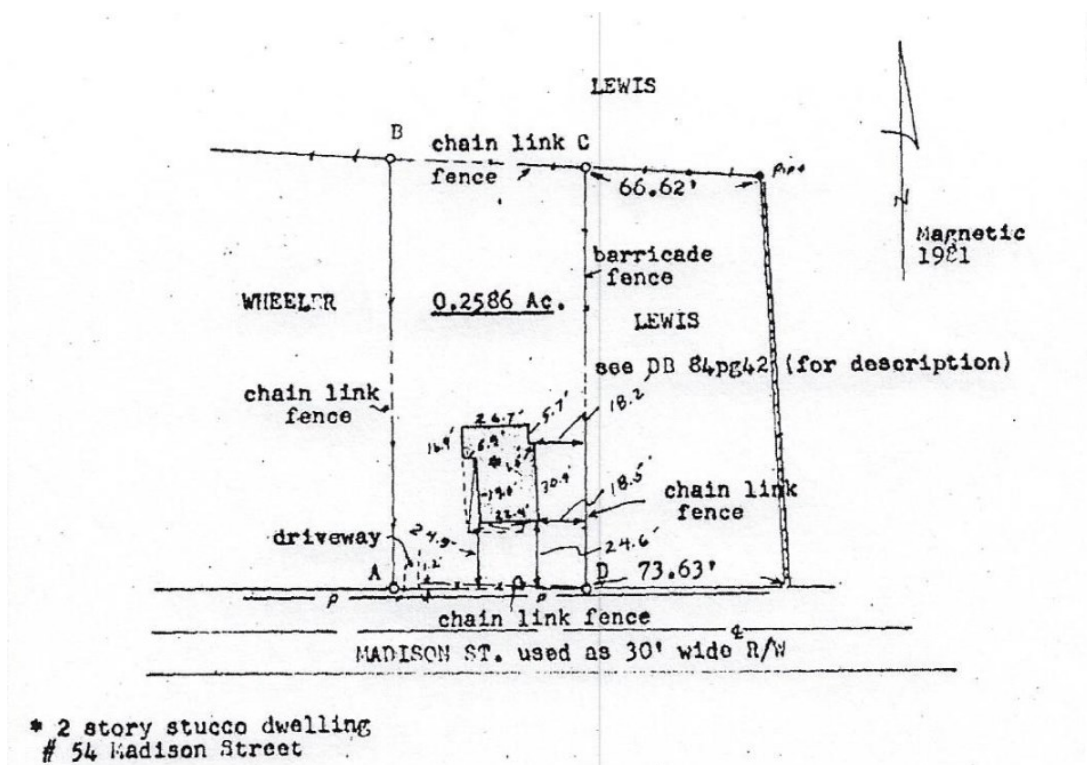
- a. The proposed 2,926 square foot single-family home averages about 1,348 square feet larger than neighboring homes on Madison Street with similar lot sizes.

Address	Lot Size	Living Area	Difference
53 Madison Street	10,890 square feet	1,636 square feet	1,290 square feet
44 Madison Street	10,890 square feet	1,408 square feet	1,518 square feet
54 Madison Street	11,264 square feet	1,688 square feet	1,238 square feet

In addition, a neighboring property across the street from the subject property, 54 Madison Street, has a 18.2' side yard setback for the existing home as shown on a 1981 Boundary Survey.

