



## BOARD OF ZONING APPEALS MEETING

Tuesday, August 01, 2023 at 5:00 PM

### AGENDA

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#### CALL TO ORDER.

#### DETERMINATION OF A QUORUM.

#### ELECTION OF OFFICERS.

1. Section 11-2.1.8 of the Ordinance requires that a Secretary be appointed to prepare minutes of meetings, keep all records and conduct official correspondence of the Board. At this time no Secretary has been appointed, and therefore the Board must appoint a staff member to act as such.

#### APPROVAL OF MINUTES.

- [2.](#) Draft BZA Minutes - June 6, 2023

#### PUBLIC HEARING.

- [3.](#) Application for a Variance pursuant to Article 2-19, Fences and Walls, of the Town of Warrenton Zoning Ordinance. The request is for a variance to permit a two-foot height increase for a fence, from four feet to six feet in height, within the secondary front yard setback area along Meadowview Lane. GPIN 6983-79-2716-000. On June 6, 2023 the BZA closed the public hearing for this item and deferred action to permit the property owner to provide additional information to support the requested variance. Per Ordinance Section 11-3.11.3.2 *Decision on Variance Application*, the BZA must make a final decision to approve or deny this application on August 1, 2023.

#### UPDATES.

#### ADJOURN.



**BOARD OF ZONING APPEALS OF THE TOWN OF WARRENTON  
TOWN HALL  
21 MAIN STREET  
WARRENTON, VIRGINIA 20186**

**MINUTES**

**A REGULAR MEETING OF THE BOARD OF ZONING APPEALS WAS HELD ON JUNE 6, 2023, AT 5:00 P.M. IN WARRENTON, VIRGINIA**

PRESENT Mr. Larry Kovalik; Ms. Melea Maybach; Mr. Amos Crosgrove; Ms. Betsy Sullivan; Mr. Rob Walton, Director of Community Development; Ms. Heather Jenkins, Zoning Administrator.

PRESENT VIA ZOOM

ABSENT

**CALL TO ORDER AND DETERMINATION OF A QUORUM**

The meeting was called to order at 5:00pm. There was a quorum of members present.

**ELECTION OF OFFICERS**

No discussion

**APPROVAL OF MINUTES**

**Draft Minutes – Previous Meetings**

Ms. Melea Maybach motioned to approve the minutes for previous meetings, as presented. Mr. Larry Kovalik Seconded. All in favor.

**Ayes:** Mr. Larry Kovalik, Chair; Ms. Melea Maybach; Mr. Amos Crosgrove; Ms. Betsy Sullivan

**Nays:**  
**Absent During Vote:**



**PUBLIC HEARING****BZA 2023-2 – 576 Galina Way**

Ms. Heather Jenkins provides a detailed overview of the application.

Mr. Kovalik asks if there are any questions for staff.

Mr. Kovalik asks for clarification on the location of the proposed fencing.

Ms. Jenkins responds outlining the location of proposed fencing.

Ms. Maybach asks if the applicant is present to speak and if further questions for staff can be asked once the applicant has spoken.

Ms. Jenkins replies in the affirmative to both questions.

Mr. Kovalik opens the public hearing at 5:18pm.

Mr. Travis Simoes, applicant and resident of 576 Galina Way, comes forward to speak.

Mr. Simoes provides further details to the Board.

Mr. Kovalik for any questions from the Board.

Ms. Maybach asks for further details on the drainage easement.

Mr. Simoes responds providing further details of the easement.

Mr. Kovalik asks for any other speakers.

No further speakers are present.

Mr. Kovalik closes the public hearing at 5:24pm.

Mr. Kovalik asks for any discussion or a motion.

Ms. Maybach comments on the difficulties dealing with site drainage issues and thanks the applicant.

Mr. Kovalik asks for clarification from staff on the recommended location of the 6ft fencing and interaction with existing trees.

Ms. Jenkins responds outlining reasoning for recommendation required trees for site.

Ms. Maybach comments on potential visibility concerns with proposed 6 ft fencing.

Mr. Maybach Motions to delay until August meeting, Seconded by Mr. Kovalik. All in favor, no discussion.

The vote was as follows:

**Ayes:** *Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair;  
Mr. Amos Crosgrove; Ms. Betsy Sullivan*

**Nays:**

**Abstention:**

**Absent During Vote:**

### **UPDATES**

No updates from Staff.

No updates from the Board.

### **ADJOURNMENT**

Mr. Kovalik motioned to adjourn. Ms. Maybach seconded, all in favor. No discussion.

The meeting was adjourned at 5:31pm.



# 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

August 1, 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.

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## PROCESS

On June 6, 2023 the Board of Zoning Appeals held a public hearing for the requested variance, where members reviewed the application materials and heard testimony from the Applicant, Mr.

Staff Report, Board of Zoning Appeals  
BZA #2023-2  
August 1, 2023

Travis Simoes. Upon completion, the Board moved to close the public hearing, and defer action until the August 1, 2023 meeting so that the Applicant could provide additional information to support the requested variance.

Following this meeting, the Applicant submitted a sight distance profile of the intersection located at Galina Way and Meadowview Lane via email on July 17, 2023; a copy of this survey has been provided as **Attachment J – Line of Sight Survey**. The survey, certified by John Foster, L.S. on July 10, 2023, depicts the proposed location of the six foot tall fence along Meadowview Lane, as well as the line of sight from the Galina Way, extending 280 feet along Meadowview Lane. The line of sight survey shows that the proposed six foot tall fence does not restrict view of oncoming traffic to the intersection.

**STAFF RECCOMENDATION**

Staff recommendation of denial has not changed from the initial June 6, 2023 meeting, 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.

**BZA DECISION**

As stated in Ordinance Section 11-3.11.3.2 – *Decision on Variance Application*, the Board must render a decision on any application submitted to it within sixty (60) days after the date of the hearing. Therefore, the Board must render a final decision on this application at the August 1, 2023 meeting to approve, approve with conditions, or deny the Variance. Proposed conditions of approval and a proposed motion for denial have been provided for consideration as **Attachment A**.

**ATTACHMENTS**

**The following documents are new or updated for the August 1, 2023 Meeting:**

- A. Pattern Motions for Approval-Denial - UPDATED
- J. Line of Sight Survey – July 10, 2023 - NEW



**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**

**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.

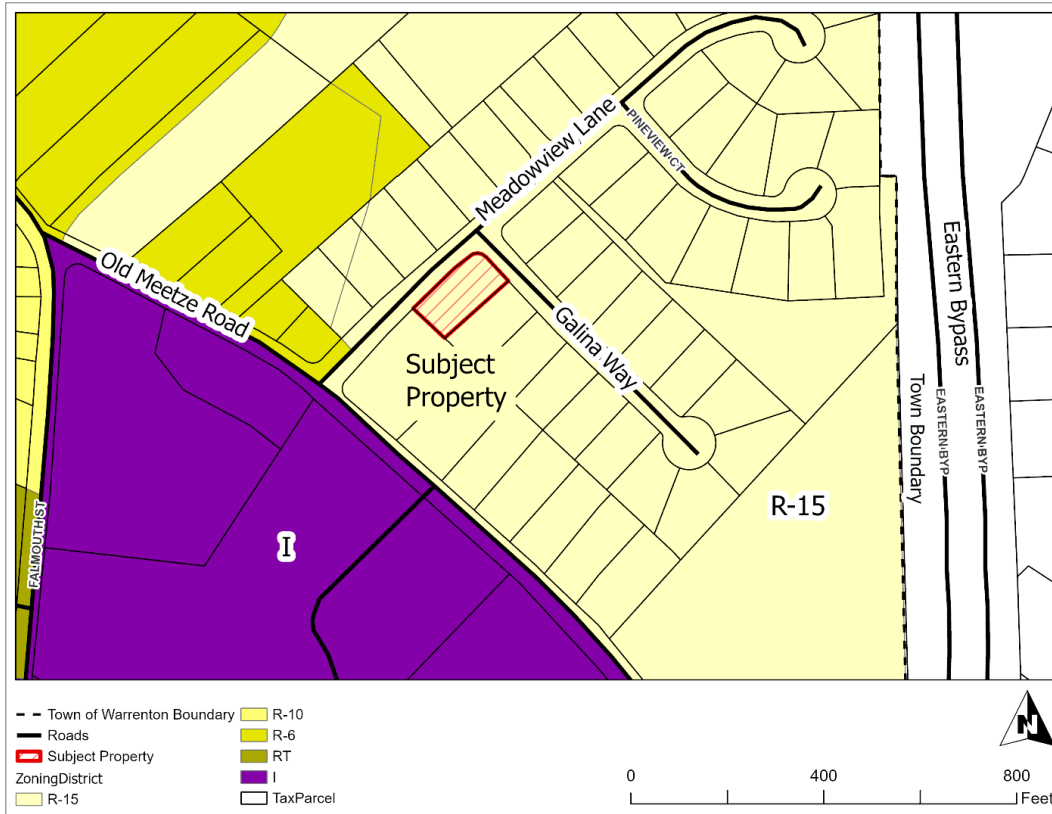
The applicant states that the six-foot high fence is needed to increase the safety and security of the applicant and neighborhood children, as well as to provide a visual barrier to increase privacy of the pool and hot tub area. The applicant states that granting a variance to increase the permissible 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.

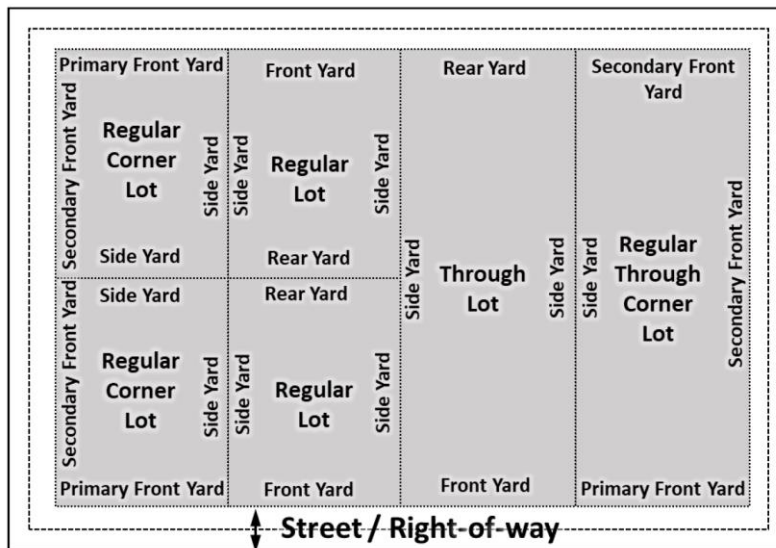
The property is zoned Residential (R-15) and has remained R-15 since prior to the creation of the Monroe Estates subdivision in 2002. The lot is 0.3785 acres (16,489 square feet) in size and has street frontage on both Meadowview Lane and Galina Way.

**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*.

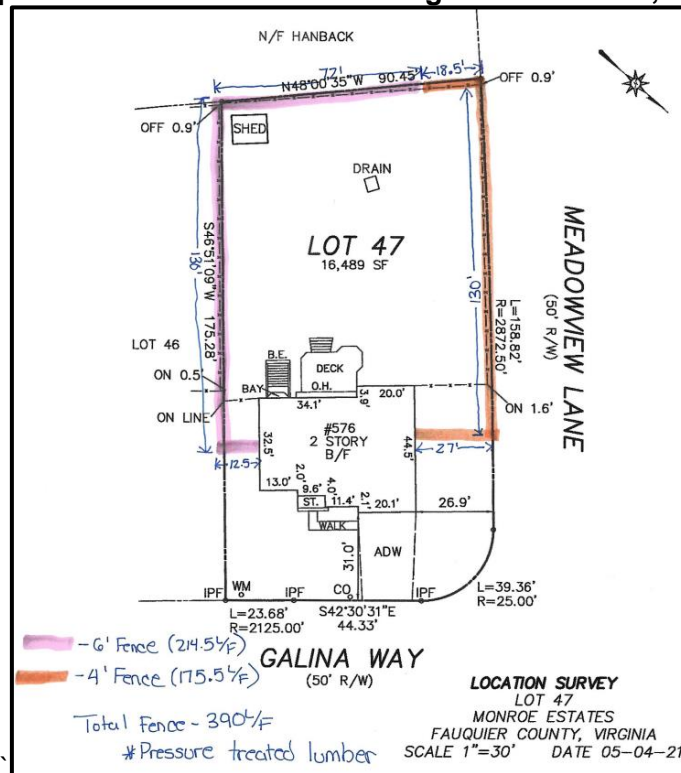
**Figure - Section 2-13.2 Regular lots, determination of front yard**







**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

**PATTERN MOTION TO APPROVE VARIANCE VARIANCE**

**BZA #2023-2 JORDYN &  
TRAVIS SIMOES**

**BZA MEETING DATE:  
August 1, 2023**

In Application BZA #2023-2, I move to grant the Variance, after due notice and hearing as required by Code of Virginia §15.2-2204 and Article 11-3.11 of the Town of Warrenton Zoning Ordinance, based on upon the following Board findings:

1. The strict application of the Ordinance would unreasonably restrict the utilization of the property, the need for the variance will not be shared generally by other properties, and the variance is not contrary to the purpose of the ordinance.
2. 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; and
3. The granting of the variance will not be of substantial detriment to the adjacent property and nearby properties in the proximity of that geographical area; and
4. 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 a general regulation to be adopted as an amendment to the Ordinance; and
5. 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; and
6. The relief or remedy sought by the variance application is not available through a Special Exception or Special Permit process that is authorized in the Ordinance or the process for a modification from a provision of the Zoning Ordinance at the time of the filing of the variance application.

The Variance is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The site shall be in substantial conformance with the information and drawings submitted with the variance application except as specifically modified by the conditions below or as necessary to meet Zoning Ordinance requirements.
2. The height of the fence within the secondary front setback area may be increased by two (2) feet, not to exceed a total fence height of six (6) feet from the ground surface.

**PATTERN MOTION FOR DENIAL**

**VARIANCE**

**BZA #2023-2 JORDYN &  
TRAVIS SIMOES**

**BZA MEETING DATE:  
August 1, 2023**

In Application BZA #2023-2, I move to deny the Variance, after due notice and hearing, as required by Code of Virginia §15.2-2204 and Article 11-3.11 of the Town of Warrenton Zoning Ordinance, based on upon the following Board findings:

1. The strict application of the Ordinance does not unreasonably restrict the utilization of the property.
2. The strict application of the Ordinance does not 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.
3. The variance would be contrary to the intent and purpose of the Zoning Ordinance.
4. The granting of the variance would not result in substantial justice being done.
5. The relief requested can be granted only through modification of the zoning ordinance.
6. \_\_\_\_\_
7. \_\_\_\_\_



Photograph taken from the entrance to the subdivision (Meadowview Lane) coming towards the subject property at the intersection of Meadowview Lane and Galina Way.



Photograph taken from the adjacent property across the street from the subject property. The photo shows the existing 4' fencing along Meadowview Lane which the applicant seeks to increase to a 6' fence.







TOWN OF WARRENTON
Department of Community Development

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

Land Development Application

Type of Development [select type(s) below]

Permit # BLDG-22-1172

Table with 4 columns: Planning, Zoning, and two unlabeled columns. Includes options like Commission Permit, Administrative Appeal, Concept Plan Review, etc.

[X] Amendment to Existing Approved Application? If Yes, List Application # BLDG-22-1172

Project Description

Project Name: LOT 47 MONROE ESTATES Backyard Renovation
Property Address (if no address, give closest cross street): 576 Galina Way Warrenton, VA 20186
Purpose of Request: To request a variance from Article 2-19.1 of the Zoning Ordinance to construct a fence greater than four feet in height within the secondary front yard of the subject property.

Zoning District: R15 Residential Zoning Total Acres: 0.3785 Acres for Proposed Use:
Parcel Identification Number(s): 6983-79-7822-000

Contact Information (Attach separate page if necessary)

All Current Owners
Name & Company: Travis and Jordyn Simoes
Address: 576 Galina Way, Warrenton, VA 20186
Phone: 540-219-2022 Email: travissimoes@gmail.com

All Current Applicants (if different then owner):
Name & Company: NA
Address:
Phone: Email:

Representative (if different then owner/applicant):
Name & Company: NA
Address:
Phone: Email:

OWNER(S) AFFIDAVIT (Original Signatures Required)
I have read this application, understand its intent and freely consent to its filing. Furthermore, I have the power to authorize and hereby grant permission for Town of Warrenton officials and other authorized government agents on official business to enter the property to process this application.

APPLICANT(S) AFFIDAVIT (Original Signatures Required)
The information provided is accurate to the best of my knowledge. I acknowledge that all tests, studies, and other requirements of the Town of Warrenton Zoning Ordinance and Subdivision Ordinance and other requirements of review/approval agencies will be carried out at my expense. I understand that the Town may deny, approve or conditionally approve that for which I am applying.

Owner's Signature & Date: 4/21/2023 Travis a Simoes Applicant's Signature & Date: 4/21/2023 Travis a Simoes

Print Owner's Name: Travis Simoes Print Applicant's Name: Travis Simoes

**Board of Zoning Appeals**

April 21, 2023

Jordyn Simoes  
576 Galina Way  
Warrenton, VA 20186

Reference: Variance Application for a 6-foot fence structure along the property line within the secondary front yard located on the left side of the residence (576 Galina Way, Warrenton, Monroe Estates)

To Whom It May Concern,

I, Jordyn Simoes, am a co-owner of the above-referenced property. My husband has been a Fauquier County resident since his family moved from New York when he was in elementary school. I grew up in Fairfax County, went to college in North Carolina, met my husband and moved to Bealeton to raise our family. We moved into the Town of Warrenton during COVID with our four (4) children, who currently attend Fauquier High School (Sophomore), Taylor Middle School (7<sup>th</sup>) and Brumfield Elementary (4<sup>th</sup> and 1<sup>st</sup>). Our small neighborhood, Monroe Estates, is quietly tucked back by Alwyngton Manor off of Old Meetze Road. We absolutely love our neighborhood. The size of the community matches perfectly with the small town feel that we moved to Warrenton for. We plan to raise our family through adulthood in this home.

We are in the process of a large backyard project which includes a large pool and a hot tub. Since the inception of the project, we have followed all processes (we were aware of) and have received all approvals needed, inspections required, etc. Part of our project is a new 6-foot fence to replace the 4-foot fence we currently have. In addition to privacy, we feel like this is important for several safety reasons, including but not limited to the sidewalk that runs the entire length of our side yard, individuals in our community who have special needs and many young children. Since we moved in, we have had several children easily climb over our 4-foot fence to enter our backyard.

Virginia Building code requires that all pools must be fenced in by a fence at least 48 inches tall, for obvious reasons. However, we would like to erect a 72-inch fence around the property to ensure the safety of our community. One side of our property has significant foot traffic as the sidewalk runs parallel to the side of our property (the secondary front yard). Our small community not only has many children ranging from babies and toddlers to teens, but we also have residents with physical impairments (a blind resident who walks regularly in the warmer months) and also youth with special, behavioral needs (Autism Spectrum). Since moving in, we've had kids climb the current fence rather seamlessly, which is why we're looking to erect a higher fence. The safety of our community is important to us. So much so that we are willing to pay additional to put up an appropriately sized fence to ensure a strong barricade between our property line and the pool. We have two other neighbors in this community with inground pools, and both have greater than 48-inch fences, for what I assume to be the same reason.

We were unaware, but it was brought to our attention recently, that a change in fence height to 6-foot is a zoning issue that requires approval. We promptly submitted the request for approval. Our submission was denied almost immediately without any significant review of the unique circumstances or context. The initial denial stated: "I have reviewed the permit amendment to add

the fence. At this time, I cannot approve the amendment for the fence, as the proposed fence is too tall along Meadowview Lane. The property at 576 Galina Way has two front yard setbacks – a primary front yard setback off Galina Way, and a secondary front yard setback off Meadowview Lane. Within the front yard setback area, a fence is limited to no more than four feet tall. There is a 25-foot wide front-yard setback off of Galina Way, and an 18.5-foot-wide setback off of Meadowview Lane; within this 25-foot and 18.5-foot-wide setback area, the fence can be no more than 4 feet tall; the remainder of the fence can be up to 6 feet tall.”

For clarity, we did receive approval for the fence to be 6 feet tall on the right side of our property, and the entire back side of our property, except for the 18 ½ feet perpendicular to the secondary front yard. We currently must keep the 4-foot fence the last 18 ½ feet on the back side, and the entire property edge on the secondary front yard. We are requesting a variance for this section of the fence to match the 6-foot fence approved for the remaining perimeter of the property. The approved length of the fence is approximately 133 feet along the secondary front yard of the property. For context, the back corner of the property (start of the secondary front yard) is 236 feet (straight) from the entrance to our community. The entire sidewalk that runs parallel to our secondary front yard is approximately 410 feet (from the community entrance to the bus stop, which is located on the front corner, right outside of our property). The area in question is parallel to approximately 1/3<sup>rd</sup> of the entire sidewalk section, which is a significant, and very visible section. Pictures are attached to this letter.

There are a few key facts that I feel are important to understand as they add context to our request.

1. Most importantly, we have unique community safety circumstances that warrant special consideration. On our cul-de-sac alone (the first of the three in the neighborhood) we have 10 children high school age or younger, seven (7) of whom are elementary age or less. There are an additional 6-8 middle school age or younger on Meadowview with a direct view of our backyard from their home. Out of 42 homes in our small community, I'd estimate that there are around 30 children (high school age or less). Additionally, there are a handful of children who live across the street in Alwyngton Manor. This is a critically important point, as one of our greatest concerns relates to the relative safety of children in the community. As a Town, I'm sure you all are aware about our collective community's voiced concerns about the speed limit in our neighborhood. That is a direct result of the number of children in our neighborhood. Having so many children in the community gives many of us a different lens in how we approach situations.

Since we've moved in, we've experienced several situations which hopefully demonstrate our justified safety concern related to our new pool. (For clarity, we don't consider any of these "issues". I'm only mentioning these to show that the children in our community are just that: Children. Kids do not always think before they act. Although rarely malicious, it can put them in dangerous situations they may not have envisioned for themselves based on their initial decision). Of greatest concern, is that we've already had children climb our (currently 4 foot) fence without our knowledge. If children are willing to climb neighborhood fences before anything exciting is in the back yard, it is even more likely it will happen again once our backyard renovation is complete. We've also had kids take inappropriate pictures on our Christmas decorations as a dare. When the Town invested in sidewalk patching, we had children from right outside of our neighborhood write their names in the new concrete. We moved into this community, in large part, because there are so many children. We just also want to put appropriate barriers in place to prevent poor choices and dangerous outcomes. We strongly feel denying the increased height of the fence on the most visible sides of our property is missing perhaps the best opportunity to

minimize safety concerns due to the pool. We are in a community tucked back away from Main Street. The only people who come into our neighborhood (besides people who live here/are visiting) are those who are lost and delivery trucks. Approving a 6-foot fence for safety purposes does not impact the historical vision of the town, including the 4-foot fence requirement. No one else sees it.

2. Zoning documents state: 2-19 Fences and Walls 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 bound 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.


We understand that there are seemingly conflicting/ambiguous provisions in the zoning regulations pertaining to this issue. However, I think everyone can agree that the circumstances surrounding fence height around a pool in a neighborhood warrants additional consideration. In at least the last section of the provision, someone, at some point, recognized that there are different needs for safety barriers around pools.

3. We will be the third inground pool in Monroe Estates. Both other pools have 6-foot-tall fences around their pools. Although not on Meadowview, this demonstrates that other community members see the addition of a pool as a significant risk to also invest in 6-foot fences.
4. There is also already a 6-foot-tall fence on Meadowview, the next (cross) street over. The visual aspect of having 4-foot fencing all along Meadowview has already been removed. Pictures have been provided as attachments to this letter. This fence is visible from our home.

Unrelated to child safety is the general safety of our family. As previously indicated, our back yard is viewable from the front of the neighborhood. There are many people who tend to drive and walk on Old Meetze. Additionally, there continues to be an uptick of power consultants and surveyors at the front of our community, to include repetitive work and measurements along the front side of Meadowview. Based on the circumstances surrounding some of the local property for sale (accessible off Old Meetze) we expect this traffic to increase, not decrease. We have a teenage daughter, son and two elementary school boys. Increasing the fence height in the most visible areas (the last 18.5 feet of the back side and the entire secondary front yard) certainly provides piece of mind that we can utilize our swimming pool without general fear and discomfort of strangers with direct visual access to our back yard.

There is absolutely no hinderance to anyone in our neighborhood to alter the height of the fence from 4 foot to 6 foot along the above-mentioned section. The HOA agrees with our request (and has approved) and we have many community members who would attest to the same. We really appreciate your consideration of this request. Please let us know if we can provide any additional information to support your review and evaluation.

