

ZONING ADMINISTRATOR'S REPORT
VARIANCE APPLICATION
1314 Jenifer St

Zoning: TR-C4, HIS-TL

Owner: E. Vaughn Brandt

Technical Information:

Applicant Lot Size: 33' x 132'

Minimum Lot Width: 40'

Applicant Lot Area: 4,356 sq. ft.

Minimum Lot Area: 4,000 sq. ft.

Madison General Ordinance Section Requiring Variance: 28.045(2)

Project Description: Two-story Two- family dwelling. Construct single-story sunroom at rear of principal structure.

Zoning Ordinance Requirement: 3.3'

Provided Setback: 1.66'

Requested Variance: 1.73'

Comments Relative to Standards:

1. Conditions unique to the property: The lot is relatively narrow but appears similar to other lots in the neighborhood. The existing principal structure exists in the setback slightly, but it appears an addition with a similar amenity could be constructed without necessitating a zoning variance. There does not appear to be a unique condition on the property.
2. Zoning district's purpose and intent: The regulation requested to be varied is the *side yard setback*. In consideration of this request, the *side yard setback* is intended to provide minimum buffering between buildings, generally resulting in space in between the building bulk constructed on lots, to mitigate potential adverse impact and to afford access to the backyard area around the side of a structure. The existing building placement and relationship between the existing home and the home adjacent to where the variance is being requested appears to be a long-standing condition, likely original to the development of these lots. There is adequate side yard setback on the side of the home opposite the variance (driveway side) to allow access to the rear yard.

The principal structure on the neighboring property to the east has a rear porch-type structure at the rear. This structure provides a greater setback to the side lot line than the main wall of the home (it is inset from the side wall). The result is greater setback between structures on lots, which is the purpose of the side yard setback requirement as applied to the subject lot. The project does not appear to result in development consistent with the purpose and intent of the TR-C4 district.

3. Aspects of the request making compliance with the zoning code burdensome: The proposed addition is usual/common in placement, (at the rear of the home) but unusual from an access perspective, being that it is accessed through a bathroom and not a common area, and via a narrow door. The home has an existing rear porch which could be expanded to create a reasonably sized rear screen porch. The proposed design results in a narrow width to the space, however that is because the petitioner is choosing to exclude using part of the existing rear porch area for the project. Incorporating some or all of the existing porch area would result in a reasonably sized porch space, which also could be accessed off a common area in the dwelling unit, and with a design in compliance with the side setback requirement. Note: the existing (legal) rear porch was constructed by the petitioner in 2001.
4. Difficulty/hardship: The home was constructed in 1894 and appears to have been purchased by the current owner in July 1997. See comments #1 and #3 above.
5. The proposed variance shall not create substantial detriment to adjacent property: The impact of the proposed porch is limited by the existence of a privacy fence on the neighbors' property; however if this fence were removed, there could be bulk and privacy impacts. Also, the addition is very close to the side lot line, which would make maintenance difficult over time.
6. Characteristics of the neighborhood: The general area is comprised of two-story homes where porches, either open or enclosed, are common. Often, these porches are inset from the side walls. A shed roof design is common for this type of addition. Often these types of features are inset from the primary side wall of buildings.

Other Comments: The principal argument for this request lies in the existence of the three-story porch, which was constructed by the petitioner in 2001. As noted above, this porch could be modified to accommodate the desired space. No specific detail, besides the general statements in the application, explain why this structure cannot accommodate the desired amenity. Revised entrances for fire safety and individual unit access (future construction) are identified by the petitioner but none of these appear to be code requirements.

As is obvious in the photographs from the site inspection, the addition has already been constructed. In addition to the sunroom, the subject property has had significant construction performed by the owner without obtaining the required building permits. Violations have been turned over to the City Attorney's office for prosecution. The property owners have a record of secured permits for some other construction, so it would be fair to say the owner knew they needed permits for the construction, but chose to proceed without the required permits at their discretion. The ZBA should review this request as if the construction does not exist. It is ultimately the property owners' responsibility to address matters of noncompliance after-the-fact, and not a reason for the ZBA to grant a variance approval in this case.

This project required approval from the Madison Landmarks Commission for an addition to a structure in the Third Lake Ridge historic district. The project has received a Certificate of Appropriateness; however, the Landmarks Commission required a number of changes to the materials used in the exterior of the structure. The Landmarks Commission review in this historic district is limited to a few criteria, basically focusing on the street facades of buildings

(where additions are visible from the front), roof changes and general compatibility with the character of the district, so the ZBA should not consider the Landmarks Commission review as a thorough design review of this project or a statement about the appropriateness of the addition relative to the setback requirement. Per preservation planner Amy Scanlon, the Landmarks Commission reviewed this as an “after-the-fact” addition and used some discretion in its approval, considering the fact it is not visible from the street as a major factor in its approval. If the variance is not approved, the Certificate of Appropriateness for a modified structure of similar design that complied with the side setback requirement would still be valid.

The addition provides a very small setback to the left side property line. The placement leaves little room for maintenance of the structure. By practice, when a request for a zoning variance is located less than 2’ from a property line, the ZBA typically requires a condition that a maintenance easement/agreement be recorded with the adjacent property owner. If the ZBA believes such a condition should be attached to this request, the following language is appropriate: *The petitioner must secure and record a maintenance agreement between the subject property and the property to the southeast (1312 Jenifer Street).*

At its December 19, 2002, meeting, the Madison Zoning Board of Appeals approved side yard variances to allow for the construction of the front porch at the subject property.

Staff Recommendation: The burden of meeting the standards is placed upon the applicant, who needs to demonstrate satisfaction of all the standards for variance approval. It is not clear that this burden has been met. This request appears to primarily be based upon the desire of the petitioner to maintain a structure that was constructed without obtaining the required zoning approval and building permits, rather than a clear topographical hardship. Staff recommends that the Zoning Board find that the variance standards are not met and **deny** the requested variance as submitted, subject to further testimony and new information provided during the public hearing.