**Plat of 54 Madison Street**

November 16, 1981; Deed Book 424, Page 137

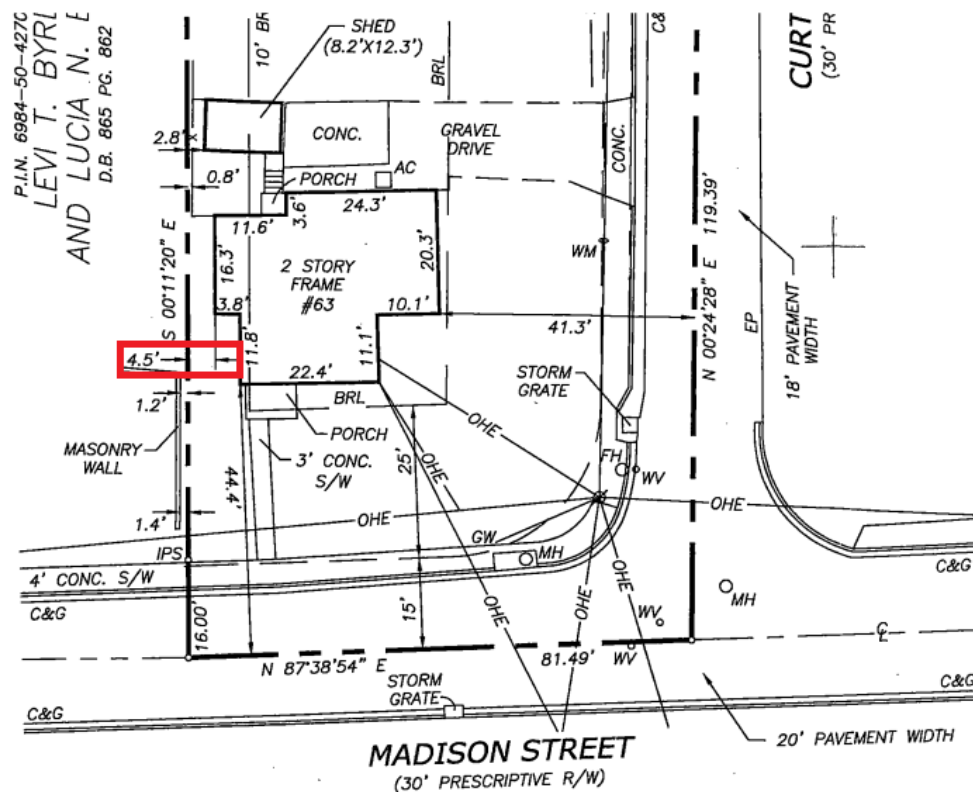


- b. The *Vallerie Holdings v. County of Louisa* case supported fair, sensible, and reasonable utilization of the property; The applicant could reasonably place a smaller home within the required setbacks, effectively eliminating the need for a variance from the Board of Zoning Appeals.

- c. The applicant would like to apply the lot regulations and setbacks as permitted by a cluster development, which is a by-right permitted use in the Residential R-10 Zoning District; However, the applicant is not proposing to provide the additional requirements for cluster development under Article 9-6, such as open space. Staff does not feel that this is adequate justification for the variance request.
- d. The applicant has also noted the existing non-conforming setbacks for the adjacent property, 63 Madison Street. Upon staff research, the property appears to meet current lot size requirements (10,000 square feet), but the dwelling itself was constructed in the 1940's, prior to the Town's first Zoning Ordinance in 1955, making the lot legal non-conforming due to pre-existing setbacks.

**Plat of 63 Madison Street**

April 4, 2023; Deed Book 1746, Pages 2444-2450



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 seems to have a slight downward slope, but the ground appears to be largely level across the rear of the lot. The property is not encumbered by any existing utility or drainage easements.



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 variance request is not being requested by or on behalf of 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 in 2024 by purchase of the property recorded in Deed Book 1776 Pages 238-240. The hardship appears to have been created by the applicant, as the size of the home is significantly larger than neighboring homes with similar lot sizes, and a smaller footprint may allow the existing setbacks to be met on the lot.

Address	Lot Size	Living Area	Difference
53 Madison Street	10,890 square feet	1,636 square feet	1,290 square feet
44 Madison Street	10,890 square feet	1,408 square feet	1,518 square feet
54 Madison Street	11,264 square feet	1,688 square feet	1,238 square feet

- 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 R-10 and all are currently single-family detached dwellings, though smaller in stature. However, there may be additional concerns with fire safety separation and drainage due to the close proximity of the proposed home to the property line.

- 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 lot has never met the minimum required lot size (10,000 square feet, Per Section 3-4.2.4 of the Zoning Ordinance) for any of the previous zoning districts in 1955, 1959, 1991, nor the current minimum lot size in the Residential R-10 Zoning District.

- 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 detached dwellings are a by-right permitted use in the R-10 zoning district. Granting the variance would not affect the current Zoning designation for the property.

- 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 setback requirements, nor are any waivers available for homes unable to meet setback requirements.

## CONCLUSION

The applicant has requested a side-yard setback variance of approximately 2 feet from Article 3-4.2.4 of the Zoning Ordinance to construct a single-family home.

The BZA, per Virginia State Code § 15.2-2309, must hear and decide whether the evidence submitted by the applicant shows that the strict application of the Ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a substantial hardship. No variance shall be authorized merely for the purpose of convenience or economic hardship.

Pattern motions for approval and denial have been provided as attachments for consideration.

## ATTACHMENTS

- A. Proposed Conditions of Approval / Proposed Motion for Denial
- B. Maps – Location, Zoning, Aerial Imagery
- C. Photographs – Existing Conditions
- D. Variance Application Materials
- E. Deed of purchase Atkins-2024 (Deed Book 1776, Pages 238-240)
- F. Deed Book 201, Pages 479-480
- G. Deed Book 865, Page 862
- H. Deed Book 424, Page 137
- I. Deed Book 1746, Pages 2444-2450