Sincerely,

  
Jordyn V. Simoes

**Supporting Pictures**

Picture 1: View of backside of property from community entrance



Picture 2-6: View of back yard from various points along the secondary front yard (section where we are seeking a variance)













Pictures 7-8: Picture of child name and footprint in newly poured concrete at front of community (and demonstration of visual distance to the property)







Pictures 9- 14: Various view of backyard/property from the sidewalk on the other side of Meadowview













Picture 15: View from 576 Galina Way of 6 foot tall fence on corner lot of Meadowview and Pineview



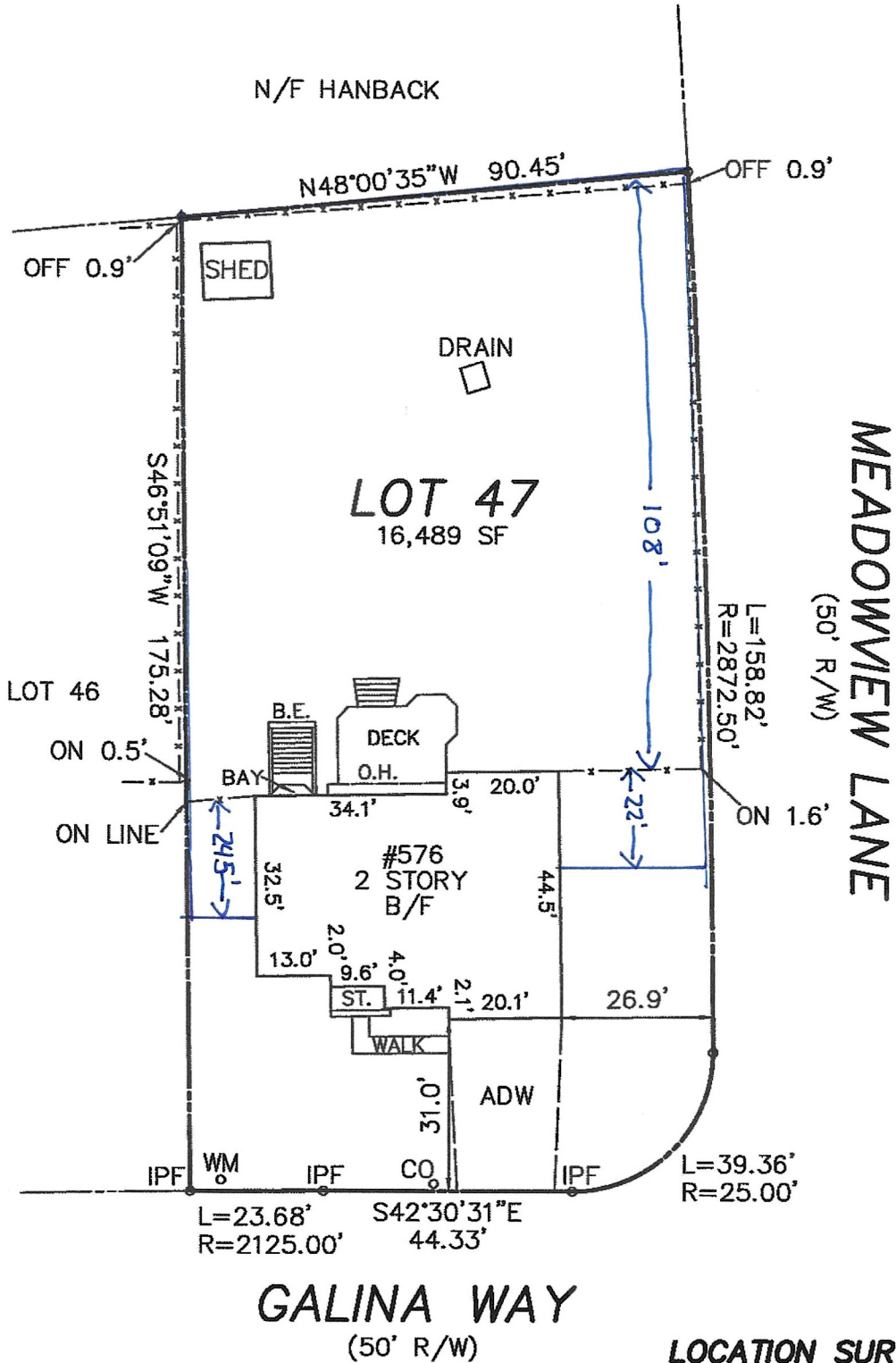


**LINE TYPES:**

- BOUNDARY LINE
- EASEMENT
- DRIVEWAY/ROAD
- x-x-x- FENCING
- o-o- OVERHEAD WIRE
- STRUCTURE

**LEGEND:**

- |                                |                               |                          |
|--------------------------------|-------------------------------|--------------------------|
| ADW- ASPHALT DRIVEWAY          | CONC.- CONCRETE               | PAD- CONCRETE PAD        |
| A/C- AIR CONDITIONING          | ER- ELECTRICAL RISER          | PP- POWER POLE           |
| A/W- AREAWAY                   | F.E.- FIRE ESCAPE             | R/W- RIGHT OF WAY        |
| B.E.- BASEMENT ENTRANCE        | FIO- FIBER OPTICS UTILITY BOX | SMH- SANITARY MANHOLE    |
| BF- BOLT FOUND                 | GDW- GRAVEL DRIVEWAY          | ST.- STOOP               |
| BO- BOLLARD                    | GEN.- GENERATOR               | TELE- TELEPHONE PEDESTAL |
| BRL- BUILDING RESTRICTION LINE | IPF- IRON PIPE FOUND          | TR/TRANS- TRANSFORMER    |
| CDW- CONCRETE DRIVEWAY         | IRS- IRON ROD SET             | WM- WATER METER          |
| CM- CONCRETE MONUMENT          | IRF- IRON ROD FOUND           | WV- WATER VALVE          |
| CO- CLEANOUT                   | MH- MANHOLE                   | W.W.- WINDOW WELL        |



**LOCATION SURVEY**  
**LOT 47**  
**MONROE ESTATES**  
**FAUQUIER COUNTY, VIRGINIA**  
**SCALE 1"=30' DATE 05-04-21**



Type: DEEDS  
Recorded: 5/13/2021 1:13:00 PM  
Fee Amt: \$2,972.00 Page 1 of 4  
Fauquier County, VA  
Gail H Barb Clerk of Circuit Court  
File# 2021-00006695

**BK 1685 PG 1938 - 1941**

**DEED**

**This Deed, made this 12th day of May, 2021, by and between Christine M. CONNOLLY and John CONNOLLY, wife and husband, GRANTORS, and Travis Alexander SIMOES, Trustee and Jordyn Vicinus SIMOES, Trustee of The Travis and Jordyn Simoes Living Trust U/A dated February 17, 2017, GRANTEES;**

**WITNESSETH**

That for and in consideration of the conveyance made hereby, the consideration received by the GRANTORS and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the GRANTORS subject to the matters described herein, hereby grant and convey to the GRANTEES with General Warranty and English Covenants of Title, in fee simple unto the GRANTEES, **Travis Alexander SIMOES, Trustee and Jordyn Vicinus SIMOES, Trustee of The Travis and Jordyn Simoes Living Trust U/A dated February 17, 2017** sole owner, the following described real estate, situate, lying and being in Fauquier County, Commonwealth of Virginia, (the "Real Estate"), to wit:

**SEE LEGAL DESCRIPTION ON EXHIBIT A ATTACHED HERETO**

**AND BEING** the same property conveyed by Jerry Salts and Jaquetta Salts unto John CONNOLLY and Christine M. CONNOLLY by virtue of a deed dated November 25, 2009, and recorded November 30, 2009, in Deed Book 1332, page 2152, among the land records of the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

The Real Estate is conveyed subject to all recorded easements, conditions, restrictions, and agreements that lawfully apply to the Real Estate or any part thereof.

The GRANTORS covenant that said GRANTORS have the right to convey the Real Estate, that the GRANTORS have done no act to encumber the Real Estate; that the said GRANTEES shall have quiet possession of the Real Estate; and that the GRANTORS will execute such further assurances as may be requisite.

THE SETTLEMENT COMPANY  
7500 DIPLOMAT DR., SUITE 101  
MANASSAS, VA 20109

*Handwritten signature*

PREPARED BY  
LAW OFFICES  
SHREVES,  
SCHUDEL,  
SAUNDERS,  
PARELLO &  
CLARKE, PLLC

492 Blackwell Road  
Warrenton, VA 20186

P:540-316-6205

Tax Map Number: 6983-79-2716 - 000  
Property Address: 576 Galina Way, Warrenton, VA 20186  
Grantee's Mailing Address: 576 Galina Way, Warrenton, VA 20186  
Consideration: \$675,000.00  
Assessed Value: \$493,600.00  
Underwriter: Fidelity Title Insurance Company  
VSB#: 74235, Donald W. Tomlinson

Deed Page 1  
Case No. 325056WAR

TO HAVE AND TO HOLD the Property in fee simple, upon the trusts and for the uses and purposes set forth herein and in the Trust Agreement and as enumerated in the Virginia Code Section 64.1-57, including but not limited to the following:

Full power and authority is hereby granted to the Trustees and their successors to protect and conserve the Property; to sell, contract to sell and grant options to purchase the Property and any right, title or interest therein on any terms; to exchange the Property or any part thereof for any other real or personal property upon any terms; to convey the Property by deed or other conveyance to any grantee, with or without consideration; to mortgage, execute a deed of trust on, pledge or otherwise encumber the Property or any part thereof; to lease, contract to lease, grant options to lease and renew, extend, amend and otherwise modify leases on the Property or any part thereof from time to time, for any period of time, for any rental and upon any other terms and conditions; and to release, convey or assign any other right, title or interest whatsoever in the Property or any part thereof.

No party dealing with the Trustees in relation to the Property in any manner whatsoever, and (without limiting the foregoing) no party to whom the Property or any part thereof or any interest therein shall be conveyed, contracted to be sold, leased or mortgaged by the trustees, shall (a) be obliged to see to the application of any purchase money, rent or money borrowed or otherwise advanced on the Property, (b) be obliged to see that the terms of the trust have been complied with, (c) be obliged to inquire into the authority, necessity or expediency of any act of Trustees, or (d) be privileged to inquire into any of the terms of the Trust Agreement creating said trust. Every deed, mortgage, lease or other instrument executed by the Trustees in relation to the Property shall be conclusive evidence in favor of every person claiming any right, title or interest thereunder; (i) that at the time of the delivery thereof the said trust was in full force and effect, (ii) that such instrument was executed in accordance with the trust, terms and conditions thereof and of the said Trust Agreement and is binding upon all beneficiaries thereunder, (iii) that the Trustees were duly authorized and empowered to execute and deliver every such instrument, and (iv) if a conveyance has been made to a successor or successors in trust, that such successor or successors have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations of its, his or their predecessor in trust.

The Trustees shall have no individual liability or obligation whatsoever arising from Trustees' ownership, as Trustees, of the legal title to the Property, or with respect to any act done or contract entered into or indebtedness incurred by said Trustees in dealing with said Property, or in otherwise acting as Trustees, except only so far as said Property and any trust funds in the actual possession of the Trustees shall be applicable to the payment and discharge thereof.

2

The interest of every beneficiary under the Trust Agreement and of all persons claiming under any of them shall be only in the earnings, avails, and proceeds arising from the rental, sale or other disposition of the Property. Such interest is hereby declared to be personal property, and no beneficiary under the Trust Agreement shall have any right, title or interest, legal or equitable, in or to the Property, as such, but only in the earnings, avails and proceeds thereof as provided in the Trust Agreement.

This Deed is governed by and is to be read and construed with reference to Section 55-17.1 of the Code of Virginia, 1950, as amended, and in force.

Witness the following signatures and seals:

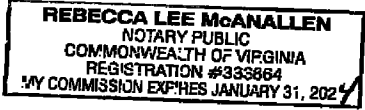
Christine M. Connolly  
Christine M. CONNOLLY

John Connolly  
John CONNOLLY

Commonwealth of Virginia, City/County of: Fauquier to wit:

I, the undersigned, a Notary Public for the jurisdiction aforesaid, do certify that Christine M. CONNOLLY and John CONNOLLY, whose names are signed to the foregoing document, acknowledged the same before me in my jurisdiction aforesaid, this 12<sup>th</sup> day of May, 2024

Rebecca Lee McAnallen  
Notary Public



My Commission Expires: 1-31-24

3

Exhibit A

Legal Description

Lot 47, MONROE ESTATES, as the same appears duly dedicated, platted and recorded in Deed Book 982 at Page 940, among the land records of Fauquier County, Virginia.

RECORDED IN CLERK'S OFFICE OF  
FAUQUIER ON  
May 13, 2021 AT 01:13:00 PM  
\$675.00 GRANTOR TAX PD  
AS REQUIRED BY VA CODE § 58.1-802  
STATE: \$337.50 LOCAL: \$337.50  
FAUQUIER COUNTY, VA  
GAIL H BARB CLERK OF CIRCUIT COURT

*Gail H Barb*

4

Deed Page 3  
Case No. 325056WAR

**DEED OF DEDICATION, SUBDIVISION AND EASEMENT**

THIS DEED OF DEDICATION, SUBDIVISION, AND EASEMENT is made this 22 day of October, 2002, by and between RICHMOND AMERICAN HOMES OF VIRGINIA, INC., a Virginia corporation (hereinafter referred to as "Owner"); and the TOWN OF WARRENTON, VIRGINIA, a municipal corporation (hereinafter referred to as "Town").

WITNESSETH:

WHEREAS, the Owner is the owner and proprietor of certain real property ("Property") as shown on Subdivision Plat, dated October 4, 2002, entitled "MONROE ESTATES", and prepared by Richard D. Townsend of Schools & Townsend, P.C., certified land surveyors ("Plat"), which Plat is attached hereto and made a part hereof; and

WHEREAS, the Property is situated in the Town of Warrenton, Fauquier County, Virginia; Owner having acquired the Property by deed recorded in Deed Book 976, at Page 227, among the land records of Fauquier County, Virginia; and

WHEREAS, it is the desire and intent of Owner to subdivide the Property into lots and parcels, and to dedicate, grant, and convey to the Town, its successors and assigns for public use, the streets and thoroughfares in accordance with this Deed of Dedication, Subdivision, and Easement and the Plat; and

WHEREAS, it is the desire and intent of Owner to grant and convey unto the Town the easements in the locations as shown on the Plat by separate instruments of conveyance to be recorded among the County land records.

OCT 23 2002

Recorded and Returned To:

*Robert B. ...*  
LAND DEV. ASST. P.M.  
RICHMOND AMERICAN HOMES

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00), cash in hand paid, receipt of which is hereby acknowledged, Owner, together with the consent of the Trustees, does hereby subdivide the Property containing 22.50 acres, more or less, into lots and parcels, to be known as Lots One (1) through Forty-seven (47), inclusive, Monroe Estates, in accordance with the Plat which is expressly incorporated herein and made a part of this Deed of Dedication, Subdivision, and Easement; and

THIS DEED FURTHER WITNESSETH that in consideration of the premises and the sum of One Dollar (\$1.00), cash in hand paid, receipt of which is hereby acknowledged, Owner does hereby grant, dedicate, and convey to the Town, in fee simple, the 3.4598 acres for public street purposes as shown on the Plat. This dedication is made in accordance with the statutes made and provided therefor.

Grantor covenants that it is seized of and has right to make such dedication and to grant rights and privileges appurtenant thereto, that Town shall have quiet and peaceable possession, use and enjoyment of the aforesaid property and that Grantor shall execute such further assurances thereof as may be required.

This Deed of Dedication, Subdivision, and Easement is made in accordance with the statutes made and provided in such cases including Section 15.1-465 et seq. and including Section 15.1-477 et seq. of the Code of Virginia 1950 as amended; with the approval of the proper authorities of the Town of Warrenton, Virginia, as shown by the signatures affixed to the Plat, and is with the free consent and in accordance with the desire of Owner, the owner and proprietor of the land embraced within the bounds of said subdivision.

IN WITNESS WHEREOF, Owner has caused this Deed of Dedication, Subdivision, and Easement to be signed by its duly authorized representative.

FURTHER WITNESS the following signatures and seals:

RICHMOND AMERICAN HOMES OF VIRGINIA, INC.,  
a Virginia corporation, (OWNER)

By: *Steven M. Massie*  
Steven M. Massie

Title: Vice President of Land Development

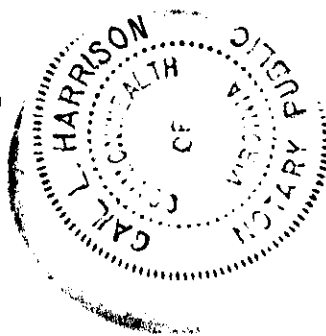
COMMONWEALTH OF VIRGINIA  
COUNTY OF Prince William, to-wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Steven M. Massie as Vice President - Land Development of RAH Richmond American Homes of Virginia, Inc., whose name is signed to the foregoing Deed of Dedication, Subdivision and Easement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 22<sup>nd</sup> day of October, 2002.

*Bill L Harrison*  
Notary Public

My Commission expires: 31 May 2003



F:\deeds\monrocest.ra.doc

SIGNATURE PANEL

APPROVED

DATE 10/23/02

PLANNING DIRECTOR

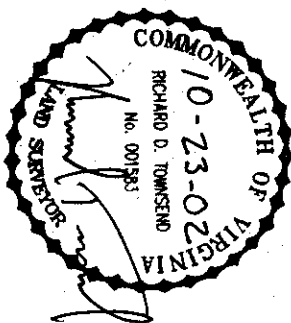
*[Signature]*

*[Signature]*

Richard D. Tompkins, Asst. P.M.

**SURVEYORS CERTIFICATE**

I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE PROPERTY SHOWN HEREON AND IDENTIFIED BY GPIN 6893-79-7739, AND A PORTION OF GPIN 6983-79-0689 IS CURRENTLY IN THE NAME OF RICHMOND AMERICAN HOMES OF VA, INC., HAVING BEEN ACQUIRED IN DEED BOOK 826, PAGE 227. THE METES AND BOUNDS ARE THE RESULT OF A CURRENT FIELD SURVEY, WITH AN ERROR OF CLOSURE OF LESS THAN 1:110,000. THE MERIDIAN WAS TAKEN FROM VDOT PROJECT 6029-030-102, PE101. UPON RECORDATION IRON PIPES WILL BE SET AT ALL PROPERTY CORNERS IN ACCORDANCE WITH THE SUBDIVISION ORDINANCE.



54609D2860XB



BK 0982 PG 0944

**NOTES:**  
1. THIS PROPERTY IS IDENTIFIED BY THE FOLLOWING G.P.I.N. : 6893-79-7739 AND 6983-79-0589 (PORTION OF).

2. THE OPEN SPACE PARCELS ARE TO BE CONVEYED TO A HOME OWNERS ASSOCIATION FORMED BY THE SUBDIVISION PROPERTY OWNERS. THE MAINTENANCE OF THESE PARCELS WILL BE THE RESPONSIBILITY OF THE ASSOCIATION.

3. SEWER LATERALS LOCATED OUTSIDE OF THE ROAD RIGHT-OF-WAY ARE THE RESPONSIBILITY OF THE PROPERTY OWNER.

4. THERE IS NO F.E.M.A. FLOODPLAIN ON THE PROPERTY.

**OWNERS CONSENT:**

THE SUBDIVISION OF THE 22.50 ACRES OF LAND, IDENTIFIED AS GPIN 6893-79-7739 AND 6983-79-0589 (PORTION OF), AS SHOWN HEREON, IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNER. THE OWNER HEREBY DEDICATES TO THE TOWN OF WARRENTON, THE RIGHT OF WAY SHOWN HEREON FOR PUBLIC STREET PURPOSES. FURTHER, THE OWNER GRANTS TO THE TOWN, EASEMENTS SHOWN HEREON FOR SANITARY SEWER, WATERLINE, STORM DRAINAGE, ACCESS, AND STORM WATER MANAGEMENT. FURTHER, THE OWNER HEREBY GRANTS PRIVATE A SANITARY SEWER LATERAL EASEMENT FOR THE BENEFIT OF LOTS 1, 15, AND 18, AN ACCESS EASEMENT IS ALSO GRANTED TO THE MONROE ESTATES H.O.A.

OWNER: RICHMOND AMERICAN HOMES OF VIRGINIA, INC.

BY *Steven M. Maysie*  
STEVEN M. MAYSIE  
VP OF LAND DEVELOPMENT

**NOTARY CERTIFICATE**

STATE OF VIRGINIA, COUNTY OF Dorchester  
TO WIT: SUBSCRIBED AND ACKNOWLEDGED BEFORE ME THIS 27th  
DAY OF October, 2002, BY Steven M. Maysie, Vice President Land Acquisition Department  
Richmond American Homes of Virginia, Inc.

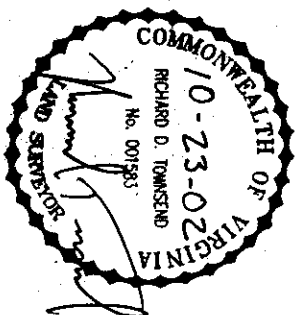
*Gail L. Harrison*  
GAIL L. HARRISON  
NOTARY PUBLIC  
31st Oct 2003  
MY COMMISSION EXPIRES

AREA TABULATION			
AREA IN STREETS	OPEN SPACE	LOTS	TOTAL
3.4598 ACRES	2.0801 ACRES	16.9633 ACRES	22.5032 AC.


BK 0982 PG 0946

Item 3.

**SURVEYORS CERTIFICATE**  
 I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE PROPERTY SHOWN HEREON AND IDENTIFIED BY GPIN 6983-79-7739, AND A PORTION OF GPIN 6983-79-0689 IS CURRENTLY IN THE NAME OF RICHMOND AMERICAN HOMES OF VA, INC., HAVING BEEN ACQUIRED IN DEED BOOK 976, PAGE 227. THE METES AND BOUNDS ARE THE RESULT OF A CURRENT FIELD SURVEY, WITH AN ERROR OF CLOSURE OF LESS THAN 1:10,000. THE MERIDIAN WAS TAKEN FROM VDOT PROJECT 6029-030-102, PE101. UPON RECORDATION IRON PIPES WILL BE SET AT ALL PROPERTY CORNERS IN ACCORDANCE WITH THE SUBDIVISION ORDINANCE.



54609d2860x8

<b>SUBDIVISION PLAT</b>	
<b>MONROE ESTATES</b>	
TOWN OF WARRENTON, VIRGINIA	
 <b>SCHOOLS &amp; TOWNSEND, P.C.</b> ENGINEERS • SURVEYORS 9252 MOSBY STREET • MANASSAS, VIRGINIA 22110 703-368-8001 • 831-2995 • FAX 703-368-9350	
DATE: 10-1-02	SCALE: 1"=50'
DRAWN BY: TS	CHECKED BY: RT
	FILE: RPB 1824
	SHEET 1 OF 3

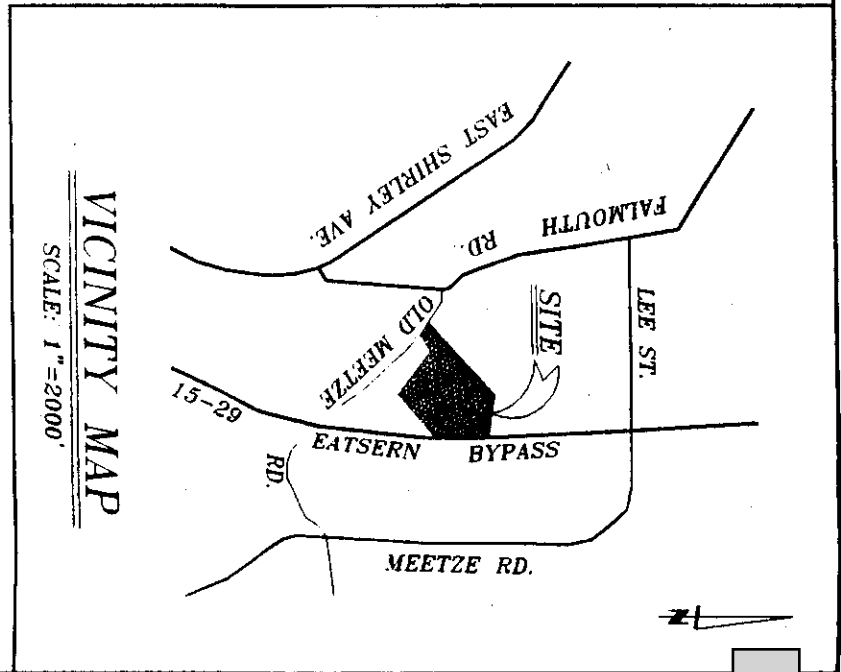
Item 3.

	AREA IN STREETS	OPEN SPACE	LOTS	TOTAL
AND DIANTON E	3.4598 ACRES	2.0801 ACRES	16.9633 ACRES	22.5032 AC.

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light

BK0982PG0946



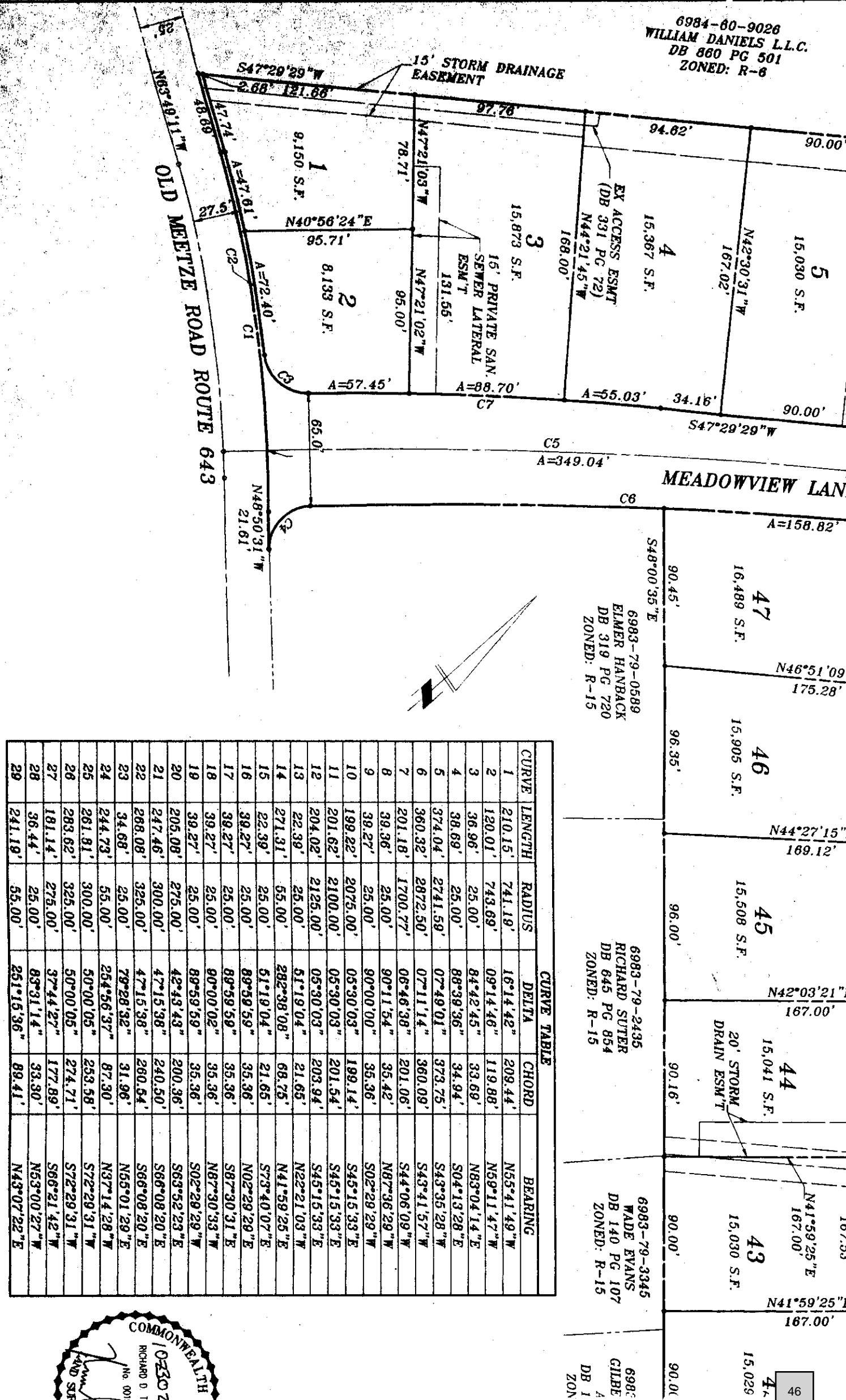
8K0982PG0947

Item 3.

6984-80-9028  
WILLIAM DANIELS L.L.C.  
DB 860 PG 501  
ZONED: R-8

OLD MEETZE ROAD ROUTE 643

MEADOWVIEW LAN



EX ACCESS ESMT  
(DB 331 PG 72)  
N44°21'45"W  
168.00'

6983-79-0589  
ELMER HANBACK  
DB 319 PG 720  
ZONED: R-15

6983-79-2435  
RICHARD SUTER  
DB 645 PG 854  
ZONED: R-15

6983-79-3345  
WADE EVANS  
DB 140 PG 107  
ZONED: R-15

6982  
GILBE  
DB 1  
ZON

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	BEARING
1	210.15'	741.19'	16°14'42"	209.44'	N55°41'49"W
2	120.01'	743.69'	09°14'46"	119.88'	N59°11'47"W
3	36.96'	25.00'	84°42'45"	33.69'	N83°04'14"E
4	38.69'	25.00'	88°39'36"	34.94'	S04°13'28"E
5	374.04'	2741.59'	07°49'01"	373.75'	S43°35'28"W
6	360.32'	2872.50'	07°11'14"	360.09'	S43°41'57"W
7	201.18'	1700.77'	06°46'38"	201.06'	S44°06'09"W
8	39.36'	25.00'	90°11'54"	35.42'	N87°36'29"W
9	39.27'	25.00'	90°00'00"	35.36'	S02°29'29"W
10	199.22'	2075.00'	05°30'03"	199.14'	S45°15'33"E
11	201.62'	2100.00'	05°30'03"	201.54'	S45°15'33"E
12	204.02'	2125.00'	05°30'03"	203.94'	S45°15'33"E
13	22.39'	25.00'	51°19'04"	21.65'	N22°21'03"W
14	271.31'	65.00'	282°38'08"	68.75'	N41°59'26"E
15	22.39'	25.00'	51°19'04"	21.65'	S73°40'07"E
16	39.27'	25.00'	89°59'59"	35.36'	N02°29'29"E
17	39.27'	25.00'	89°59'59"	35.36'	S87°30'31"E
18	39.27'	25.00'	90°00'02"	35.36'	N87°30'33"W
19	39.27'	25.00'	89°59'59"	35.36'	S02°29'29"W
20	205.08'	275.00'	42°43'43"	200.36'	S63°52'23"E
21	247.46'	300.00'	47°15'38"	240.50'	S66°08'20"E
22	268.08'	325.00'	47°15'38"	260.54'	S66°08'20"E
23	34.68'	25.00'	79°28'32"	31.96'	N65°01'29"E
24	244.73'	55.00'	254°56'37"	87.30'	N37°14'28"W
25	261.81'	300.00'	50°00'05"	253.58'	S72°29'31"W
26	263.62'	325.00'	50°00'05"	274.71'	S72°29'31"W
27	181.14'	278.00'	37°44'27"	177.89'	S66°21'42"W
28	36.44'	25.00'	83°31'14"	33.30'	N53°00'27"W
29	241.19'	55.00'	251°15'36"	89.41'	N43°07'22"E



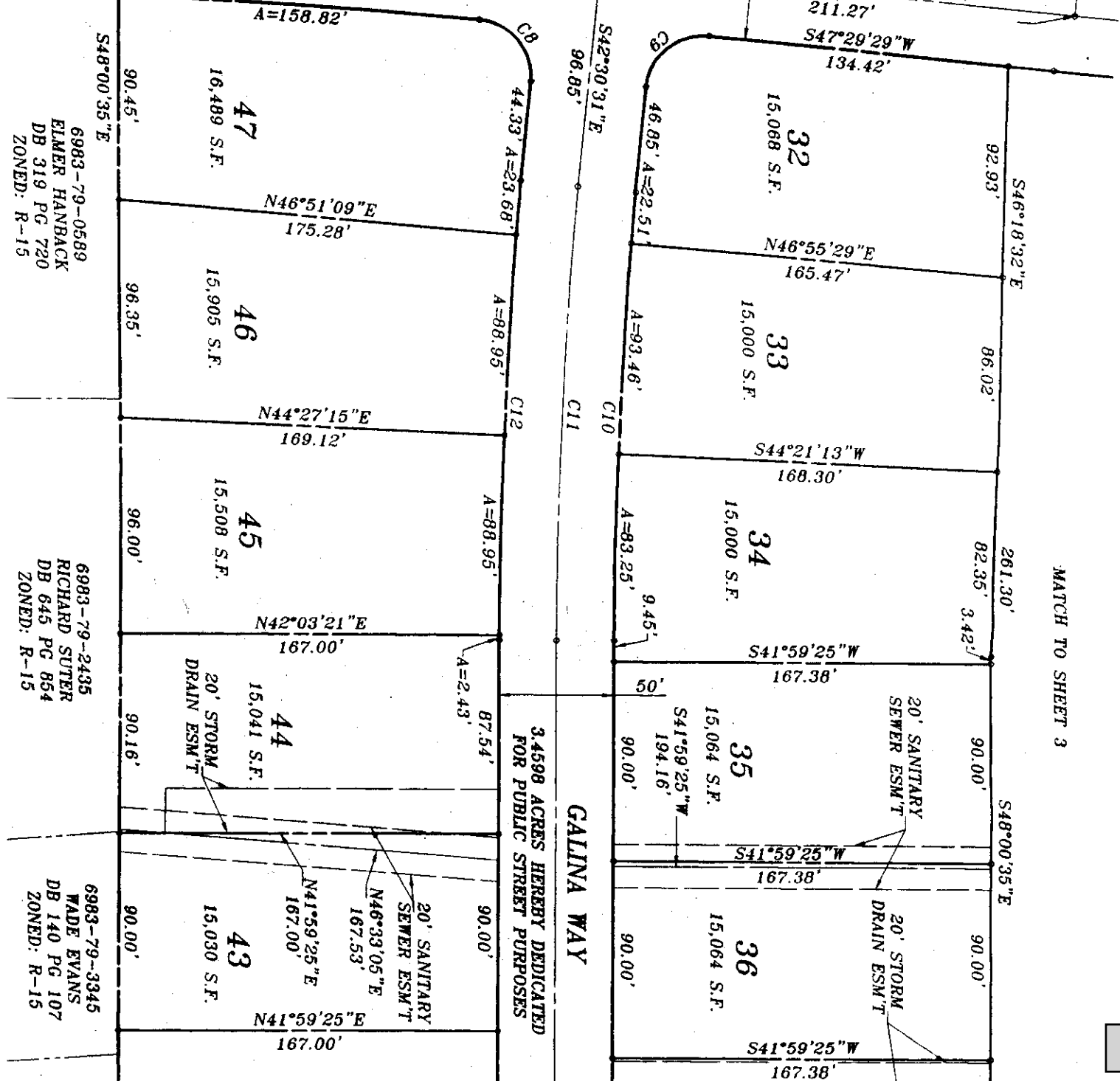
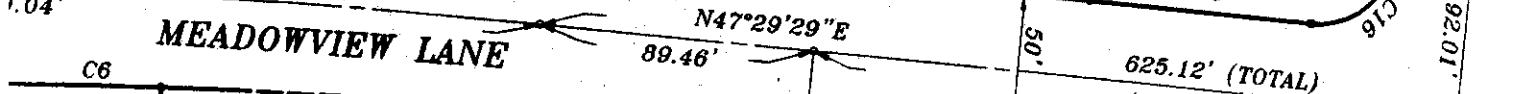
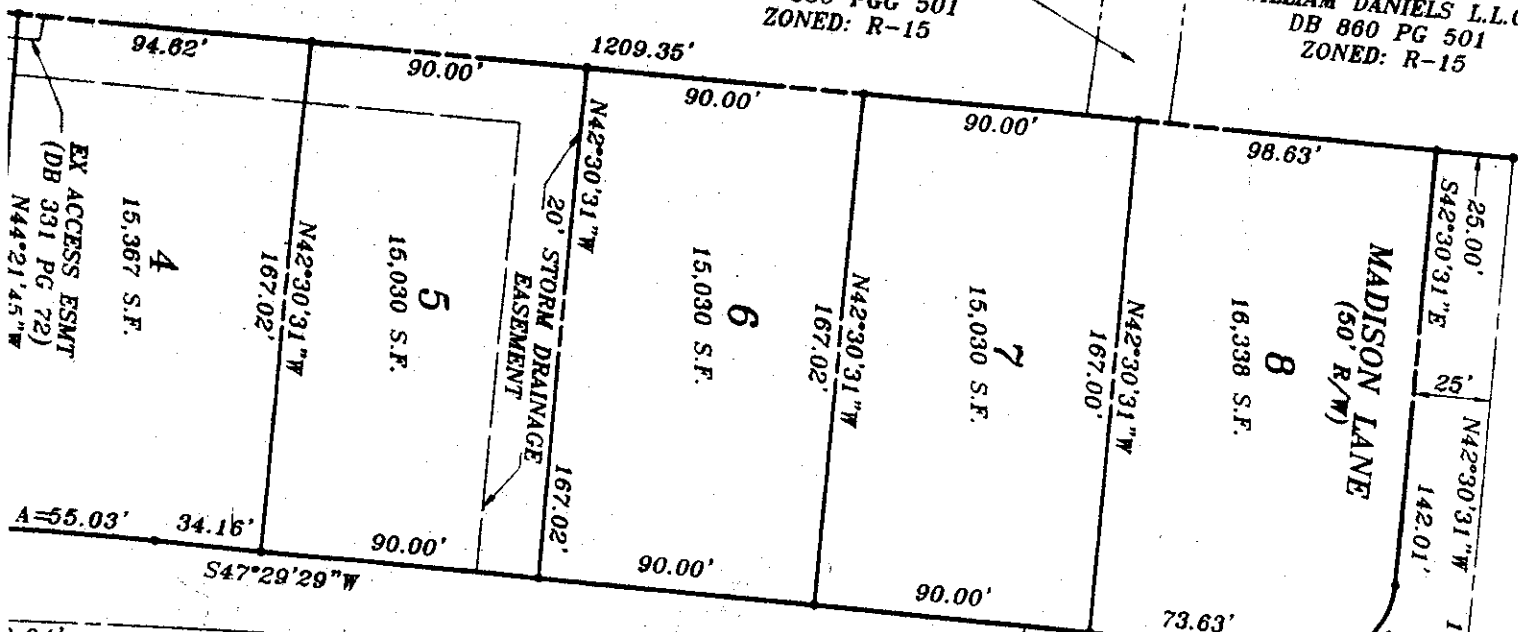
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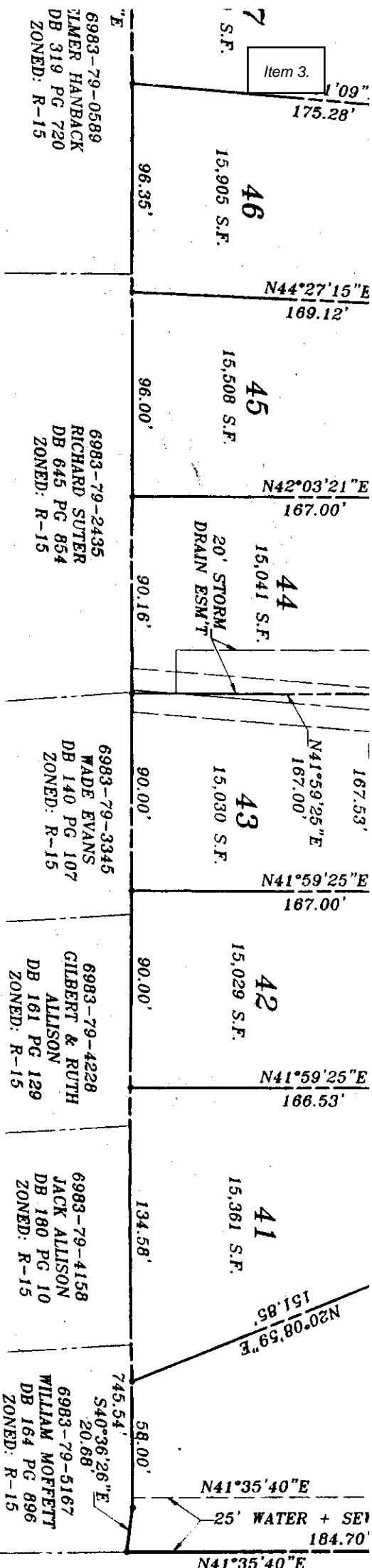
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WILLIAM DANIELS L.L.C.  
DB 860 PG 501  
ZONED: R-6

6984-70-1108  
WILLIAM DANIELS L.L.C.  
DB 860 PGG 501  
ZONED: R-15

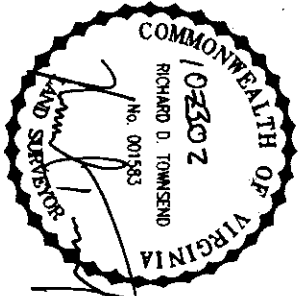
6984-70-2394  
WILLIAM DANIELS L.L.C.  
DB 860 PG 501  
ZONED: R-15



BK0982PG0950



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1	210.15'	741.19'	16°14'42"	209.44'	N55°41'49"W
2	120.01'	743.69'	09°14'46"	119.88'	N59°11'47"W
3	36.96'	25.00'	84°42'45"	33.69'	N83°04'14"E
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24	244.73'	55.00'	254°56'37"	87.30'	N37°14'28"W
25	261.81'	300.00'	50°00'05"	253.58'	S72°29'31"W
26	283.62'	325.00'	50°00'05"	274.71'	S72°29'31"W
27	181.14'	275.00'	37°44'27"	177.89'	S66°21'42"W
28	36.44'	25.00'	89°31'14"	33.30'	N53°00'27"W
29	241.19'	55.00'	261°15'36"	89.41'	N43°07'22"E



**SUBDIVISION PLAT**  
**MONROE ESTATES**  
TOWN OF WARRENTON



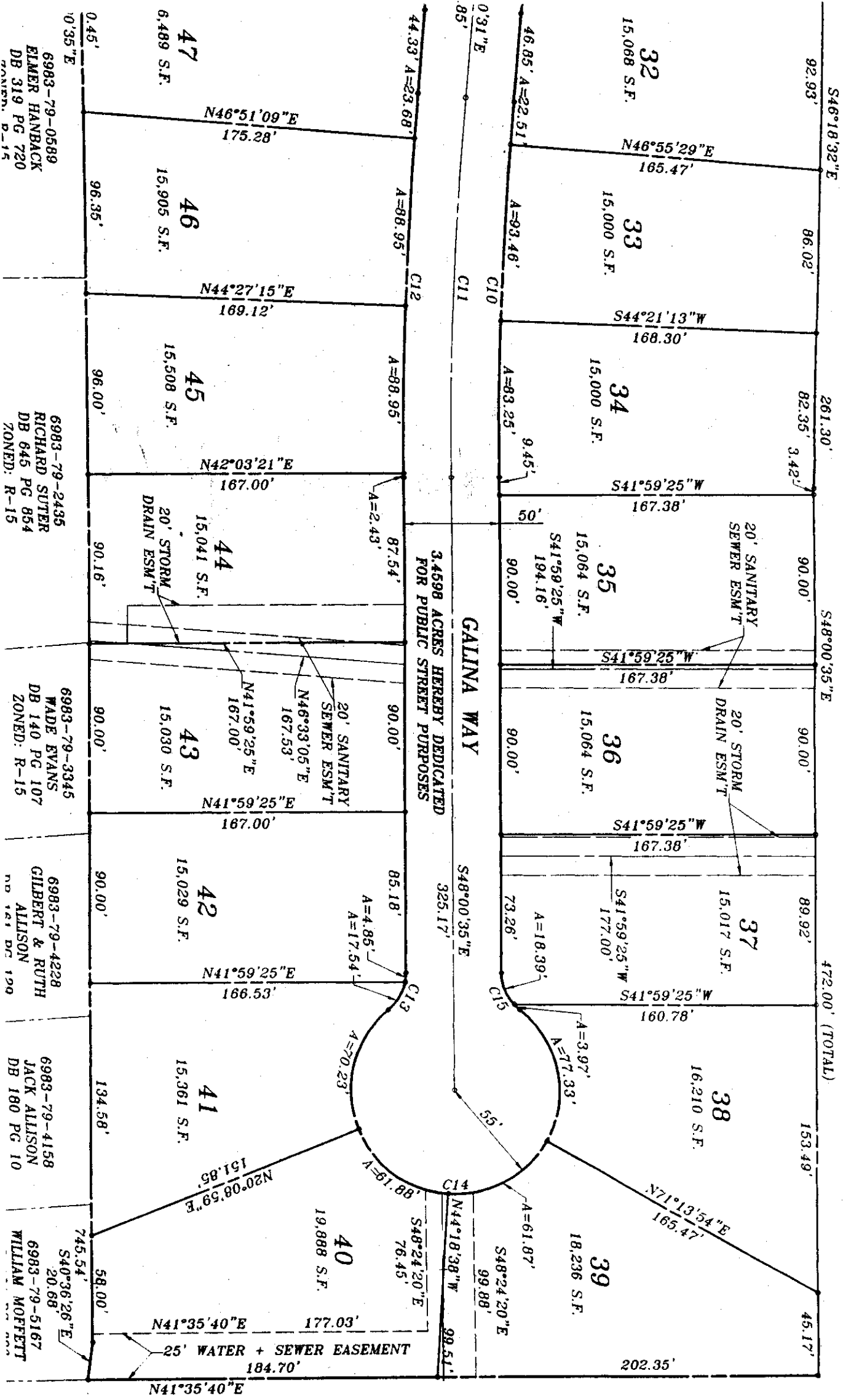
**SCHOOLS & TOWNSEND, P.C.**  
ENGINEERS & SURVEYORS  
9252 MOSBY STREET · MANASSAS, VIRGINIA 22110  
703-368-8001 · 631-2995 · FAX 703-368-9950

DATE: 10-1-02  
DRAWN BY: JS  
CHECKED BY: RT  
SCALE: 1"=50'  
FILE: RPB-1824  
SHEET 2 OF 3

6760982860XB

BK0982PG0950

MATCH TO SHEET 3



6983-79-0589  
ELMER HANBACK  
DB 319 PG 720  
ZONED: R-15

6983-79-2435  
RICHARD SUTTER  
DB 645 PG 854  
ZONED: R-15

6983-79-3345  
WADE EVANS  
DB 140 PG 107  
ZONED: R-15

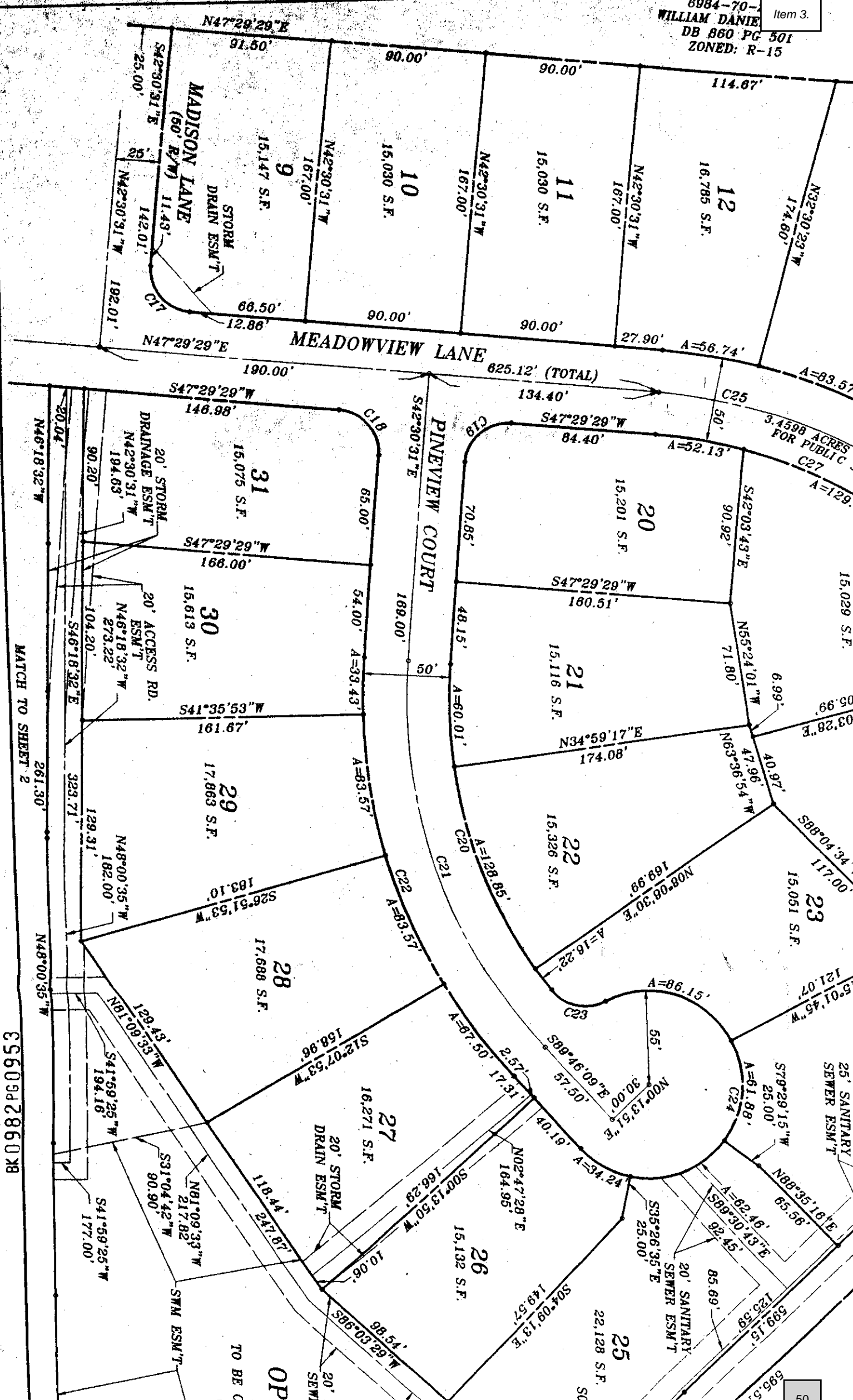
6983-79-4228  
GILBERT & RUTH  
ALLISON  
DB 161 PG 190

6983-79-4158  
JACK ALLISON  
DB 160 PG 10

6984-79-8068  
CHARLES & SHIRLEY  
MILLER  
DB 586 PG 649  
ZONED: R-15

6984-79-8068  
CHARLES & SHIRLEY  
MILLER  
DB 586 PG 649  
ZONED: R-15

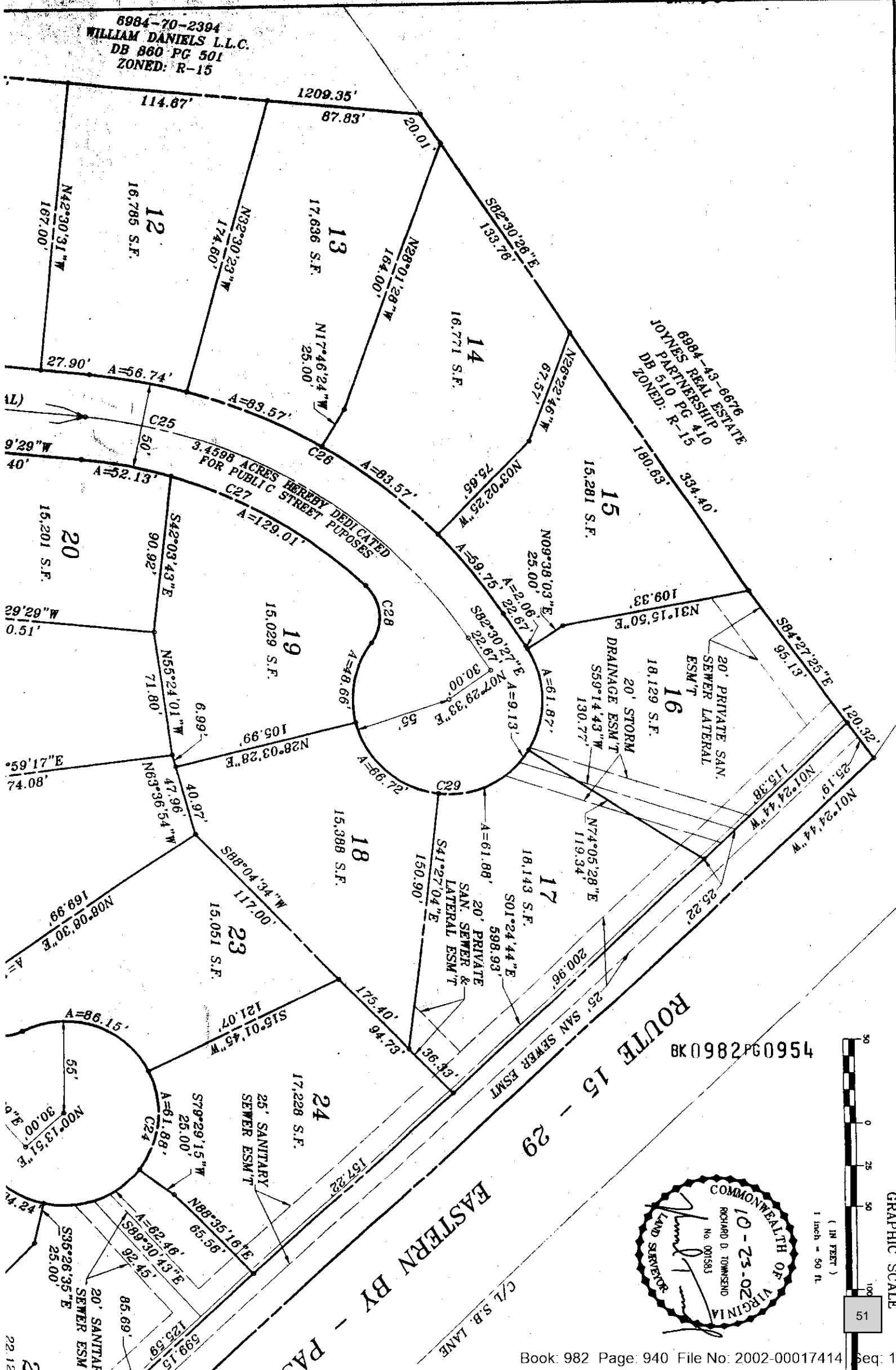
6984-70- Item 3.  
WILLIAM DANIE  
DB 860 PG 501  
ZONED: R-15



MATCH TO SHEET 2  
C5609d2860XB



BK 0982 PG 0952



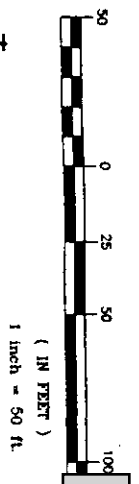
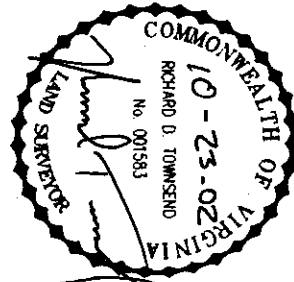
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 WILLIAM DANIELS L.L.C.  
 DB 860 PG 501  
 ZONED: R-15

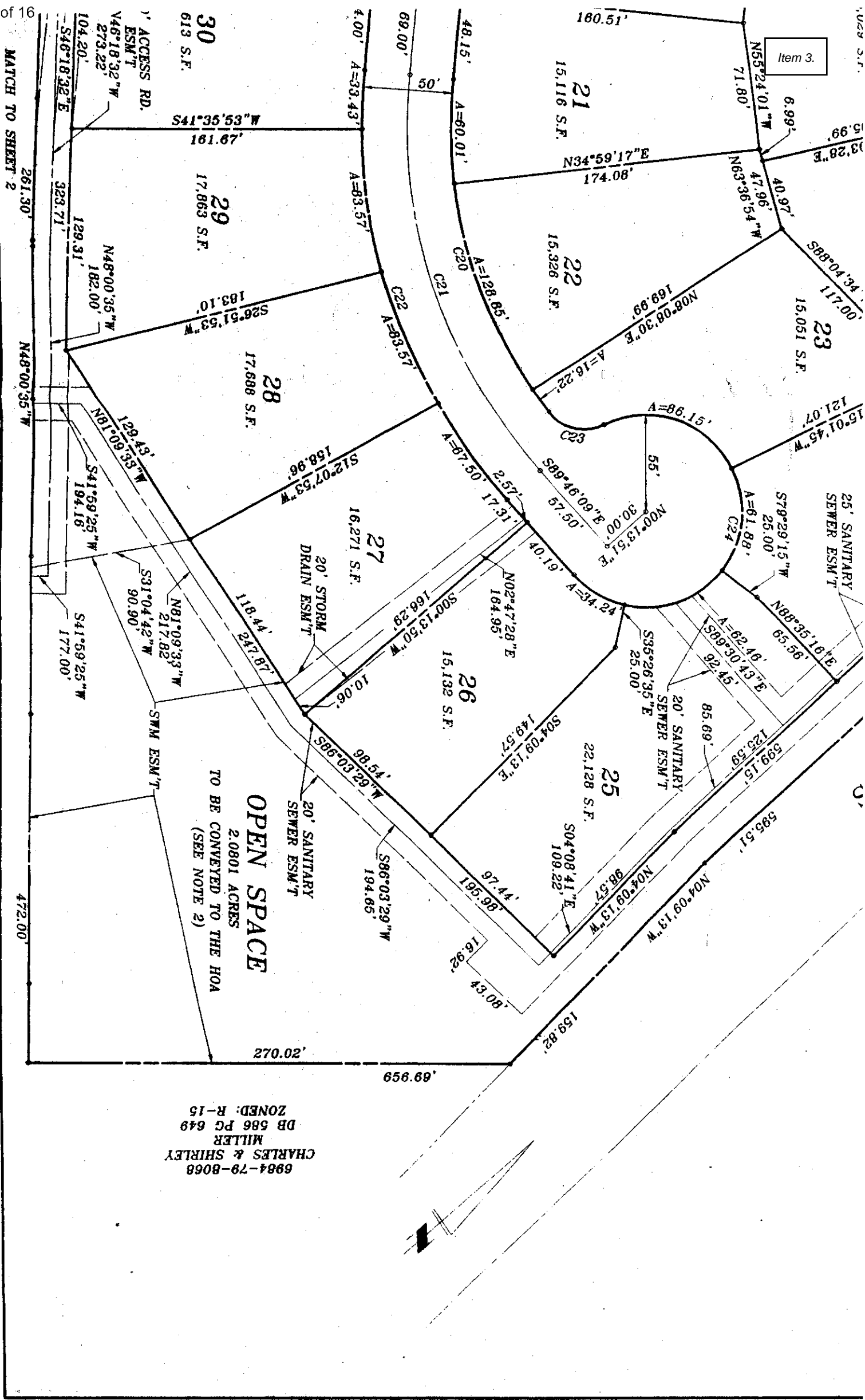
6884-43-6676  
 JOYNES REAL ESTATE  
 PARTNERSHIP  
 DB 510 PG 410  
 ZONED: R-15

3.4588 ACRES HEREBY DEDICATED  
 FOR PUBLIC STREET PURPOSES

BK 0982 PG 0954

ROUTE 15 - 29  
 EASTERN BY - PAC  
 C/L S.B. LANE



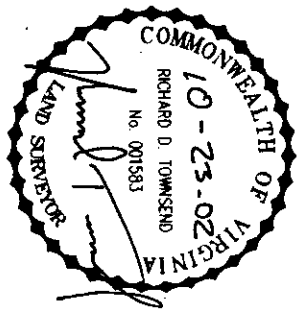
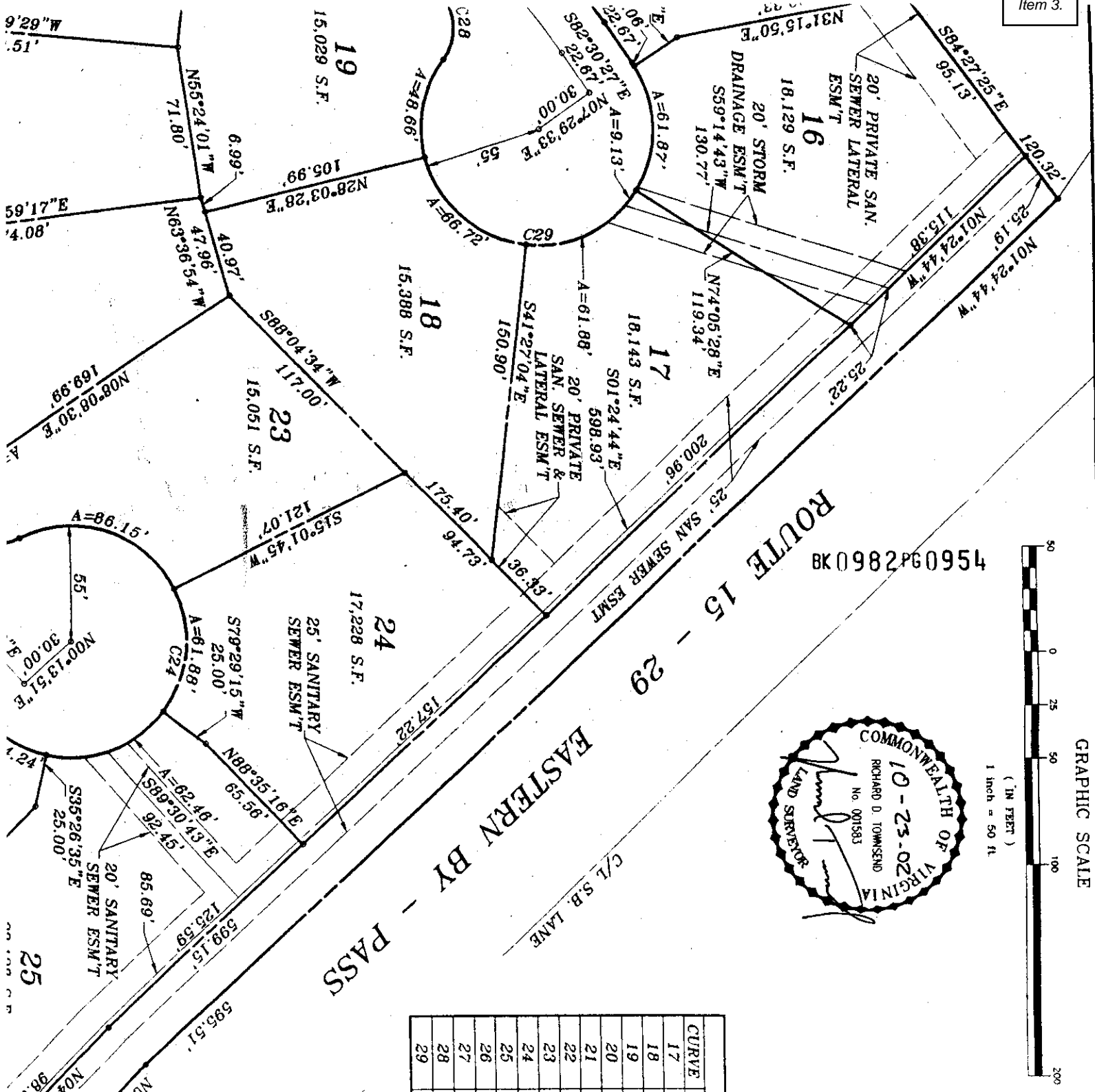


6984-79-8068  
 MILLER  
 CHARLES & SHIRLEY  
 DB 686 PG 649  
 ZONED: R-15

35609D2860X8

MATCH TO SHEET 2

Item 3.



BK 0982 PG 0954

CURVE	LENGTH	RADIUS	DELTA	CHORD	BEARING
17	39.27'	25.00'	89°59'59"	35.36'	S87°30'31"E
18	39.27'	25.00'	90°00'02"	35.36'	N87°30'33"W
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**SUBDIVISION PLAT**

**MONROE ESTATES**

TOWN OF WARRENTON

SCHOOLS & TOWNSEND, P.C.

ENGINEERS · SURVEYORS

9252 MOSBY STREET · MANASSAS, VIRGINIA 22110  
703-368-8001 · 631-2995 · FAX 703-368-9950

DATE: 10-1-02      SCALE: 1"=50'      FILE: RPB-1024

DRAWN BY: TS      CHECKED BY: RT      SHEET 3 OF 3

BK 0982 PG 0955

Item 3.

VIRGINIA: IN THE CLERK'S OFFICE OF THE CIRCUIT COURT  
FOR THE COUNTY OF FAUQUIER,

OCT 23 2002

This instrument was this day received in said Office and  
with certificate admitted to record at 2:43 P. m.

\$ 3.00 Tech Fee Exempt

\$ 30.00 RD

TESTE: *Gaul H Barb*, CLERK



Residential Pool Permit

Permit Number: **BLDG-22-11** Item 3.  
USBC: 2015  
APPLICATION DATE: October 4, 2022  
ISSUANCE DATE: October 6, 2022  
RENEWAL DATE:

**Town of Warrenton**

**21 Main Street**

**Warrenton VA 20186**

**(540)-347-2405**

LIEN  
AGENT:

**OWNER NAME/ADDRESS**

SIMOES, JORDYN VICINUS TRUSTEE; SIMOES,  
TRAVIS & JORDYN LVG TRUST; SIMOES, TRAVIS  
ALEXANDER TRUSTEE  
576 GALINA WAY  
WARRENTON, VA 20186

**SITE ADDRESS**

576 GALINA WAY  
WARRENTON, VA 20186

CONTRACTOR NAME	TRADE	ADDRESS	PHONE
--------------------	-------	---------	-------

**DESCRIPTION OF CONSTRUCTION LOCATION**

TAX MAP NO: 6983-79-2716-000	LOT: 47	SUBDIVISION: MONROE ESTATES
SETBACK S:	FRONT: 25'	BACK: 35'
	RIGHT: 12'	LEFT: 12'
		ZONE DISTRICT:

**CERTIFICATE OF APPROPRIATENESS:**

**CONDITIONS/LEGISLATIVE APPROVALS:** Pool cannot be located closer than 5' to side property line per article 9-1.2 of the Zoning Ordinance. Pavilion must be limited to 15' in height. Must meet all requirements of Land Disturbance permit (LDP2022-635) approval. Property is located within the 500 year floodplain.

4' and 6' Fencing per article 2-19.1 of the Zoning Ordinance. Fencing is not permitted to exceed 6' along Meadowview Lane. 6' fencing must be set back a minimum of 18.5' from Meadowview Lane and 25' from Galina Way. See plat provided with new fencing location dated March 14, 2023.

USE GROUP:	SQ. FEET: 0
CNST. TYPE:	
CHANGE IN ZONING USE TO:	NEW ZONING USE SQ. FEET:

**NATURE OF WORK:** Installation of inground gunite/shockcrete pool and concrete pool deck. Installation of pavillion & Hot tub.

Amendment 10-03-2022: Here is a description of work for the swimming pool, pavillion, hot tub and outdoor kitchen. We will run conduit and connect one pool panel, 3 motors and 2 lights. Bonding of rebar shell and deck, wiring one pavillion, 1 ceiling fan, 4 recessed lights and 5 receptacles  
One 60A circuit for hot tub and four 120V receptacles for outdoor kitchen.

Amendment 02-17-2023: added two 1" pro poly 125' and 115' lines

Amendment 03-9-2023: Installation of 214.5' 6ft tall, pressure treated lumber (wood fencing) and 175.5' of 4' fencing per plat in file.

JOB VALUE: \$80,000

TOTAL FEES: \$237.00

Under the Building Code, any permit issued shall become invalid if the authorized work is not commenced within six (6) months after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work.

REQUIRED SIGNATURES

ZONING ADMINISTRATOR

BUILDING OFFICIAL

Travis Simoes

AGENT

2022-0891

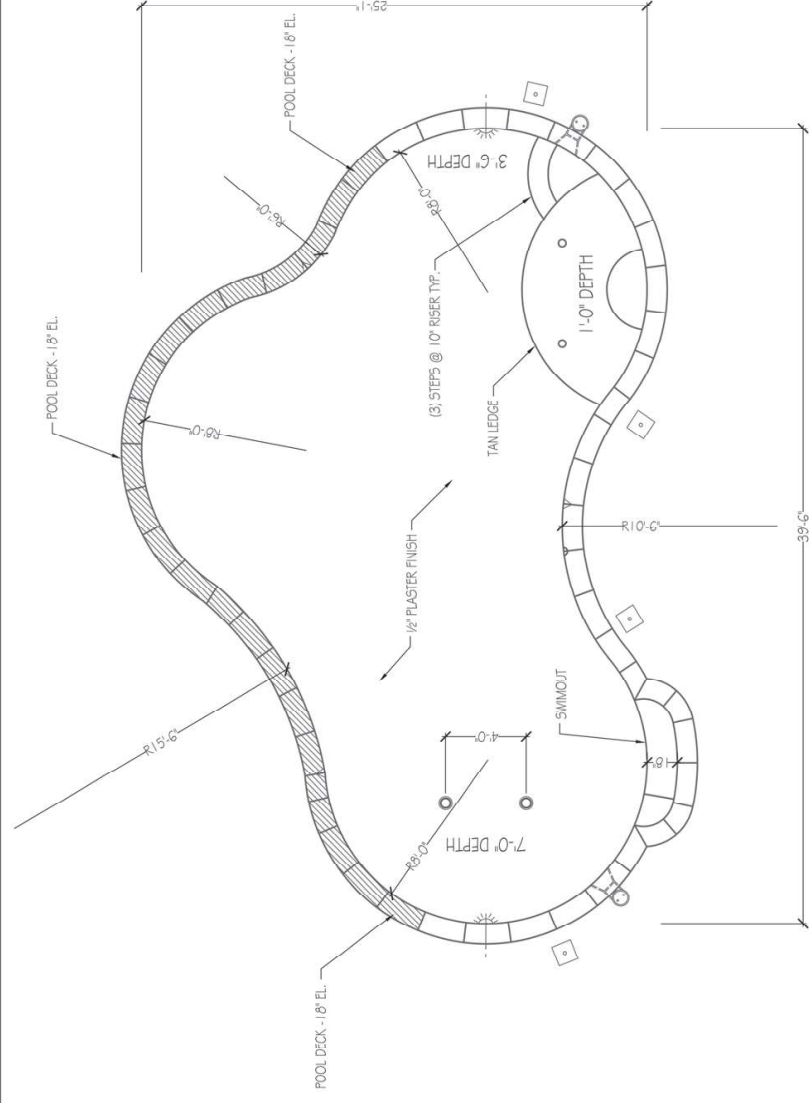


**PLANS APPROVED**

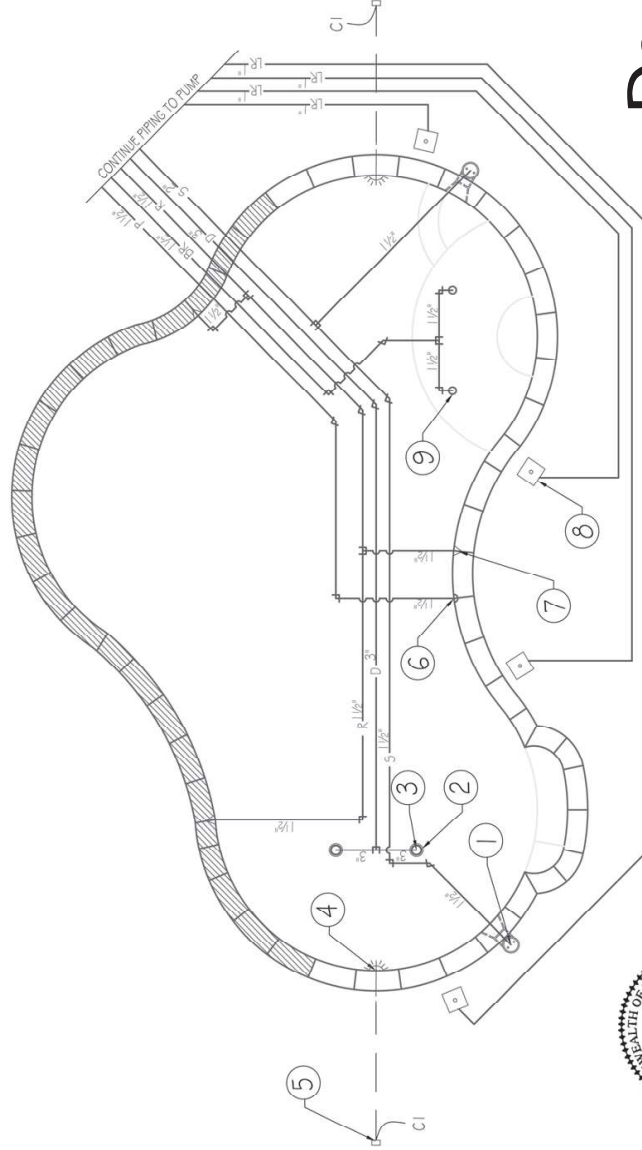
With the intent that they comply in all respects to the code any omissions or errors on the plans does not relieve the applicant from complying with all applicable requirements of the code.

*David F. Counts* 03-11-2022  
date

**Town of Warrenton Building Inspection Department**  
**NO INSPECTIONS WILL BE MADE UNLESS AN APPROVED SET OF PLANS IS ON THE JOB SITE**



LAYOUT PLAN  
SCALE: 1/4" = 1'-0"



EQUIPMENT & PIPING PLAN  
SCALE: 1/4" = 1'-0"



*David F. Counts*

**David F. Counts**  
Digitally signed by David F. Counts  
Date: 2022.03.02 14:04:03 -05'00'

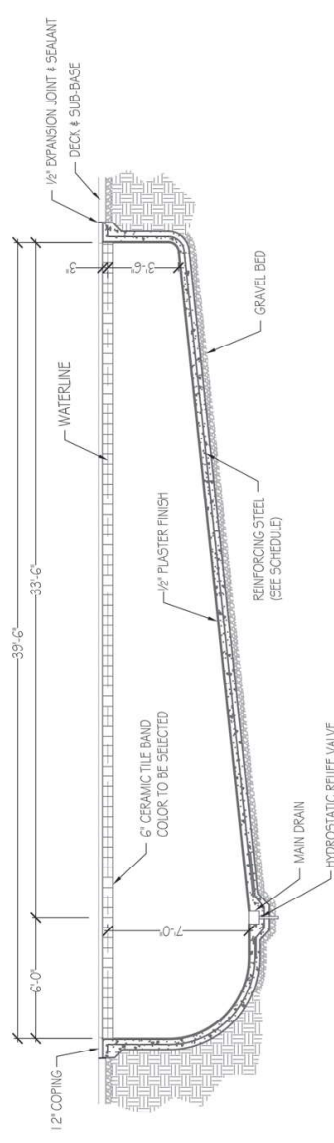
EQUIPMENT	
ITEM REQD	EQUIP NO. DESCRIPTION
1	2 SP-1082 SURFACE SKIMMER WITH VENTED LID - HAYWARD
2	2 SP1154AV 8" DIA. MAIN DRAIN - ANTI-VORTEX - HAYWARD
3	1 SP-1056 HYDROSTATIC RELIEF VALVE & COLLECTOR TUBE - HAYWARD
4	2 PENTAIR UNDERWATER POOL LIGHT
5	2 JB-750 WEATHERPROOF JUNCTION BOX - PENTAIR
6	1 SP-1022 1 1/2" FIP VACJUM FITTING - HAYWARD (POLARIS CLEANER)
7	3 SWIMQUIP 2" FULLY ADJUSTABLE INLET FITTING
8	4 PENTAIR MAGIC JET LAMINAR
9	2 PENTAIR COLOR CASCADE BUBBLER
10	1 PENTAIR 3/4 HP PUMP & MOTOR - 115/230V - (POLARIS CLEANER)
11	1 RAYPAC 400,000 BTJ NATURAL GAS HEATER
12	1 PENTAIR CLEAN & CLEAR CARTRIDGE FILTER - 420
13	1 PENTAIR 3 HP V5 PUMP & MOTOR - 230V
14	1 PENTAIR EROS ON CHLORINE FEEDER
15	
EQUIPMENT NOT SHOWN	
A	1 280 AUTOMATIC POOL CLEANER - POLARIS
B	

PIPE LEGEND

RETURN	R
MAIN DRAIN	D
SKIMMER	S
VACJUM (POLARIS)	P
BUBBLER RETURN	BK
LAMINAR JET RETURN	LR

CODE ANALYSIS:  
I.R.C. 2018  
ISPSC 2018  
TYPE 0 POOL - NO DIVING

SP001  
SIMOES RESIDENCE  
576 GALINA WAY, WARRENTON, VIRGINIA 20186  
POOL PLANS



POOL SECTION  
SCALE: 1/4" = 1'-0"

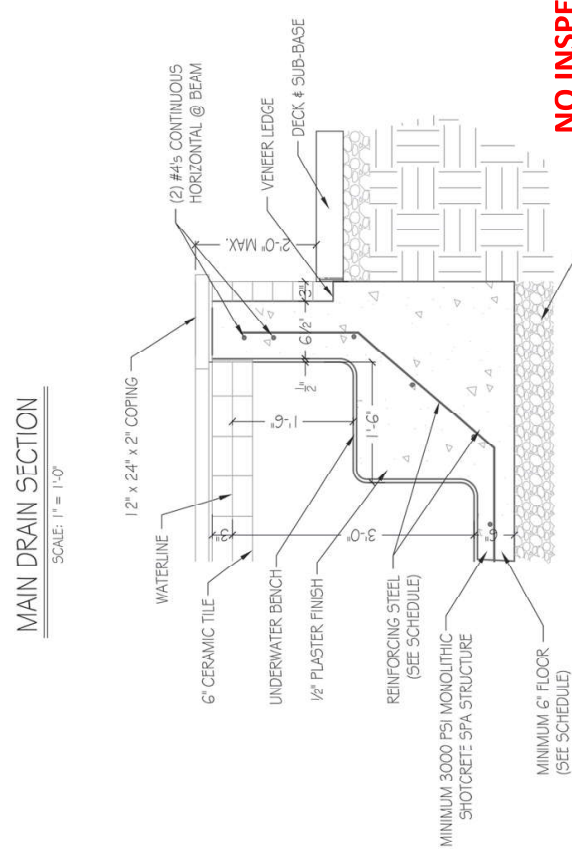
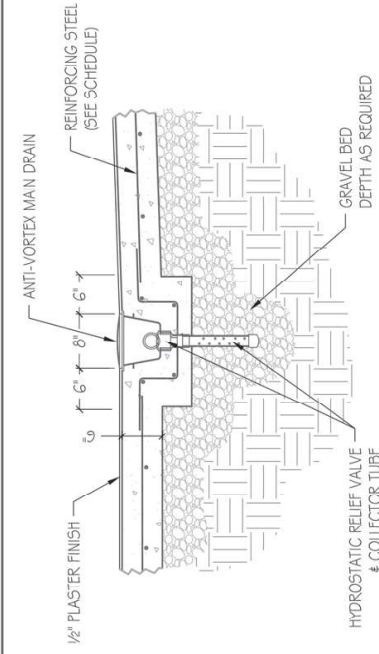




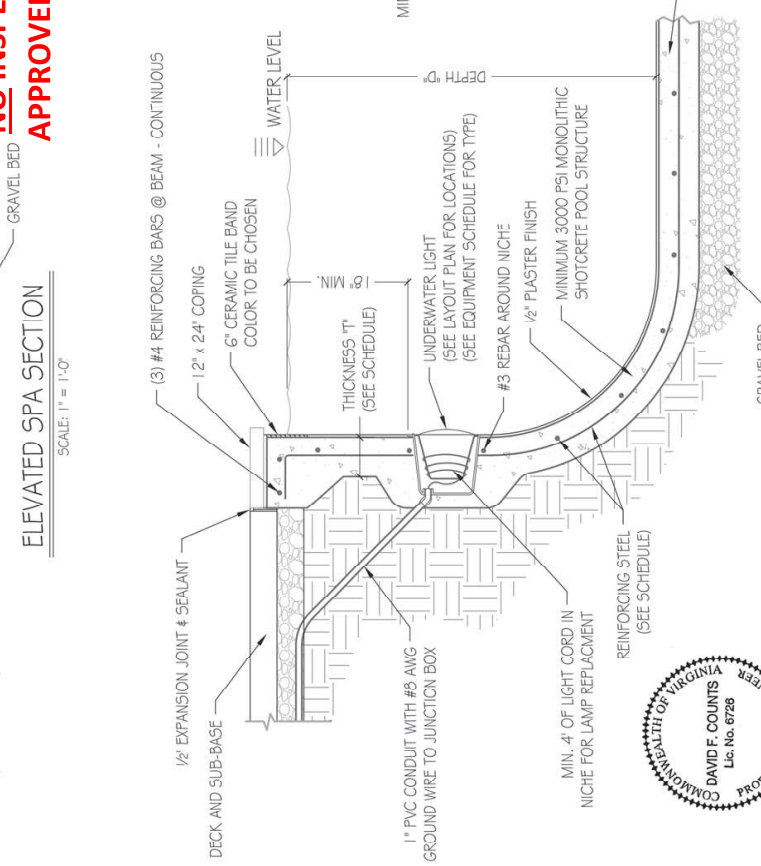
REINFORCING STEEL SCHEDULE

WALLS			FLOORS		
DEPTH	CONCRETE THICKNESS	VERTICAL BARS "A"	HORIZONTAL BARS "B"	CONCRETE THICKNESS	FLOOR SUB BARS
	"	SIZE	SPACING	GRADE	
UP TO 4'-0"	6"	#3	12"	#3	#3 @ 12" O.C. B.W.
4'-1" TO 5'-0"	7"	#3	12"	#3	#3 @ 12" O.C. B.W.
5'-1" TO 6'-0"	7"	#3	12"	#3	#3 @ 12" O.C. B.W.
6'-1" TO 7'-0"	8"	#4	12"	#4	#3 @ 12" O.C. B.W.
7'-1" TO 8'-0"	8"	#4	12"	#4	#3 @ 12" O.C. B.W.
8'-1" TO 9'-0"	8"	#4	12"	#4	#3 @ 12" O.C. B.W.
9'-1" TO 10'-0"	10"	#4	12"	#4	#3 @ 12" O.C. B.W.

NOTES: REINFORCING BARS PLACED WITH 3" CONCRETE COVER FROM SOIL FACE.  
LAP ALL REINFORCING BARS FORTY BAR DIAMETER MINIMUM.  
DESIGN SUITABLE FOR EXPANDING & CONTRACTING SOILS.  
POOL TO BE FILLED BY TANKER TRUCK

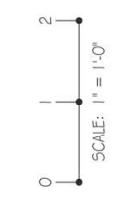


**NO INSPECTIONS WILL BE MADE UNLESS AN APPROVED SET OF PLANS IS ON THE JOB SITE**



David F. Counts

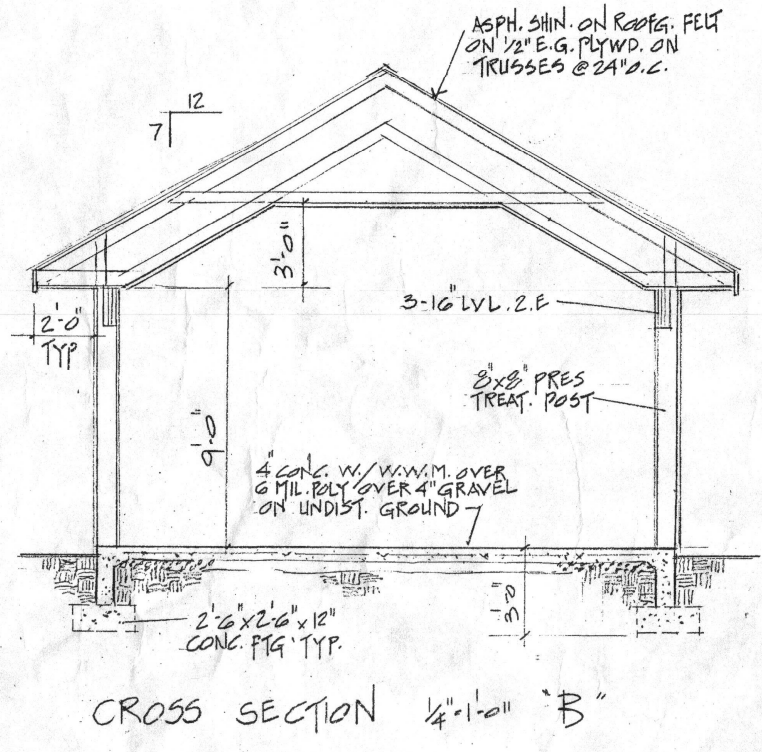
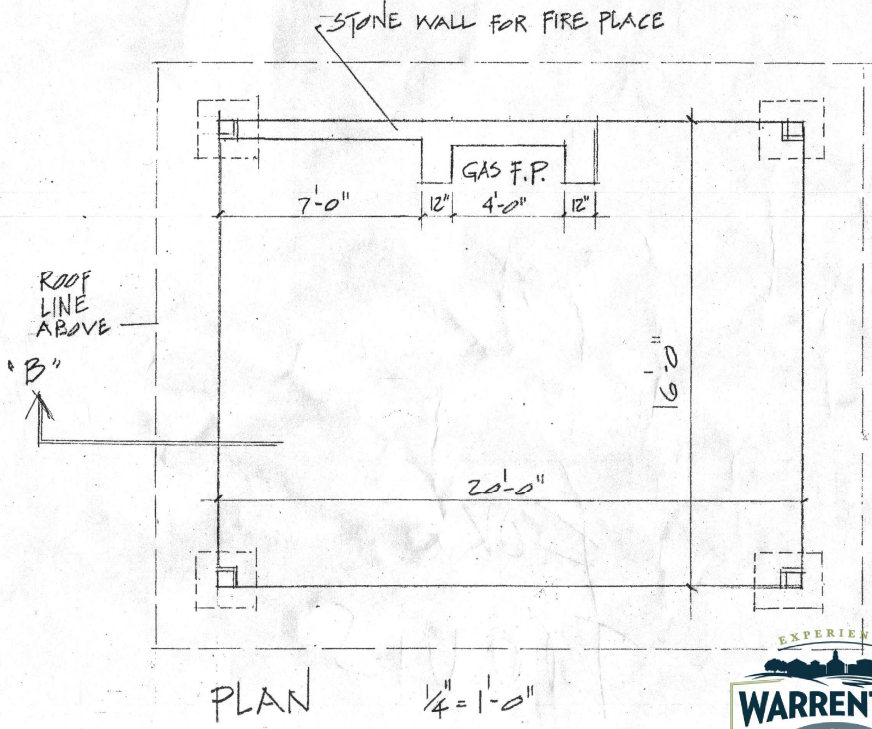
**David F. Counts**  
Digitally signed by David F. Counts  
Date: 2022.03.02 14:03:14 -05'00'



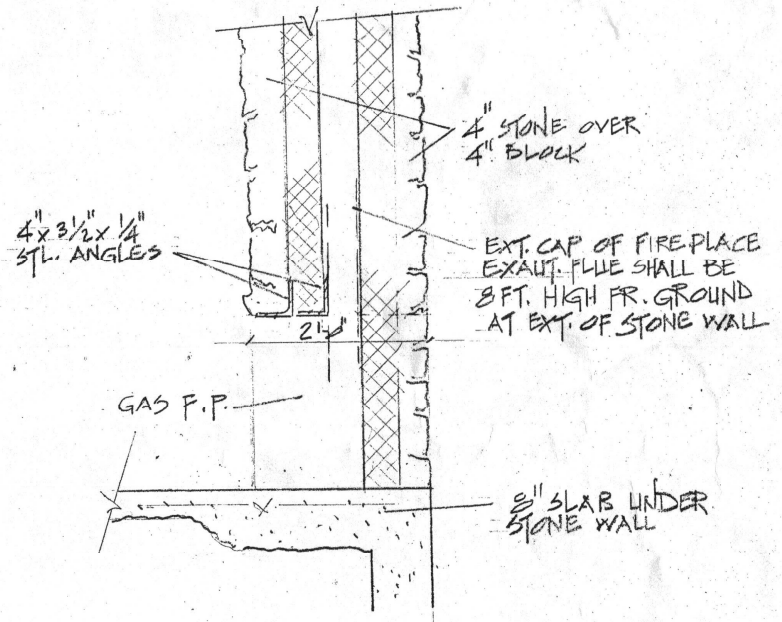
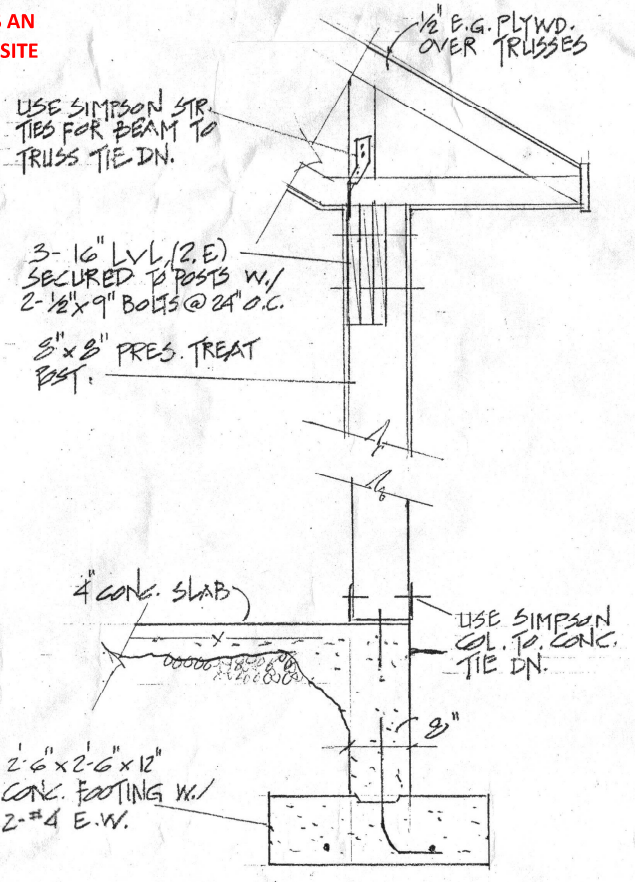
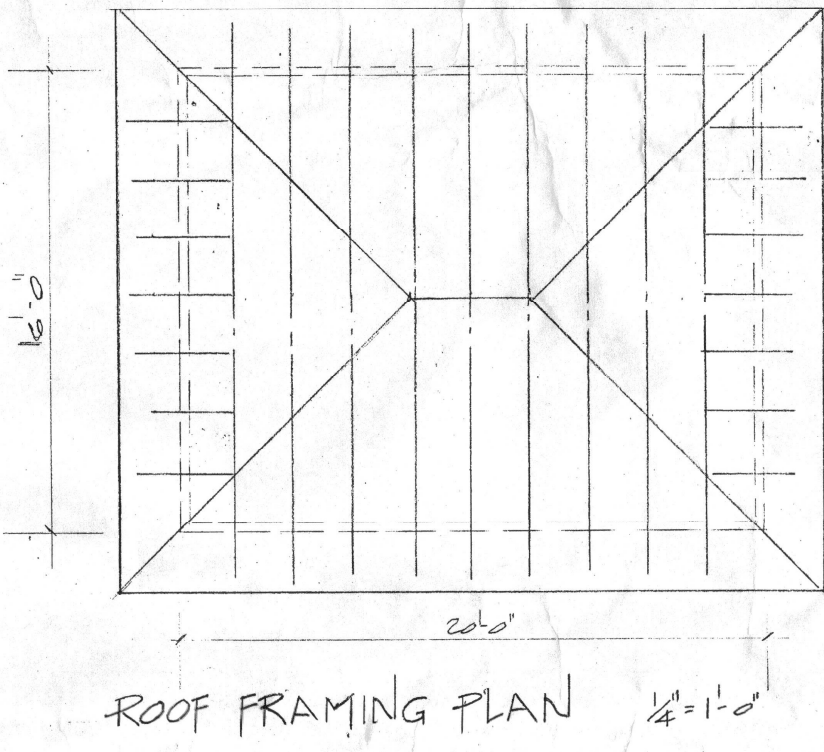




**SUBMIT GAS PIPING APPLICATION FOR FIREPLACE**

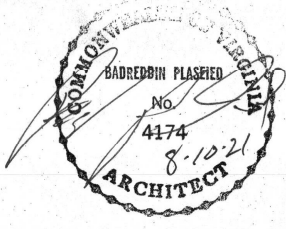


**NO INSPECTIONS WILL BE MADE UNLESS AN APPROVED SET OF PLANS IS ON THE JOB SITE**



- NOTES:**
- GROUND RESISTANCE HAS BEEN ASSUMED 2000 PSI
  - ROOF TRUSSES SHALL BE FABRICATED BY TRUSS MFG. & INSTALLED PER THEIR RECOMMENDATIONS
  - WRAP ALL BEAMS W/ TYVEC BEFORE FINAL COVERAGE
  - ROOF LOAD L: 30 LB D: 17 LB
  - WIND PRES. 120 MPH

**PORCH DETAILS**



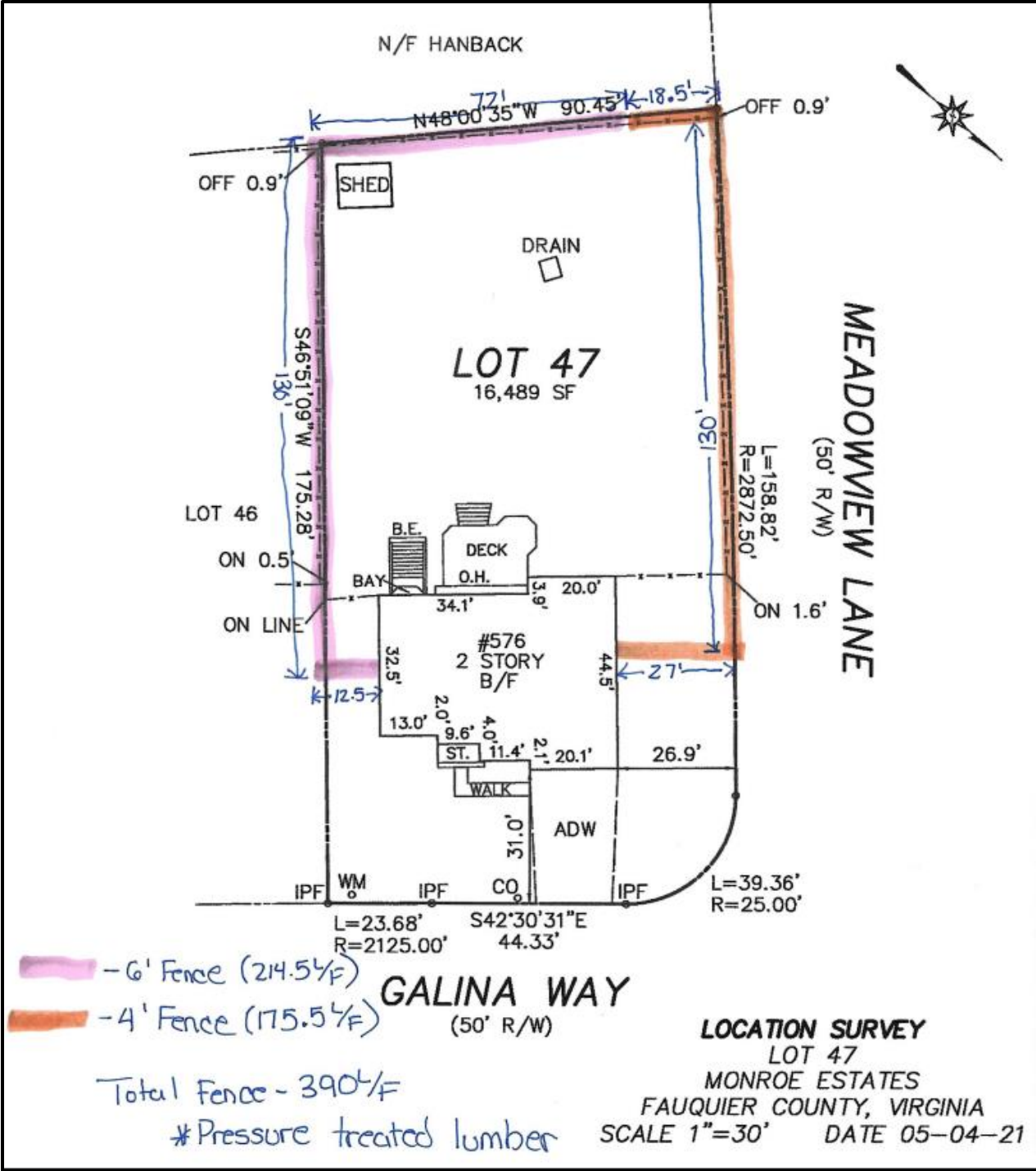
REVISIONS	BY

**BADREDDIN PLASEIED, A.I.A.**  
 ARCHITECT  
 9713 COUNSELLOR DR., VIENNA, VA 22180  
 PLASEIED@VERIZON.NE  
 TEL: 703-405-1750

SEMOE'S RESIDENCE  
 576 GALINA WAY  
 WARRENTON, VIRGINIA 20186

Date: AUG 10, 21  
 Scale: AS SHOWN  
 Drawn:  
 Job: 576  
 Sheet: 1  
 Of: 1 Sheets





**WARRENTON ZONING ORDINANCE**  
**Article 2-19.2 Fences and Walls Text Amendment**

**Adopted by Town Council: December 9, 2014**

**2-19 Fences and Walls**

2-19.2 Fences along the side yard of a corner lot shall meet the side yard setback requirements within the front setback.



## TOWN OF WARRENTON

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### STAFF REPORT

**TO:** Chairman Scullin and Members of the Planning Commission

**FROM:** Sarah A. Sitterle, AICP, CZA  
 Director of Planning & Community Development

**DATE:** November 12, 2014

**SUBJECT: Town Code, Zoning Ordinance and Subdivision Ordinance Amendments.** The Town of Warrenton has proposed revisions to the Town Code, Zoning Ordinance and Subdivision Ordinance in response to the 2014 General Assembly session.

### BACKGROUND

This application is a request by the Town of Warrenton for Code and Ordinance Text Amendments pursuant to Chapter 1 of the Town Code, Article 11 of the Town of Warrenton Zoning Ordinance, and Article 1-5 of the Subdivision Ordinance. The applicant seeks an amendment to current code and ordinances to update and revise the regulations for consistency and compliance with the Code of Virginia, as amended with laws passed per the 2014 session of the General Assembly. Additionally, there are a few amendments proposed to bring the Ordinance up to date with the Code of Virginia regarding variances, and to clean up the Ordinance in Articles 2 and 3 for fence setbacks and maximum front setbacks in the R-6 and R-10 Districts. Below are a list of the proposed amendments to the Town Code, Zoning Ordinance and Subdivision Ordinance:

**TOWN CODE AMENDMENT.** An amendment to Chapter 17 Water and Sewers, Article IV - Sewers to add Division 6 – Illicit Discharge regulations. The regulations for control of discharges into the storm sewer system are a requirement of the Town of Warrenton’s Municipal Separate Storm Sewer System (MS-4) program, which took effect in 2014.

**SOTA 14-01. Subdivision Ordinance Text Amendment.** An amendment to Article 3-2 of the Subdivision Ordinance per an amendment to Section 15.2-2260 of the Virginia Code that removes the mandatory review by the Planning Commission of a preliminary plat for fifty (50) or fewer lots.

**ZOTA 14-03. Zoning Ordinance Text Amendment.** An amendment to Article 12-Definitions per an amendment to Section 15.2-2291 of the Virginia Code that changes the

definition of Group Home to reflect that group homes shall be supervised by resident or nonresident staff persons.

**ZOTA 14-04. Zoning Ordinance Text Amendment.** An amendment to Article 2-19.2 that changes the requirement for side setbacks for fences on corner lots to be met within the front setback area.

**ZOTA 14-05. Zoning Ordinance Text Amendment.** An amendment to Article 3-4.2.4 Lot and Yard Regulations in the R-10 District that removes the maximum front setback requirement.

**ZOTA 14-06. Zoning Ordinance Text Amendment.** An amendment to Article 3-4.3.4 Lot and Yard Regulations in the R-6 District that removes the maximum front setback requirement.

**ZOTA 14-07. Zoning Ordinance Text Amendment.** An amendment to Article 11-3.11.1 Variances Authorized, that removes the approaching confiscation language per a 2009 amendment to Section 15.2-2309 of the Virginia Code.

**ANALYSIS:**

As with any request for amendments, the Commission must utilize the criteria provided for in the Town of Warrenton Zoning Ordinance. According to Article 11-3.9, the Planning Commission and the Town Council should consider several factors. As they relate to text amendments, the Commission should consider two specific points:

- Whether or not the request furthers the public interest, and the goals, objectives, and policies of the Comprehensive Plan
- Whether or not the amendment is justified by changed or changing conditions

The following proposed text amendments are a result of changes to state law per the 2014 General Assembly session:

1. ZOTA 14-03 - Amendment to Article 12 – Definitions
  - a. The proposed amendment is per Section 15.2-2291 of the Code of Virginia to reflect a change in the status of staff persons for residential facilities for individuals with mental illness, intellectual disability or developmental disabilities. The amendment to the Code allows for assisted living facilities and group home of eight or fewer individuals to have staff persons that are residents or nonresidents and still be considered as a single family residence for zoning ordinances.
2. SOTA 14-01 - Amendment to Article 3-2 – Purpose of Preliminary Plat, of the Subdivision Ordinance
  - a. The proposed amendment is per Section 15.2-2260 of the Code of Virginia to reflect a change in the review of preliminary plats for fifty (50) or fewer lots. The code change provides the landowner with the option to submit preliminary plats for tentative review for fifty (50) or fewer lots.



The following text amendments to the Town Code and Zoning Ordinance are being proposed to clarify some sections and bring the regulations up to date with previous changes to the Code of Virginia:

1. **TOWN CODE AMENDMENT.** This is an amendment to Chapter 17 Water and Sewers, Article IV - Sewers to add Division 6 – Illicit Discharge regulations.
  - a. The amendment is being requested because regulations for control of discharges into the storm sewer system are a requirement of the Town of Warrenton’s Municipal Separate Storm Sewer System (MS-4) program, which took effect in 2014.
2. **ZOTA 14-04. Zoning Ordinance Text Amendment.** An amendment to Article 2-19.2 that changes the requirement for side setbacks for fences on corner lots to be met within the front setback area.
  - a. 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.
3. **ZOTA 14-05. Zoning Ordinance Text Amendment.** An amendment to Article 3-4.2.4 Lot and Yard Regulations in the R-10 District that removes the maximum front setback requirement.
  - a. This change is being requested to allow for additional front setback area to accommodate off-street parking on driveways, and additional flexibility for placement of homes in new subdivisions and on infill lots within older neighborhoods that were not subject to the same setback restrictions when developed. The Town has received two variance requests for an exception to the maximum front setback in the R-10 District in July 2010 and April 2013.
4. **ZOTA 14-06. Zoning Ordinance Text Amendment.** An amendment to Article 3-4.3.4 Lot and Yard Regulations in the R-6 District that removes the maximum front setback requirement.
  - a. This change is being requested to allow for additional front setback area to accommodate off-street parking on driveways, and additional flexibility for placement of homes in new subdivisions and on infill lots within older

neighborhoods that were not subject to the same setback restrictions when developed. The Town has received two variance requests for an exception to the maximum front setback in the R-6 District in December 2009 and November 2012.

5. **ZOTA 14-07. Zoning Ordinance Text Amendment.** An amendment to Article 11-3.11.1 Variances Authorized, that removes the approaching confiscation language per a 2009 amendment to Section 15.2-2309 of the Virginia Code.

- a. During the 2009 Legislative Session, Section 15.2-2309 was updated with Chapter 206, which was an act that amended the regulations to remove the “approaching confiscation” language associated with demonstrating a hardship condition for variance requests. The Town’s Zoning Ordinance was not updated at that time, and this amendment is to bring the regulations into conformance with the Code of Virginia.

The text amendments proposed to improve sections of the Zoning Ordinance further the public interest by eliminating duplication, providing clarification, and consistency with the Code of Virginia. The goals, objectives and policies of the Comprehensive Plan support the appropriate provision and administration of zoning regulations for the Town. The fundamental intent of the Zoning Ordinance is to implement the purposes set forth in the Comprehensive Plan. Proposed text amendments were drafted with this intent in mind.

**STAFF RECOMMENDATION:**

Staff recommends approval of the proposed text amendments as being consistent with the goals, objectives and policies of the Comprehensive Plan. The amendments represent an improvement to the Zoning Ordinance and further the public interest.

**ATTACHMENTS:**

- 1.) Draft amendments







**Town Of Warrenton  
Community Development Department  
Board of Zoning Appeals**

**Subject:** Variance BZA-23-2 576 Galina Way Follow-Up Information for August 1, 2023 Meeting

**Reference:** 1) Variance BZA-23-2 576 Galina Way Staff Report Dated June 6, 2023  
 2) Variance BZA #2023-1 545 Solgrove Road Staff Report Dated April 4, 2023  
 3) BZA-23-2 576 Galina Way PowerPoint  
 4) Additional Information for June 6<sup>th</sup> Zoning Appeals Meeting Letter Dated June 6, 2023  
 5) June 6, 2023, Zoning Appeals Meeting  
 6) July 6, 2023, 576 Galina Way On-Site Meeting with Zoning and Storm Water Management  
 7) Line of Sight Survey provided via email on July 17, 2023  
 8) Land Disturbance Permit ZNG2022-0635 – 576 Galina Way – Approval With Conditions  
 9) LDP22-0003 – Fences across swales – 576 Galina Way - Agreement in Lieu  
 10) ZA #2023-2 Staff Report Dated August 1, 2023  
 11) 576 Galina Way Lot Survey, With Easement Depicted  
 12) Pictures depicting Easement  
 13) Neighbor Letters

To Whom It May Concern,

This letter is a follow-up to our letter dated June 6, 2023, and the subsequent June 6 Zoning Appeals meeting. We are also in receipt of the revised Staff Report dated August 1, 2023. This report acknowledges the submitted line-of-sight confirms no impact with the fence. Since the rest of the Staff Report doubles down on the initial assessment, we've structured this response mapping to the original Staff Report (Reference 1) and associated PowerPoint presentation (Reference 3).

As you recall, after the Board reviewed the information contained in our June 6, 2023, Letter (Reference 4) and various discussions took place at the June 6<sup>th</sup> Zoning Appeals Meeting (Reference 5), the parties agreed that a continuance be granted as more information was needed in order for the BZA to make a final determination on our submitted Variance Request.

This letter:

- 1) Summarizes the additional actions taken since that meeting, and the additional information received from those actions.
- 2) Provides further contextual information to supplement our iterative Variance Submission, and is in direct response to the PowerPoint (Reference 3) presented at the June 6<sup>th</sup> meeting.
- 3) Describes, in detail, an additional circumstance since the June 6<sup>th</sup> meeting of impactful importance to the purpose of our variance request.

Finally, this letter is a formal request for the BZA, once it has reviewed all of the additional information provided in this Letter and the information provided in the Referenced 1-13 documents/meetings, to respectfully and rightfully reject the recommendation contained in the June 6, 2023 and August 1, 2023 staff report, and approve our Variance request.

### Summary of Positions

As a reminder, we are requesting this variance to accommodate a 6-foot fence (thus, the request is for the variance of two feet) to alleviate safety, security and protection concerns and associated stress by providing an increased visual and physical barrier. The Town's effective counter position for how we are able to proceed (moving the fence 12 feet inwards) in fact, *increases* our safety, security and protection concerns, not decreases them. The counter position also increases the hardship already in existence due to the uniqueness of the property. As reflected in the Staff PowerPoint Presentation (Reference 3) that was presented at the June 6<sup>th</sup> meeting (Reference 5), the Staff recommended rejecting our Variance Request because it does not believe we meet:

- 1) Any of the three (3) Requirements contained in Sec. 11-3.11.1.1; and
- 2) Does not/may not meet two (2) of the mandatory five (5) criteria contained in Sec. 11-3.11.1.2.  
*\*Our interpretation of the August 1<sup>st</sup> Staff Report is that it is now contending we do not meet one (1) of these five (5) criteria.*

As previously indicated, we strongly believe the Staff has erred in its judgment in this collective assessment, particularly as it pertains to its rejection of facts in substantiating 11-3.11.1.1, as well as its collection and rejection of facts pertaining to Sec. 11.3.11.1.2.c.

**Pertaining to Sec. 11-3.11.1.1**, the same hardships presented in this Variance request (safety, security, protection and visual barrier) have already been approved as an underlying component of a hardship on other Variance Requests.

*\*\*We respectfully request this point be reread through in entirety. It was initially misinterpreted to indicate that we are suggesting the properties themselves are comparable. That is not what we are advocating. We are suggesting that the Staff and BZA accepted the argument that safety, security, protection and visual barrier equated to a hardship caused by a physical condition related to another property, with regular pedestrian traffic and continuous neighbor parking. We are only asking that the same hardship definition be applied consistently and appropriately, as we also have significant pedestrian and neighbor traffic and parking concerns, which are physical attributes related to our property, similar to the other properties with variance approvals. If you find that we meet all five (5) requirements pertaining to Sec.3.11.1.2, the accepted examples of hardships on other variance requests should be applied consistently and appropriately here, to ensure the integrity of each stand-alone assessment. Inconsistent application undermines not only this Variance request, but others that have already been approved.*

**Also pertaining to Sec. 11-3.11.1.1** we contend the staff has misevaluated the application of the Ordinance and its impact on property utilization. As described in the following pages, strict application of the Ordinance, specifically the 2014 amendment which addresses secondary front yard setbacks on *standard* corner lots, significantly restricts utilization of the property by meaningfully limiting the available space (by moving the fence inwards) that was *already* significantly limited due to the existence of the drain, easement and swale. **It's really important to note here that nowhere in the Staff Report is there any reflection of the easement or swale/slope. The drain is the only item depicted at all or even considered in the Staff's analysis. They didn't even use the complete picture of the circumstances for their evaluation.** For demonstration purposes, we're providing 576 Galina Way Lot Survey, With Easement Depicted (Reference 11). (The green and orange depict the area of our property that was

entirely unusable or restricted use due to the existence of the drain, swale and easement. We had to restructure our backyard additions within the yellow area to work with in the existing physical hardships.) We are also providing actual pictures of our backyard with the easement depicted (Reference 12).

**Finally, pertaining to Sec. 11-3.11.1.1** and since the last meeting, **[Confidential- PHI]** Jordyn Simoes experienced a catastrophic heart event, further substantiating the need to immediately alleviate additional external stressors, which includes chronic stressors at home. During surgery on June 29<sup>th</sup>, 2023, Jordyn suffered cardiac arrest and had to be resuscitated. She did not have a heart attack. Rather, her heart simply stopped beating. This was considered to be a Pulseless Electrical Activity (PEA) cardiac arrest, which is “non-shockable” (meaning a defibrillator will not correct it). She was hospitalized in critical care for several days before being released to go home.

Our concern about safety, security, intrusion and visibility directly and significantly increases the stress on Jordyn utilizing the backyard space. Specifically, as Jordyn continues to heal from her cardiac arrest, she is uncomfortable utilizing the space in the way it was intended due to the lack of privacy and significant visibility issues from high pedestrian traffic and parking immediately next to the property. Although the concerns existed before, they are even more critical now that Jordyn must maintain a low stress level to ensure her heart heals and she does not have a recurrence. In addition to alleviating the defined hardships (as follows) due to physical conditions of the property, approving the Variance for a 6-foot fence would also alleviate a hardship by granting a reasonable modification requested by, or on behalf of, a person with a ‘disability’.

**Please note, only high-level information on Jordyn’s health diagnosis and condition is provided within this letter. Even though we are marking this letter as containing confidential information, we are not comfortable or confident that the entirety of this letter won’t become part of a public record, not generally exempt from FOIA. Jordyn’s health diagnosis and associated information is subject to HIPAA protections. To the extent the BZA decides approval of this Variance is solely contingent upon the necessity of additional Personal Health Information (PHI) that substantiates Jordyn’s medical concerns, we would like to provide the requested PHI/supporting documentation with advanced, written confirmation of FOIA exemption and/or that it would be, at minimum, heavily and appropriately redacted prior to any public release. (In other words, if the BZA decides to reject our arguments around restricted use and hardship, we’d request the opportunity to provide medical documentation, subject to full protections, to support our Variance request).**

**Related to Sec. 11-3.11.1.2.b** and in accordance with discussion at the June 6<sup>th</sup> meeting, line-of-sight was the most critical concern of all parties. Confirming no impact to line-of-sight resolves the concerns with Sec. 11-3.11.1.2.b. We contracted, at our expense, a professional line-of-sight surveyor and confirmed our proposed 6-foot fence has no impact to line-of-sight at the Meadowview/Galina intersection. The results have been provided as Reference # 7. The Surveyor has confirmed that there are zero line-of-sight impacts if we erect a 6-foot fence in the proposed location as defined in the original submission. It should also be noted that the Surveyor performed his assessment based on a 25 MPH speed limit, as that is the lowest speed VDOT apparently offers line-of-sight formulas for. The speed limit in Monroe Estates is actually 15MPH. The lower the speed, the less line-of-sight impact. Therefore, it is a reasonable assumption that applying the actual speed limit of our neighborhood would have a further, positive impact on line-of-sight as pertaining to our proposed fence.

In reference to Sec. 11-3.11.1.2.c we strongly contend the staff has erred in its assessment of the requirement to determine that the condition or situation of the property is not so general or recurring in nature as to be adopted as an amendment to the Ordinance. The Staff literally indicates that the fact that our property is a corner lot with an amendment defining standard practice means it doesn't meet the requirements. Let's think this one through: Being a non-corner lot would also be a recurring condition- far more common than a corner lot. This Ordinance was originally written for application across all Town properties relating to residential fences. If this logic is applied consistently, there is zero opportunity for variance approvals. However, we know for a fact that there have been variance approvals. Therefore, the single argument presented in the August 1<sup>st</sup> and June 6<sup>th</sup> Staff Reports on this topic does not answer the question. Further, the Staff neglected to acknowledge collectively, all of the unique features of our property that have 1) significantly impacted our entire backyard; and 2) were the direct cause of multiple meetings with the Town to try to address in the context of our project. The Staff has erred in its review of each of these unique circumstances individually. It's the collection of all of these features together that makes this property unique enough to justify this Variance.

Additional clarifying information on all the points above is provided in the following pages.

For assessment ease, we've structured this follow-up letter to map directly to the Staff's PowerPoint presentation presented at the June 6<sup>th</sup> Meeting, with applicable excerpts from the Staff Reports sprinkled throughout, where appropriate. For comprehensiveness, I've denoted where we agree and where we request you review additional information.

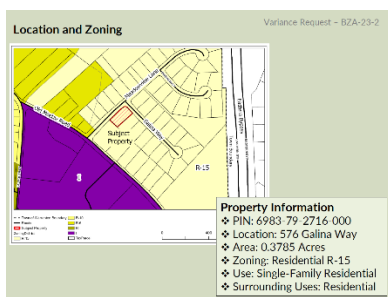
**Supplemental Information to Staff Analysis**

**1. Slide 1: Cover**



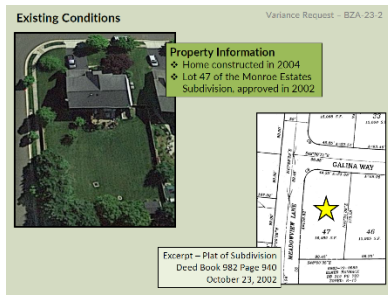
No concerns with this slide.

**2. Slide 2: Location and Zoning**



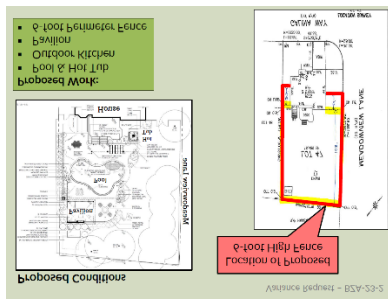
No concerns with this slide.

**3. Slide 3: Existing Conditions**



No concerns with this slide.

**4. Slide 4: Proposed Conditions**



No concerns with this slide. However, the following additional context is hereby provided:

It should be noted that the entire reason for the location of everything in our backyard (and why it is left side heavy) is due to the existence of the drain, easement and swale. Our entire project has been modified repeatedly due to the unanticipated hardship these unique, physical circumstances have presented, and continue to present. Our Land Disturbance permit (Reference 8) was approved *with conditions*, stating “the applicant will not build any structure in the drainage field easement and will not change the existing grading to avoid issues with drainage”. Our project was structured from the beginning considering the feedback from the Town around the drain, easement and swale. The physical conditions of the property have created hardships, and granting this Variance will help to “relieve [some] of these hardships [reduce stress by providing privacy and security that would have been achievable through other means had the drain, swale and easement not existed in the backyard] or lessen an inequitable condition due to a physical condition of the property that equates to privation [the Towns iterative guidance around the backyard project, and now its guidance around the fence (in relation to the easement, swale and drain) has created an inequitable condition in comparison to other properties that equates to privation].” (circumstances mapped to Marriam-Webster cited definition in Staff Report).

***We request that as part of your assessment of hardship, you consider that the fence is not a standalone feature of our backyard. It is one piece of this project that has been modified repeatedly due to the hardship of the easement, drain and swale. We have worked with zoning, stormwater management, building officials and inspectors over the past year due to the unique constraints of***



***this property and the evolving information that continues to impact our approved plans, as more information is discussed collectively with the Town (Example 1- we were first told there was no easement or drain on record- clearly this was incorrect but was the only information the Town could initially provide us. We were able to provide documentation to the Town and the Town eventually found the documentation as well. Example 2- We just received finalized information on 2-inch clearance requirements for fences across swales from Stormwater Management on July 13, 2023 (Reference 9).***

To say there is no physical hardship is respectfully shortsighted and amnesic. We have had so many meetings with the Town centered around this drain, the easement and swale. The plans were constantly in flux due to the fact that no one has really experienced a project of this magnitude, in combination with the unique, physical circumstances of this particular property. To now say there is no hardship misses the entire point. Yes, we did work within the hardship to improve our backyard. Working within the hardship does not mean the hardship doesn't exist or disappears. We were able to make it work, and many times, at our additional expense. However, we continue to be asked now to make further modifications around this existing hardship.

*Granting this Variance helps to alleviate some (not all) of the hardships created by the physical conditions of the property by giving us privacy, safety and security that could have been addressed through other means had those physical hardships not existed.*

Removing trees and moving the fence 12 feet inwards **does** impact our ability to use our backyard. Moving the fence 12 feet in **creates** additional hardships: Removing the trees **removes** the only current visual barrier we are looking to extend and could cost us (estimated) \$20,000 to remove them. We lose 12 feet of (somewhat) usable space, and it moves the fence (and therefore pedestrian traffic) 12 feet closer to our pool and hot tub (further reducing privacy and increasing safety concerns). On the point of pedestrians, the approach the Town is asking us to pursue effectively donates 12 feet of our property to the pedestrians that walk next to our yard daily. This significantly increases our stress level (impacting health issues) around safety and security, and we are frustrated that this is being considered as a reasonable and viable option given the circumstances. **All of this ties back to the fact that strict application of the Ordinance (the one the Staff keeps saying applies here because it's for a corner lot) will create additional hardships and will continue to further restrict our ability to use our property in the way it was intended.**

Respectfully, and although we don't know for sure, we doubt that any of the other homeowners who requested variances for their properties were continually told that they had to spend more money and donate their property for common usage to accommodate the additional needs created by the unique circumstances of their yard. After a reasonable assessment, the variances were likely, simply approved. By not doing the same here, equitable application of the Variance process and consistent treatment of requests are put in jeopardy.

At one point, we brought up concerns about drainage *if* we moved the fence in (which potentially creates a conflict between storm water management and building/pool code- which precipitated the July 6, 2023, onsite meeting (Reference 6)). We just recently received additional instruction from Zoning dated July 13, 2023 (Reference 8). We have now been told Zoning recommends a clean 2 inches of space under our fence to "prevent surface stormwater from being blocked by fences." "However, if installing a new fence changes the drainage pattern or the existing grading, a stormwater specialist or

an engineering consultant can help analyze and recommend ways to avoid an improper fence installation that can block storm flows and cause water ponds in the property owner’s or neighbor’s yard.”

This is one more example of how **strict application of this Ordinance in our unique backyard has continued implications that no one really understands**. We are being told that moving the fence is our answer, but now we have to lift it up, move it in, take down trees and now, if that creates bigger issues for us or our neighbor related to “draining patterns on existing grading”, we have to hire a stormwater specialist to deal **with the problem created by strict application of the Ordinance**. This doesn’t even acknowledge the fact that we now have received conflicting guidance from the Town that we should not “build any structure in the drainage easement *and will not change existing grading to avoid issues with drainage*” (Reference 8). At this point, we are respectfully requesting an end to this continuous spin and ever-changing and conflicting guidance that has yet to tell us what we are actually able to do. As far as we can tell, it may now actually be impossible to comply strictly with the application of the Ordinance and all the formally issued guidance (some conflicting) from various Town departments. It’s certainly not feasible to do so without continuing to restrict the usage of a fairly significant part of our property. We are being set up for compliance failure.

**5. Slide 5: Ordinance Requirements**

**Ordinance Requirements**

Article 3 & Article 2 Requirements:

- ❖ § 3-4.1.4: 25-foot required front setback & 12-foot required side setback
- ❖ § 2-13.2.2: Primary front yard is the shortest boundary fronting on a street.
- ❖ § 2-19.2: Fences along the secondary front yard must meet the side yard setback if over 4-feet in height

**Fence Setback Requirements:**

- ❖ No setback if 4 feet or lower
- ❖ If over 4 feet:
  - 25 foot front setback on Galina Way
  - 12 foot secondary front setback on Meadowview

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

We disagree with the contention that our lot is a “Regular Corner Lot”. (Unsure if this is a standard graphic or not). We do not have any other specific concerns with this slide.

**6. Slide 6: Variance Request**

**Variance Request**

Construct a 6-foot-tall fence within the secondary front yard setback along Meadowview Lane.

- Requires a Variance to increase the allowable height of the fence from 4 feet to 6 feet.

**Applicant's Justification:**

- ❖ Provide privacy and security for the back yard area.
- ❖ Increase the safety of neighborhood children.
- ❖ Significant foot traffic along the sidewalk.
- ❖ No neighboring properties will be negatively impacted.

**Application Materials - Attachment C**

- Statement of Justification
- Photographs of Existing Conditions

We have the following comments:

- a. Applicant justification neglects to reference the communal parking that occurs daily parallel to the entire side yard.
- b. Clarify that our concerns are to “increase the safety and security for the property owner and their guests, as protection against intrusion, a visual barrier to increase privacy within the yard area behind the house, and as a safety measure to prevent access to a newly constructed swimming pool.” This includes neighborhood children, but is not entirely about the children on the outside of the property. Our safety concern is equally about protecting the individuals living inside of the property (including multiple children under 18) from external factors (and people).
- c. Clarify that addressing the privacy, safety and security of the backyard will alleviate intense stress that exacerbates a new, significant medical issue (See discussion around Slide 12, 3 below, as well as Summary of Positions, page 2 above ).
- d. Clarify that we believe we meet **all three Ordinance Requirements that authorize a Variance (the BZA only needs to accept one here);**
  - i. We are requesting a variance due to the fact that the proposed solution of moving the fence 12 feet in (thus strict application of the Ordinance) **unreasonably restricts the use of the property;**
  - ii. We are requesting a variance to **alleviate hardships due to physical conditions relating to the property** (drain, easement, swale/steep topography, significant pedestrian traffic, continuous overflow parking) (privacy, security and visibility could have been addressed through alternative project layout had the drain, easement, swale/steep topography not existed. Thus the existence of pedestrian traffic and continuous parking exacerbates the safety, security and visibility hardships that could not be addressed due to the physical circumstances of the property) ;
  - iii. **(New Addition) We are requesting a variance to alleviate a hardship by granting a reasonable modification requested by, or on behalf of, a person with a disability.**

**7. Slides 7-10, Existing Conditions- Photographs**



We do not take any issue with these slides. We provided these pictures.

**8. Slide 11, Staff Analysis 1 of 4**

Variance Request - BZA-23-2

**Staff Analysis**

**Ordinance Requirements - Sec. 11-3.11.1.1 - Variances Authorized**  
*A Variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would impose one of the following:*

1. ***Unreasonably restrict use of the property; or***
  - The use of the property is not restricted, as it is currently being utilized for a dwelling.
  - Building Code requires a minimum 4-foot tall fence surrounding a pool for safety, which has been approved with BLDG-22-1172.
  - If a 6-foot tall fence is desired, it could be set back to meet the reduced 12-foot setback allowed by Sec. 2-19.2.

*Staff does not find that the use is unreasonably restricted.*
2. ***Granting the Variance would alleviate a hardship due to a physical condition of the property; or***
  - The property is a corner lot, with reduced secondary front setbacks to allow property owners flexibility for locating fences.
  - The condition of the property does not restrict the applicant's use of the property for a residence and accessory uses.

*Staff does not find that there is a hardship due to a physical condition of the property.*

We disagree with both positions the Staff has taken here.

The writeup from the Staff Analysis states: *(black text is Staff Analysis. Red text is our response.)*

- ***(Restricted Use) 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.

*Applicant comments: Please see below for substantiation of the preponderance of the evidence.*

- **(Hardship due to physical condition)** 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.

*Applicant comments: This is categorically incorrect and a misstatement of the entirety of the circumstances. At minimum, the subject property contains 3 of the 4 specified physical restrictions the Staff specifically identified as not existing in our property (but then calls them common). We also have a significant number of trees that make application of the ordinance an additional financial hardship (tree removal) (not to mention the negative impact on the environment) and if we move the fence inwards, our ability to utilize the property as intended is restricted as we lose even more space than we have lost due to the existing physical hardships. The facts are that:*

*1) Yes, we are a corner lot.*

*2) Yes, we have two front yard setbacks that, by strict application of the ordinance, prohibit a six-foot tall fence within 12 feet of a property line;*

*3) However, (contrary to the Staff Report), we are actually seeking relief from the impactful visibility, safety and security concerns and associated stress related to our backyard due to the significant pedestrian traffic that runs right next to our entire property; and*

*4) However, (contrary to the Staff Report), we are actually seeking relief from the impactful visibility, safety and security concerns and associated stress related to our*



*backyard due to the communal parking that occurs right next to our entire property (which does not just include neighbor parking); and*

*5) However, (contrary to the Staff Report), we are actually seeking relief from the impactful visibility, safety and security concerns and associated stress related to our backyard that could not be otherwise addressed through alternative backyard layouts **due to the existence of the drain, easement and swale** (thereby making the increased fence height the requested relief); and*

*6) We are actually seeking relief from strict application of the Ordinance (inclusive of the December 2014 amendment) which creates a significant hardship and restricts our ability to use the backyard even more than the physical conditions have already restricted it.*

*We laid out our entire backyard based on the physical conditions/hardships of the property. Had those physical conditions/hardships not existed, our entire backyard would be designed differently. We would have used the existing trees as natural barriers for the pool and hot tub, and likely wouldn't have needed to pursue this Variance. We also would have had our Pavilion built on the right side of the property to act as a visual barrier to the pool. However, due to the existence of the drain, easement and swale (which we were told by the Town we could not build in); we were unable to leverage the features of the property that would have minimized visibility, safety and security concerns and associated stress. Therefore, the physical conditions of the property have created these hardships. A four-foot fence does not alleviate the hardship. Only a higher fence (6-foot) will provide appropriate relief.*

*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.*

*Applicant Comment: Except that, again, the existence of the drain, easement and swale make our property different from most, if not all, of the other properties the Staff just used as comparison. And again, the existence of these three factors specifically impacted the layout of our entire backyard. It also impacted what we could and could not do. It is unfair and unreasonable to minimize the unique circumstances of our backyard and the impacts of the drain, swale and easement and say that the condition of our property is not unique or uncommon. It is just as physically comparable to the other properties the Staff are comparing it to, as it is to 545 Solgrove Road. It is not reasonable or realistic to reject a comparison because the physical attributes aren't identical and then also reject the physical attributes unique to this property.*

*The physical condition of the property, as a corner lot developed with a single-family residence, does not equate to privation or hardship.*

*Applicant Comment: Please see above and below. We are not requesting reprieve due to the fact that we have a single-family corner lot. This is a poor misstatement of our request.*

*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.*

*Applicant Comment: Again, absolutely untrue. In fact, ALL of the stated developments were impacted directly by the physical condition of the property. Just because we worked within the hardship doesn't mean the hardship doesn't exist. And just because we didn't raise issues with the hardship, doesn't mean we forgo our right to assert the hardship now and request appropriate reprieve.*

*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.*

*Applicant Comment: We are not suggesting that the Ordinance, in and of itself, is a hardship. We are indicating that the application of the Ordinance based on the unique circumstances of our property creates a hardship and further restricts utilization of our property. \*Note that we cannot use the back corner of our property due to the drain, swale and easement. Application of the Ordinance further restricts property that is already restricted due to circumstances outside of our control.*

(Sub bullets below are intended to directly respond to each sub bullet (unnumbered) in the slide, re-provided for reference).

Variance Request - BZA-23-2

**Staff Analysis**

**Ordinance Requirements - Sec. 11-3.11.1.1 - Variances Authorized**  
*A Variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would impose one of the following:*

1. **Unreasonably restrict use of the property;** or
  - The use of the property is not restricted, as it is currently being utilized for a dwelling.
  - Building Code requires a minimum 4-foot tall fence surrounding a pool for safety, which has been approved with BLDG-22-1172.
  - If a 6-foot tall fence is desired, it could be set back to meet the reduced 12-foot setback allowed by Sec. 2-19.2.

*Staff does not find that the use is unreasonably restricted.*
2. **Granting the Variance would alleviate a hardship due to a physical condition of the property;** or
  - The property is a corner lot, with reduced secondary front setbacks to allow property owners flexibility for locating fences.
  - The condition of the property does not restrict the applicant's use of the property for a residence and accessory uses.

*Staff does not find that there is a hardship due to a physical condition of the property.*

**1) The terms of the ordinance do reasonably restrict the use of the property.**

- a. The lack of privacy and significant visibility directly into the backyard makes homeowners and their children uncomfortable and less likely, and/or completely unwilling to utilize the space as intended.
- b. Building code is a minimum and does not restrict the BZA's ability to apply reasonable judgment to individual circumstances. Building code also does not consider individual circumstances or make recommendations in situations where context matters.

The U.S. Consumer Product Safety Commission (CPSC) has issued the "Safety Barrier Guidelines for Residential Pools Preventing Childhood Drowning": [362 Safety Barrier Guidelines for Pools.pdf \(cpsc.gov\)](#). According to the CPSC, "*Some states and localities have incorporated these guidelines into their building codes. Check with your local authorities to see what is required in your area's building code or in other regulations.*"

Key excerpts from the Guidance include: *(black text are the excerpts. Red text are our comments.)*

*"CPSC staff has reviewed a great deal of data on drownings and child behavior, as well as information on pool and pool barrier construction. The staff concluded that the best way to reduce child drownings in residential pools is for pool owners to construct and maintain barriers that will help to prevent young children from gaining access to pools and spas."*

*"The guidelines provide information for pool and spa owners to use to prevent children from entering the pool area unaccompanied by a supervising adult. They take into consideration the variety of barriers (fences) available and where each might be vulnerable to a child wanting to get on the other side. The swimming pool barrier guidelines are presented with illustrated descriptions of pool barriers. The definition of pool includes spas and hot tubs. The swimming pool barrier guidelines therefore apply to these structures as well as to above ground pools and may include larger portable pools."*

*"Barrier Locations*

*Barriers should be located so as to prohibit permanent structures, equipment or similar objects from being used to climb the barriers."*

*Applicant Comment: Due to the physical condition of the property, we were unable to place barriers, such as the Pavilion on the side to block visibility to the pool. Due to the location of the easement, drain and swale, placing the Pavilion on the right side near the fence would push the pool back and block visibility from the house to the pool. Switching the location of the pool and the pavilion blocks almost all visibility between the house and the pool. Each item is positioned in its only possible*

*location due to the drain easement and swale. The Town has suggested we should comply strictly with the Ordinance as stated, which indicates that we can move the fence 12 feet inward to increase our fence height. We've contended that in order to do so, we have to remove a significant amount of trees. The Staff Report rejects this statement, saying we can move the fence to a location that doesn't require tree removal (presumably, further in than 12 feet). **Doing this would leave mature trees right on the outside of our fence. This equates to a "permanent structure" that could ultimately be used to climb the barriers. The Town is providing an alternative that directly conflicts with federal safety guidance (and potentially building code) and undermines the intent of a fence barrier around the pool. Moving the fence so far inward that the trees are no longer an issue essentially unfences all of the remaining grassy area in our backyard. If this isn't a demonstration of "strict application of the Ordinance unreasonably restricts the use of the property", then we don't know what could possibly qualify.***

*Leaving the trees and moving the fence creates even more of a safety and security concern, which conflicts with federal safety guidance. Removing the trees creates a significant financial and environmental hardship, and increases the impact of the safety, security and visibility hardship this Variance is requested to relieve. The existence of the trees in their current locations (near the drain, easement and swale) constitute a unique condition of the property not acknowledged in the Staff Report.*

*"Fences*

*A fence completely surrounding the pool is better than one with the house serving as the fourth side. Fences should be a minimum of 4 feet high, **although fences 5 feet or higher are preferable.***

*If the home serves as one side of the barrier install door alarms on all doors leading to the pool area. Make sure the doors have self-closing and self-latching devices or locks beyond the reach of children to prevent them from opening the door and gaining access to the pool."*

*Applicant Comment: The federal government acknowledges building code as the minimum but recommends higher based on safety to children. We are complying with all other safety mechanisms defined above.*

Ultimately, the fact that there is a Variance process at all demonstrates that the BZA has the ability to consider other factors over and above the minimum requirements. Simply citing the fact that the 4-foot fence Ordinance complies with minimum requirements doesn't provide additional contextual value here.

- c. Section 2-19.2 (the December 2014 Amendment) **is part of** the Ordinance. **Implementation specifically of 2-19.2 significantly restricts the use of the property.** Moving the fence 12 feet inwards creates additional hardships and further restricts property usage over and above what has already been restricted

because of the drain, easement and swale. Removing the trees eliminates the only current (partial) visual barrier we have and could cost us \$20,000 + to remove them (additional hardship due to the physical condition of the property). We would lose 12 feet of (somewhat) usable space, and it moves the fence (and therefore pedestrian traffic) 12 feet closer to our pool and hot tub, making the safety issues worse, not better. Relying on Section 2-19.2 of the Ordinance requires us to effectively donate 12 feet of our property to the pedestrians that already walk next to our yard daily. We also purposefully left that small section of flat yard open (**it was the only place we could leave open based on the hardship restrictions of the drain, swale and easement**) to allow our children to practice soccer and tumbling in that area (and also meet the permeable space requirement by the Town). (We also couldn't build the pavilion in this location due to where the pool had to be located; it would block visibility from the house to the pool. The pool could only be located where it is due to the drain, easement and swale.) Moving the fence 12 feet inwards removes our ability to use that section of the property for the intended purpose and creates significant safety concerns for both the community and our family.

Ultimately, the argument that the 2014 Amendment addresses the issue here is actually the exact opposite. **The existence of the Amendment, which is now part of the Ordinance, solidifies our position that strict application of the Ordinance unreasonably restricts use of the property.** In essence, due to all of the unique factors of our property, the Town's "answer" to this dilemma actually opens the door for us to meet this criterion all together. (The follow-up argument that we don't have to do a 6-foot fence at all is not relevant. Anyone looking at the terms of the Ordinance related to a Variance request is seeking a modification to the 4-foot fence requirement and the only likely reason would be safety, security and visibility concerns).

**2) Granting the Variance will alleviate a hardship due to a physical condition of the property.**

- a. Although this property is a corner lot, it is not even close to a "typical" corner lot as indicated in the Staff Analysis. The drain, swale, easement, significant pedestrian traffic and daily parking (which, incidentally, does impact line-of-sight according to our surveyor) are all existing hardships created by the physical conditions of the property.
  - i. We continue to have meetings with stormwater management and zoning around the significant potential negative impacts on drainage if we move the fence to where the Staff and ordinance are saying is our "option". **The fact that this property has required so many meetings and has many questions that are so hard to answer, demonstrates this is not a typical lot and the existence of the drain, swale and easement are absolutely a physical hardship.** We've worked within this hardship the best we can. We are simply asking the BZA to grant the variance to "stop the bleeding" and the negative impact this hardship continues to have on us as homeowners



to utilize the space as desired. The pedestrian traffic and parking create a significant stress hardship based on the physical condition of the property's location, which has the ability to exacerbate Jordyn's newly diagnosed heart condition. The 6-foot fence would help to minimize this emotional/stress hardship due to the physical condition/location relative to the pedestrian traffic, daily parking, and significant visibility concerns (as well as safety and privacy).

- ii. Respectfully, "flexibility" for locating fences is overstated at best. The Staff are recommending that our "reasonable" option is to lose significant yard space, which is already restricted by the existence of the drain, easement and swale, spend \$20,000+ to remove a significant amount of trees, and put a space between our fence and the ground to then allow for drainage (which will cause significant issues with our dog).

A definition of "flexibility" from the Cambridge Dictionary is: "The ability to change or be changed easily according to a situation". A definition of "flexibility" from the Merriam-Webster Dictionary is: "Readily changed or changing; adaptable." Frankly, this situation, this fence and this backyard collectively is not flexible nor is the proposed solution in the Staff Report reasonable. This is absolutely substantiated by the many meetings we've had onsite without any clear answer or easy instruction on how we should proceed to satisfy each applicable department in the Town.

- iii. The condition of the property has been repeatedly modified due to the **hardship that already exists on the property: Easement, drain and swale.** The condition of the property is what is creating the hardship that is forcing us to tradeoff between losing 1,572 square feet of usable backyard space and spending \$20,000, or somehow tolerating the extreme stress due to our safety, security and visibility concerns.

- iv. \*Please revisit this point once you have determined that we have met all 5 mandated requirements in Sec. 11-3.1.1.1.2, specifically C. Conversely, please consider this section when reviewing Sec. 11-3.1.1.1.2, section C. A large part of this portion of the Staff Analysis is that the physical condition of this property is "typical". Once you agree that the uniqueness of our property makes the variance request process applicable, a large part of the Staff's assessment on this point becomes invalidated. Once the BZA agrees our property is different enough to substantiate the Variance Process, it only needs to apply the consistent definition of "Hardship" as it has on other approved variance requests.

1. It should also be noted that the idea that a property is unreasonably restricted is a stand-alone criterion from the existence of a hardship. In other words, it is not a necessity here for an applicant to demonstrate that the existence of a hardship

unreasonably restricts the use of the property. One must only show that the hardship exists due to the physical condition of the property OR that the ordinance application unreasonably restricts the property use. The fact that we can demonstrate that the hardship, due to the physical condition of the property plus the application of the Ordinance, *does* unreasonably restrict the use of the property is well over and above what is required.

Giving us the terms of the Ordinance as our only option 100% undermines the entire purpose of the Variance process. This process was *designed* to give homeowners like us an option to alleviate significantly negative impacts of Ordinance implementation in unique circumstances outside of our control. A property like ours was never contemplated when the Ordinance or the amendment were approved. Although we did buy this property understanding some (not all) of the basic, unique requirements it contained, we also understood a process existed to manage circumstances that most homeowners don't deal with because of the standard nature of most of the other properties in the Town of Warrenton. We never could have expected that the initial assessment was that our property is not unique enough to justify this process, especially when the Staff Assessment specifically identifies several of the physical circumstances contained in our backyard as reasons **“that would unduly impact the ability of the property owner to use the property for residential purposes.”**

The staff wrote as part of their assessment, that: “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 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 (reference page 7, #2, paragraph 3).”

As **clearly** demonstrated, this is incorrect. *If* the Town is now suggesting that “residential purposes” (meaning generally living and using the backyard) is the standard, then we are aware of at least one other approved variance where this standard was not applied. (i.e. If the variance was requested **after** a pool was already built, then they clearly were also working within the hardships their property presented. This is no different than what we are doing.)

**Using what we have isn't a precursor for a denial here.** If this were the case, then every property for which a variance has been requested should have zero utilization of the property space for which they are seeking the variance. Even the existence of a basic deck could “qualify” as “residential purposes”. **This interpretation punishes property owners and disincentivizes homeowners from investing in their property to lessen hardships on their own before leveraging the variance process that was meant to alleviate homeowners from going through exactly what we are going through right now.**

*Based on the above, Slide 11 should be revised to reflect:*

Variance Request - BZA-23-2

**Staff Analysis**

**Ordinance Requirements - Sec. 11-3.11.1.1 - Variances Authorized**  
*A Variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would impose one of the following:*

1. ***Unreasonably restrict use of the property; or***
  - The use of the property is not restricted, as it is currently being utilized for a dwelling.
  - Building Code requires a minimum 4-foot tall fence surrounding a pool for safety, which has been approved with BLDG-22-1172.
  - If a 6-foot tall fence is desired, it could be set back to meet the reduced 12-foot setback allowed by Sec. 2-19.2.

~~Staff does not find that the use is unreasonably restricted.~~  
 Strict application of the terms of the Ordinance DOES unreasonably restrict use of the property.
2. ***Granting the Variance would alleviate a hardship due to a physical condition of the property; or***
  - The property is a corner lot, with reduced secondary front setbacks to allow property owners flexibility for locating fences.
  - The condition of the property does not restrict the applicant's use of the property for a residence and accessory uses.

~~Staff does not find that there is a hardship due to a physical condition of the property.~~  
 Granting the Variance WOULD alleviate a hardship due to a physical condition of the property

**9. Slide 12, Staff Analysis 2 of 4**

Variance Request - BZA 23-2

**Staff Analysis**

**Ordinance Requirements - Sec. 11-3.11.1.1 - Variances Authorized**  
*A Variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would impose one of the following:*

1. ***Unreasonably restrict use of the property; or***  
~~Staff does not find that the use is unreasonably restricted.~~
2. ***Granting the Variance would alleviate a hardship due to a physical condition of the property; or***  
~~Staff does not find that there is a hardship due to a physical condition of the property.~~
3. ***Alleviate a hardship by granting a reasonable modification requested by, or on behalf of, a person with a disability.***  
~~No accommodation is being requested.~~

Staff does not find where the applicant meets any one of the above three criteria for the BZA to grant a Variance.

We disagree with all three (3) positions the Staff has taken here.

1. As stated in our analysis in #8 (Slide 11), we contend that we have demonstrated that strict application of the Ordinance **would unreasonably restrict the use of the property.**
2. As stated in our analysis in #8 (Slide 11), we contend that we have demonstrated that **granting the (requested) Variance would alleviate a hardship due to a physical condition of the property.**
3. We contend that approval of this Variance will **alleviate a hardship by granting a reasonable modification requested by, or on behalf of, a person with a disability.** Since our initial application, after the initial June 6<sup>th</sup> meeting and as stated above, Jordyn Simoes suffered a cardiac arrest on June 29<sup>th</sup>, 2023. We are still working to determine the exact causes of her cardiac arrest and as a result, her medical team has approved return to work and all other general life activities *to the extent stress is kept low*. The Variance approval for an additional 2 feet of fence height is a reasonable accommodation to alleviate the additional stress of using her backyard due to safety, security and visibility concerns defined herein. While the stress of

these circumstances existed before June 29<sup>th</sup>, 2023 (which were the initial reasons for this Variance Request), the profound impact of the stress on Jordyn's heart condition has fundamentally added to the necessity of this approval. Due to the visibility and safety concerns, Jordyn specifically has only used the pool twice and the hot tub once since she came home from the UVA Cardiac Intensive Care unit. She doesn't enjoy much of the outdoor space with her family, because of the stress caused by lack of privacy. She also worries about her children utilizing the space due to external visibility of the kids in bathing suits. (Recall this was a concern of another requestor- regarding grandchildren).

It should also be noted that Alwington Manor was just posted for auction. While no one knows yet what will happen to that property (or the parcel behind it), it would be reasonable to assume that external traffic to this area of Old Meetz, especially impacting the front side of our neighborhood, will continue to get worse, not better. We have (possibly) the most visible backyard location in the neighborhood, which is visible from the entrance. Parking along side our property has been utilized by individuals not associated with the neighborhood, and this will continue. Two (2) feet of extra fence height has been approved in other areas of the Town of Warrenton through the Variance process. Thus, two (2 feet) of fence height has already been determined reasonable.

The Ordinance does not have a standard definition of "Disability". There are different definitions of "disability" based on various medical or legal requirements. However, since the Staff used "Marriam Webster" for the definition of "Variance", we can use it here as well. "Impaired or **limited by a physical**, mental, cognitive, or **developmental** condition; incapacitated **by illness** or injury; or rendered inoperative (as by being damaged or deliberately altered)." Significantly limiting stress due to a significant heart condition in fact impacts/limits essentially all major life activities. Jordyn has to continue to alter everyday activities to minimize the stress and overall impact on her heart.

Given that Jordyn's medical condition reasonably meets an appropriate and acceptable definition of "disability"; and the BZA has already determined a 2-foot increase in fence height (total 6 feet) around a pool to be "reasonable" (as indicated through other Variance approvals), we contend that we do meet this requirement.

**As stated above**, we believe we in fact meet **all three** items contained in Section 11-3.11.1.1. However, we only need to meet **one** of them. The BZA would need to disagree with our assessment of all three items individually in order for them to agree with the Staff's original evaluation. Should the BZA accept one, two or three of our positions here, it must reject the Staff's original recommendations here.

Based on the above, Slide 12 should be revised to reflect:

Variance Request – BZA-23-2

## Staff Analysis

### Ordinance Requirements - Sec. 11-3.11.1.1 - Variances Authorized

A Variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would impose one of the following:

1. Unreasonably restrict use of the property; or  
~~Staff does not find that the use is unreasonably restricted.~~  
 Strict application of the terms of the Ordinance would reasonably restrict use of the property
2. Granting the Variance would alleviate a hardship due to a physical condition of the property; or  
~~Staff does not find that there is a hardship due to a physical condition of the property.~~  
 Granting the Variance would alleviate a hardship due to a physical condition of the property
3. Alleviate a hardship by granting a reasonable modification requested by, or on behalf of, a person with a disability.  
~~No accommodation is being requested.~~  
 Granting the Variance would alleviate a hardship by granting a reasonable modification requested by, or on behalf of, a person with a disability.

~~Staff does not find where the applicant meets any one of the above three criteria for the BZA to grant a Variance.~~

Although only one (1) of the criteria is required for purposes of granting a Variance, the facts demonstrate that the applicant has met at least one (1) (in fact, more than one (1)) of the criteria for the BZA to grant a Variance.

## 10. Slide 13, Staff Analysis 3 of 4

Variance Request – BZA-23-2

### Staff Analysis

#### Ordinance Requirements - Sec. 11-3.11.1.2 – Standards for Variances

A Variance request must meet all five criteria:

- a) The property was acquired in good faith, and the applicant did not create the hardship.  
 The property was acquired in good faith by the applicant.  
 This criteria is met by the applicant.
- b) The variance would not be a substantial detriment to neighboring properties.  
 Fences greater than 4-feet in height could impact the line of sight for vehicles approaching the Meadowview and Galina intersection.  
 A 2014 amendment to the Ordinance addressed the issue of fences obstructing vision near intersections, where Town Council found that meeting the required side setback was appropriate.  
 It is unclear whether this criteria has been met by the applicant. The applicant could choose to submit additional materials or documentation to demonstrate the line of sight at the intersection; however, the applicant is responsible for providing evidence to support a requested variance.

- a. We agree that the property was acquired in good faith, and that the applicant did not create this hardship.
  - i. However, we'd like to point out that there is an acknowledgement by the Staff in answering this criterion that **there is a hardship existing that we did not create.**
- b. Based on the additional information we provided in support of the June 6<sup>th</sup> meeting and the discussions that occurred as a result, we collectively agreed that line-of-sight impact is the key piece of information needed to meet the intent of this criteria.
  - i. At our sole expense, we hired a surveyor who performed a line-of-sight assessment on the impact of a six-foot fence at the locations described in our application. This



line-of-sight assessment was submitted to Ms. Heflin and Ms. Jenkins on July 17<sup>th</sup>, 2023. As stated in the email:

*Amber, Apologies for the delay. As I assume you recall, my wife went into cardiac arrest on June 29th and was in the cardiac intensive care unit for several days. She's home and we're trying to keep stress low. As a result, things are just taking a little longer these days.*

*Per your request, please see attached for the line-of-sight assessment. Per our discussion and as supported by the attached, based on a speed limit of 25 (ours is 15 so the impact is actually less than demonstrated here) the proposed increase in fence height and location have zero impact on line-of-sight on the Meadowview/Galina intersection, which was the concern expressed in the meeting.*

*Also, per our chat, the surveyor did express concerns about the impact on line-of-sight of the Town maintained trees, as well as the daily parking along our side of Meadowview. Although not within our purview, we wanted to share this information with the Town for review.*

*We plan to submit another document summarizing the additional information received since the last meeting. We will get this to everyone before the next meeting (hopefully, at least, a few days prior). Again, we appreciate the Town's patience as we continue through this process in conjunction with my wife's new circumstances.*

In summary, while increasing our fence at the proposed locations to 6 feet will **not** impact line-of-sight at the Meadowview Lane/Galina Way intersections, both the Town maintained trees and regular parking along Meadowview (which happens to be one of our several stated hardships for which we're seeking relief via a 6-foot fence) **do** impact line-of-sight. While the Town maintained trees are not within our purview (per prior emails exchanged with Zoning) and we also cannot control the parking that runs the entire length of our property, we wanted to provide this additional information to the Town for awareness and potential action.

Although this supplementary discussion now has nothing to do with our Variance request, given that everyone is incredibly concerned about the line-of-sight impacts of this intersection and given that this information is free of charge to the Town, we are hopeful it will assist in formulating next steps on this separate topic.

- c. Just to drive home the fact that there is no detrimental impact to neighboring properties, we are also providing several letters from neighbors confirming they have no concern about our installation of a 6-foot fence.

As a result of the above, Slide 13 should be revised as follows:

Variance Request – BZA-23-2

### Staff Analysis

#### Ordinance Requirements - Sec. 11-3.11.1.2 – Standards for Variances

A Variance request must meet all five criteria:

a) **The property was acquired in good faith, and the applicant did not create the hardship.**

- The property was acquired in good faith by the applicant.  
*This criteria is met by the applicant.*

b) **The variance would not be a substantial detriment to neighboring properties.**

- Fences greater than 4-feet in height could impact the line of sight for vehicles approaching the Meadowview and Galina intersection.
- A 2014 amendment to the Ordinance addressed the issue of fences obstructing vision near intersections, where Town Council found that meeting the required side setback was appropriate.

~~It is unclear whether this criteria has been met by the applicant. The applicant could choose to submit additional materials or documentation to demonstrate the line of sight at the intersection; however, the applicant is responsible for providing evidence to support a requested variance.~~

*Line of Sight survey confirms no negative impact to line of sight at the Meadowview and Galina Intersection. Further, neighbors have confirmed no concern with the installation of a 6 foot fence at the proposed locations. Consequently, it is confirmed that the variance would not be a substantial detriment to neighboring properties and that the criteria is met by the applicant.*

#### 11. Slide 14, Staff Analysis 4 of 4

Variance Request – BZA-23-2

### Staff Analysis

#### Ordinance Requirements - Sec. 11-3.11.1.2 – Standards for Variances

A Variance request must meet all five criteria:

c) **The condition isn't of a general nature so that the Ordinance should be amended.**

- The Ordinance was amended on December 9, 2014 to reduce the secondary front yard setback on corner lots. This text amendment was directly in response to multiple variance requests for fences in the secondary front yard area.  
*Staff does not find that the applicant meets this criteria. This issue has already been addressed with a reduced setback for fences on corner lots.*

d) **The variance would not allow a use that isn't permitted in the district.**

- The residential use will not change.  
*This criteria is met by the applicant.*

e) **The relief requested isn't available through a special use permit.**

- There is no special use permit available.  
*This criteria is met by the applicant.*

c) We disagree with the Staff's assessment that we do not meet this criterion. It is our position that the Staff has neglected to appropriately assess the uniqueness of the property, which has a direct

impact on their incorrect assessment here. We have provided significant commentary on this in the 21 pages above.

The Ordinance and its December 9, 2014, amendment are absolutely both intended for general use. That is literally the entire purpose of laws and ordinances: to set standards that apply to the preponderance of circumstances. Equally, the entire purpose of the Variance process is to consider unique circumstances that make the application of the Ordinance inappropriate or unreasonable. The fact that there is an Ordinance that exists that discusses secondary front yard setbacks on corner lots is entirely standalone from the fact that there may be hardships or utilization restrictions that may exist that make that property unlike the “preponderance of the circumstances”. Our circumstances do not fit with the “preponderance of the circumstances”.

d) We agree that the criterion is met that the variance wouldn’t allow a use that isn’t permitted in the district.

e) We agree that the criterion is met that relief requested isn’t available through a special use permit.

As a result of the above, Slide 14 should be revised as follows:

Variance Request – BZA-23-2

### Staff Analysis

**Ordinance Requirements - Sec. 11-3.11.1.2 – Standards for Variances**

*A Variance request must meet all five criteria:*

**c) *The condition isn’t of a general nature so that the Ordinance should be amended.***

- The Ordinance was amended on December 9, 2014 to reduce the secondary front yard setback on corner lots. This text amendment was directly in response to multiple variance requests for fences in the secondary front yard area.

~~Staff does not find that the applicant meets this criteria. This issue has already been addressed with a reduced setback for fences on corner lots.~~

The properties unique circumstances make application of the Ordinance impractical/impossible. Although the December 9, 2014 amendment addresses secondary front yard setbacks on corner lots, it does not address them for corner lots that include drains, easements, steep topography and swales, significant pedestrian traffic and communal parking right next to the property. These circumstances are so unique that it is unlikely that any other property in the Town of Warrenton has the same or similar combination of hardships/circumstances/unique factors. Therefore, this condition is not so general in nature so that the Ordinance should be amended. This criteria is met by the applicant.

**d) *The variance would not allow a use that isn’t permitted in the district.***

- The residential use will not change.

*This criteria is met by the applicant.*

**e) *The relief requested isn’t available through a special use permit.***

- There is no special use permit available.

*This criteria is met by the applicant.*

## 12. Slide 15, Criteria for BZA Decision

Variance Request - BZA-23-2

**Criteria for BZA Decision**

The BZA must find that:

The applicant meets at least **one** of the following 3 criteria:

1. The terms of the Ordinance unreasonably restricts use of the property; or
2. Granting the variance would alleviate a hardship due to a physical condition of the property; or
3. The variance would alleviate a hardship by granting a reasonable modification requested by, or on behalf of, a person with a disability.

AND

The applicant must meet **all five** of the following 5 standards:

- a) The property was acquired in good faith; and
- b) Granting the variance would not be of substantial detriment to nearby properties; and
- c) The condition is not so general or recurring so that a text amendment to the Ordinance should be adopted; and
- d) The variance would not authorize an unpermitted use; and
- e) The relief is not available through a Special Use Permit.

We have no concerns with the requirements as stated on this slide.

## 13. Slide 16, Additional Applicant Materials Submitted on June 6, 2023

Variance Request - BZA-23-2

**Additional Applicant Materials Submitted June 6, 2023**

**Staff Review:**

- 1) Comparison to BZA-23-1 – Variance for 545 Solgrove Road
  - Property conditions are different – dead-end road vs. street that serves multiple lots.
- 2) Ordinance limitation on fence height unreasonably restricts use of the property.
  - A 4-foot tall fence meets building code requirements.
  - The residential use of the property is not restricted by fence height.
- 3) The physical condition of the property constitutes a hardship.
  - The presence of a storm drain is a common feature.
  - A 4-inch gap along the bottom of a fence both meets building code requirements and permits unrestricted stormwater flows to the storm drain.
  - Mature vegetation could be preserved by adjusting the location of the fence.
  - The location of the fence can be adjusted to accommodate steep slopes.

We disagree with multiple points contained in this slide.

- 1) We never contended the property conditions are the same. We contend that the accepted hardships are similar. Also, this begs a few questions: Does this mean that 545 Solgrove Road being on a “dead-end road” is a unique feature or that the dead-end road constitutes the hardship? I cannot imagine that is the case. Interestingly enough, the Staff recommended approval due to safety, security and visibility concerns *on a dead-end road*. If those concerns are valid on a dead-end road, wouldn’t they be even more of a pressing issue on a more heavily traveled one? The only logical point the dead-end road makes, is that there is minimum impact to the surrounding location. In this case, being a dead-end road is not the only way to have a minimum impact.
  - a. We respectfully request the BZA revisit the writeup from Additional Information for June 6<sup>th</sup> Zoning Appeals Meeting Letter Dated June 6, 2023, specifically related to the comparison to the 545 Solgrove approval, with the new understanding that the comparison is not about the property conditions, but rather the accepted argument around what constitutes a hardship and what constitutes restricted utilization. Since they were accepted there and we’ve demonstrated no negative impact on our surrounding area, the same arguments should be accepted here.
- 2) Again, we are not simply stating that the Ordinance limitation on 4-foot fences unreasonably restricts the use of the property. We are saying that based on the preponderance of facts and

the unique features of the property (and circumstances around the property) that the *strict application* of the Ordinance (moving the fence 12 feet to have a 6-foot fence in order to address the safety, security and visibility concerns and related stress) impacts utilization and creates an additional hardship. This hardship could have been minimized had the drain, easement and swale not been a factor in our yard design. However, we were told by the Town we couldn't build in the vicinity or change the grading (Reference #8) which further impacted our backyard layout. To be told after we build that we should now move the fence, but IF we change grading, we need to take additional actions is not a fair or reasonable application of the Ordinance.

- 3) Given the assertion that our drain and backyard are “common”, we respectfully request an understanding of how many backyards in the Town of Warrenton have a storm drain. In addition to that statistic, we'd respectfully request additional information on how many of those backyards have the swale and easement at the same or similar angles contained within our backyard (please see Reference 12). I would assume “common” would mean several similar and citable circumstances (at least more than a few). Calling the drain a “common feature” without context or statistics isn't a full picture of this particular scenario and therefore, should not be considered as part of this assessment.
- a. Moving the fence 12 feet in *does not* allow for the preservation of mature vegetation. If the Town is suggesting we move the fence in even more than 12 feet, we will begin to encroach on the hot tub and pool itself. Every foot we move the fence further restricts utilization of the remaining open space in our backyard. Also, moving the fence so the trees are unfenced next to the common sidewalk creates greater safety and security concerns. **We would literally be giving children natural ladders to climb the fence to get to the pool. Further, it provides easy access to backyard intruders. This should not be considered a viable or reasonable option.**
  - b. Yes, the location of the fence can be adjusted, but at what cost? So much of our backyard has been dictated by what we can and cannot do around the drain, easement and swale. Having the “sole solution” of using even less of our backyard does not seem like a valid or reasonable option to us.

We believe this slide should be removed in entirety. The contents of this slide do not accurately reflect the circumstances, and include incomplete, inaccurate assessments surrounding this Variance request.

#### 14. Slide 17, BZA Decision

Variance Request – BZA-23-2

**BZA Decision**

**Decision on Variance Application**

- ❖ Approval is required from a majority of the BZA - a minimum of **three votes**.
- ❖ If three approving votes are not received, the **request is denied**.
- ❖ The BZA has **60 days** in which to render a decision once the hearing is complete.
  - The BZA may act on the request **today**; or
  - The BZA may defer their decision until the next scheduled meeting on **August 1, 2023 (57 days)**.
    - *There is no meeting scheduled for July.*
- ❖ **Appeals** to a BZA decision must be made to the Circuit Court within **30 days**.

**Pattern Motions of Approval and Denial**  
➢ Provided as attachments.



We have no concerns with this slide.

**15. Slide 18, End**



No concerns with this slide.

**Closing**

11-3.11.1.1 Variances Determined by the Board of Zoning Appeals, Variances Authorized states:

*The Board of Zoning Appeals **shall** grant a variance if the applicant proves, by a preponderance of the evidence, that the strict application of the terms of the Ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to the physical condition relating to the property or improvements thereon at the time of the effective date of the Ordinance.*

Based on all of the information presented, we have met, by the preponderance of evidence submitted to the BZA and as discussed with the Town, 11-3.11.1.1 a (1, 2 **and** 3 (although we only need to meet **one**) as well as 11-3.11.1.2 a, b, c, d and e.

As a result, we respectfully request the BZA deny the Staff's recommendation and (**shall**) approve the BZA-23-2 576 Galina Way Variance Request. The Staff Report includes a copy of the Pattern Motion To Approve Variance as Attachment A, page 1.

We continue to appreciate your time and willingness to listen and read through our extensively documented position. Please let us know if you have any follow-up questions for us or need additional information in order to issue your approval.

Respectfully,

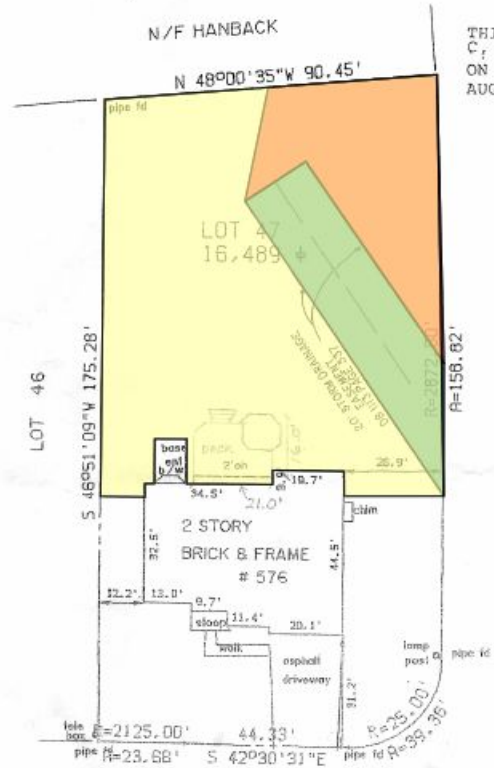
*Travis a Simoes Jordyn N. Simoes*

Jordyn and Travis Simoes  
576 Galina Way Homeowners and Variance Requestors

N137788

THIS IS TO CERTIFY THAT ON MARCH 29, 2005 I MADE AN ACCURATE SURVEY OF THE PREMISES SHOWN HEREON AND THAT THERE ARE NO EASEMENTS OR ENCROACHMENTS VISIBLE ON THE GROUND OTHER THAN THOSE SHOWN HEREON.

THIS LOT IS LOCATED IN HUD FLOOD ZONE C, AREA OF MINIMAL FLOODING AS SCALED ON FIRM MAP # 510055 0285 B EFFECTIVE AUGUST 19, 1991.



MEADOWVIEW LANE (50' WIDE)



HOUSE LOCATION SURVEY  
LOT 47  
MONROE ESTATES  
TOWN OF WARRENTON  
FAUQUIER COUNTY, VIRGINIA

GALINA WAY (50' WIDE)

	Easement	1612.8 SQ FT
	Slope/swale	2093.8 SQ FT
	Backyard	9718.2 SQ FT

FURSTENAU SURVEYING (540) 662-9323  
111 SOUTH LOUDOUN STREET  
WINCHESTER, VIRGINIA 22601  
EST. 1986 MEMBER VA. ASSOC. OF SURVEYORS

DATE: MARCH 29, 2005  
SCALE: 1" = 30'  
TAX ID 6983-07-79-2716  
WO. 0240















































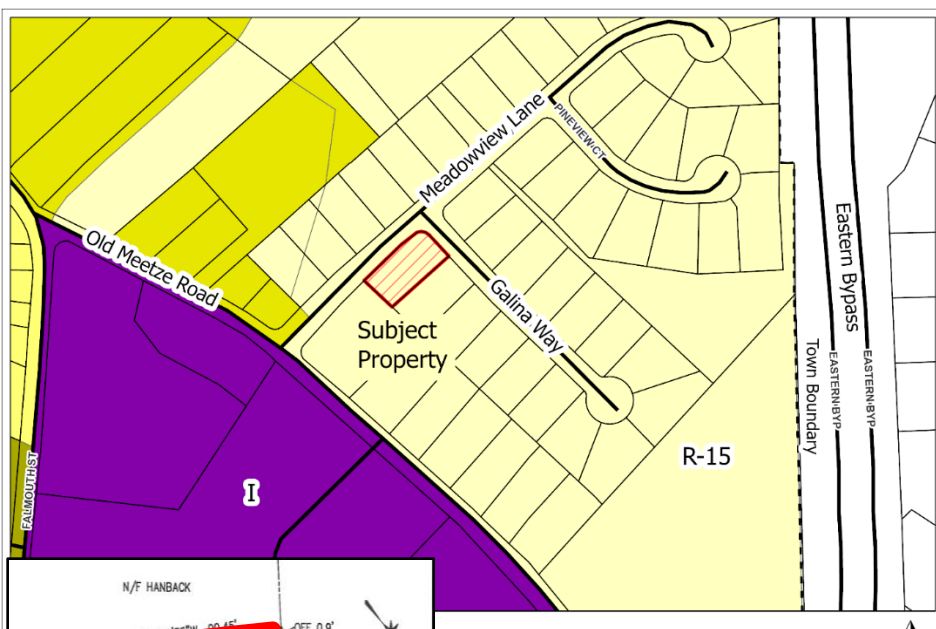
EXPERIENCE



**Board of Zoning Appeals (BZA)**  
**BZA 2023-2**  
**576 Galina Way**  
**August 1, 2023**

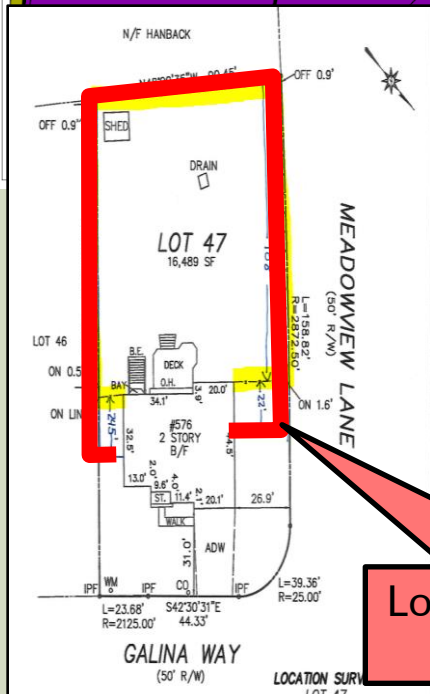


# Background



**June 6, 2023**

- Closed Public Hearing
- Action Deferred for 60 Days
- Requested Additional Information from Applicant



**Property Information**

- ❖ PIN: 6983-79-2716-000
- ❖ Location: 576 Galina Way
- ❖ Area: 0.3785 Acres
- ❖ Zoning: Residential R-15
- ❖ Use: Single-Family Residential
- ❖ Surrounding Uses: Residential

**Location of Proposed 6-foot High Fence**



# Update

## Additional Materials Provided

- Revised Letter of Justification
- Existing Conditions Drawing
- Line of Sight Survey
- Photographs

July 25, 2023

Town Of Warrenton  
Community Development Department  
Board of Zoning Appeals

**Subject:** Variance BZA-23-2 576 Galina Way Follow-Up Information for August 1, 2023 Meeting

**Reference:** 1) Variance BZA-23-2 576 Galina Way Staff Report Dated June 6, 2023  
2) Variance BZA #2023-1 545 Solgrove Road Staff Report Dated April 4, 2023  
3) BZA-23-2 576 Galina Way PowerPoint  
4) Additional Information for June 6<sup>th</sup> Zoning Appeals Meeting Letter Dated June 6, 2023  
5) June 6, 2023, Zoning Appeals Meeting  
6) July 6, 2023, 576 Galina Way On-Site Meeting with Zoning and Storm Water Management  
7) Line of Sight Survey provided via email on July 17, 2023  
8) Land Disturbance Permit ZNG2022-0635 - 576 Galina Way - Approval With Conditions  
9) LDP22-0003 - Fences across swales - 576 Galina Way - Agreement in Lieu  
10) ZA #2023-2 Staff Report Dated August 1, 2023  
11) 576 Galina Way Lot Survey, With Easement Depicted  
12) Pictures depicting Easement  
13) Neighbor Letters

To Whom It May Concern,

This letter is a follow-up to our letter dated June 6, 2023, and the subsequent June 6 Zoning Appeals meeting. We are also in receipt of the revised Staff Report dated August 1, 2023. This report acknowledges the submitted line-of-sight confirms no impact with the fence. Since the rest of the Staff Report doubles down on the initial assessment, we've structured this response mapping to the original Staff Report (Reference 1) and associated PowerPoint presentation (Reference 3).

As you recall, after the Board reviewed the information contained in our June 6, 2023, Letter (Reference 4) and various discussions took place at the June 6<sup>th</sup> Zoning Appeals Meeting (Reference 5), the parties agreed that a continuance be granted as more information was needed in order for the BZA to make a final determination on our submitted Variance Request.

### Revised Statement of Justification

7/25/23

N/F HANBACK  
N 48°00' 35"W 90.45'  
LOT 47  
16.489  
MEADOWVIEW LANE (150' WIDE)  
P=158.82'

Easement	1612.8 SQ FT
Slope/swale	2093.8 SQ FT
Backyard	9718.2 SQ FT

2 STORY BRICK & FRAME # 576  
E=2125.00' S 42°30' 31"E P=25.00'  
P=23.66' S 42°30' 31"E P=35.36'

MEADOWVIEW LANE  
VARIABLE WIDTH

CENTER OF RIGHT OF WAY  
CENTER OF TRAVEL WAY

LINE OF SIGHT

LOT 47  
POOL PATIO DECK  
DRAIN  
SHED  
STORAGE FENCE

TM 6983-79-0589  
N/F HANBACK

### Line of Sight Survey

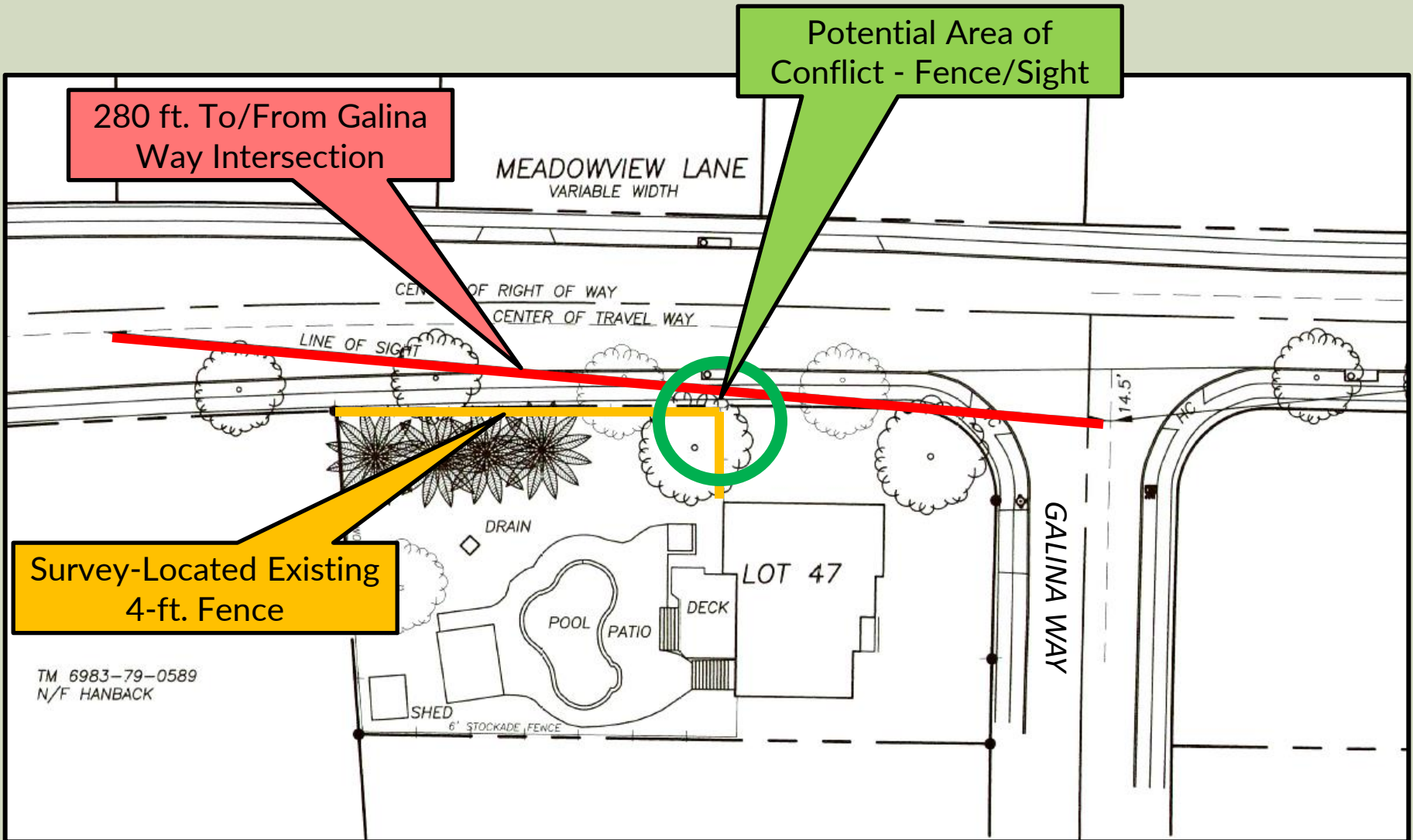
7/17/2023

### Existing Conditions Drawing

7/25/23



# Line of Sight Survey





## Criteria for BZA Decision

### The BZA must find that:

The applicant meets at least **one** of the following 3 criteria:

1. The terms of the Ordinance unreasonably restricts use of the property; or
2. Granting the variance would alleviate a hardship due to a physical condition of the property; or
3. The variance would alleviate a hardship by granting a reasonable modification requested by, or on behalf of, a person with a disability.

### AND

The applicant must meet **all five** of the following 5 standards:

- a) The property was acquired in good faith; and
- b) Granting the variance would not be of substantial detriment to nearby properties; and
- c) The condition is not so general or recurring so that a text amendment to the Ordinance should be adopted; and
- d) The variance would not authorize an unpermitted use; and
- e) The relief is not available through a Special Use Permit.



## BZA Decision on Variance Application

- ❖ Approval is required from a majority of the BZA – a minimum of **three votes**.
- ❖ If three approving votes are not received, the **request is denied**.
- ❖ **The BZA must render a decision.**
  - The BZA has 60 days to act; no further deferrals are available.
- ❖ **Appeals** to a BZA decision must be made to the Circuit Court within **30 days**.

### Pattern Motions of Approval and Denial

- Provided as attachments.

### Should the BZA decide to grant the Variance – Staff Suggested Conditions of Approval:

- ❖ The fence shall not exceed 6 feet in height.
- ❖ No portion of the fence over 4 feet in height shall extend closer to Galina Way than the rear plane of the house.



EXPERIENCE



**Board of Zoning Appeals (BZA)**  
**BZA 2023-2**  
**576 Galina Way**  
**August 1, 2023**