

ZONING ADMINISTRATOR'S REPORT
 VARIANCE APPLICATION
723-725 Jenifer Street

Zoning: TR-V2

Owner: Katharine Blood & Mitchell Tyler

Technical Information:

Four-Unit (723 Jenifer St.)

Applicant Lot Size: 26'w x 81.57'd

Applicant Lot Area: 2,121 sq. ft.

Minimum Lot Width: 50'

Minimum Lot Area: 8,000 sq. ft.

Single Family (725 Jenifer St.)

Applicant Lot Size: 36.53'w x 156.88'd

Applicant Lot Area: 5,731 sq. ft.

Minimum Lot Width: 30'

Minimum Lot Area: 3,000 sq. ft.

Madison General Ordinance Section Requiring Variance:

723 Jenifer St.

28.048(2) – Rear Yard (Dwelling), Side Yard, Lot Area, and Useable Open Space

28.132(1) – Rear Yard (Elevated Deck)

28.135(2) – Lot Frontage on a Public Street

725 Jenifer St.

28.048(2) – Front Yard Setback

28.135(2) – Lot Frontage on a Public Street

Project Description: Existing nonconforming use, four-unit detached multi-family building located on same lot as single-family detached dwelling. Proposal splits lot into two parcels, resulting in individual lots for each building.

723 Jenifer St.

	<u>Usable Open Space</u>	<u>Rear Yard, Dwelling</u>	<u>Rear Yard, Elevated Deck</u>	<u>Lot Frontage</u>	<u>Lot Area</u>	<u>Side Yard</u>
Zoning Ordinance Requirement:	2,000 sq. ft.	20.39'	14.39'	30.0'	8,000 sq. ft.	6.0'
Provided:	483 sq. ft.	13.6'	6.5'	29.38'	2,121 sq. ft.	2.6'
Requested Variance:	1,517 sq. ft.	6.79'	7.89'	0.62'	5,879 sq. ft.	3.4'

725 Jenifer St.

	<u>Front Yard</u>	<u>Lot Frontage</u>
Zoning Ordinance Requirement:	20.0'	30.0'
Provided:	18.2'	10.53'
Requested Variance:	1.8'	19.47'

Comments Relative to Standards:

1. Conditions unique to the property: The property contains a nonconforming use condition, where two principal detached residential buildings are located on the same lot, dating back over a century. The property appears to also have shared parking and cross-access with the adjacent home to the east. The subject lot is of an irregular shape, and the historical development pattern of buildings and parking on the lot is an existing condition that cannot be easily remedied.
2. Zoning district's purpose and intent: The proposed variance would result in diminished use of land, particularly for the multi-family dwelling, and clearly splits this property off on a small lot. Specifically, the opportunity for open space use of the multi-family building would be diminished.
3. Aspects of the request making compliance with the zoning code burdensome: The proposed lot division and resulting variances is derived from the existing building placement and development pattern of the lot. The resulting lot area/frontage, setbacks and open space provision appear to take into account the most appropriate placement for lot lines in consideration of building and zoning code requirements, which will result in an appropriate stand-alone lot arrangement for the two buildings.
4. Difficulty/hardship: The buildings were constructed over a century ago, prior to zoning being adopted for the City. The current owners purchased the property in June of 1995, at a time the nonconforming condition was present, and it appears as though the current owners have been managing and occupying the buildings since that time. The property owners could establish a condominium instrument, which would allow for the separate sales of buildings or individual units, further described below. It is the choice of the owner not to utilize the condominium ownership instrument, hence this request.
5. The proposed variance shall not create substantial detriment to adjacent property: The division of the lot will have little impact on the surrounding property, as no physical change to the buildings or structures is being proposed as part of this request.
6. Characteristics of the neighborhood: The general area is characterized by single, two and multiple family dwellings of various size on varying lots. The development pattern is highly irregular, but there does not appear to be a lot arrangement similar to the proposal. The buildings are not proposed for any change, so there would be no visual impact as the result of this lot division.

Other Comments: This property is currently for sale, where the current owners intend to sell the property to future buyers, not retaining either structure or proposed lot. The properties, as a single sellable property, have been represented to staff by the petitioner as not sellable because financing cannot be obtained for a development with the existing land use condition (no comparable sales in the market). The basis for this variance is to create a mechanism for the current owner to sell the property as separate fee-simple lots. *NOTE: Information relating to this argument should be clarified and substantiated by the petitioner as part of the public hearing, as none of this information was included with the submittal.*

This request is not based *solely* upon a desire for financial gain; the basis for the request comes from a need to sell the properties as the result of a divorce. One option is the lot split, which necessitates the requested variances.

There is no condition that prevents a condominium instrument (declaration and plat) from being recorded for this property, which would allow for the buildings to be owned and operated separately, with use restrictions for the common areas being limited by the condominium documents. Individual condominium units could be sold, either as individual buildings or individual units within the buildings. Condominium instruments allow for a more refined description and regulation of the land, including exclusive rights of use for property and rights for common elements, to be used and enjoyed by all owners of the property. In consideration of the unique condition of the development on this property, a condominium instrument would probably be the best tool to clearly define the rights of use for the property, beyond what zoning otherwise would regulate. A condominium instrument would not require City approval beyond a technical review for correctness.

In the past, Planned Development zoning had been used to address unique development pattern conditions, often existing conditions dating back prior to the adoption of zoning codes in the City. Not all requests for PD zoning ended up being approved, but often this tool was used in situations like the subject property. In the new zoning code, the standards for approval of PD rezoning have been changed, and the owners have the right to submit a request for PD rezoning, but it is unlikely a rezoning request would be approved, which is why variance requests have been submitted.

At its February 25th 1988 meeting, the Madison Zoning Board of Appeals approved a side yard setback variance to construct an addition to 725 Jenifer St.

At its February 25th 1988 meeting, the Madison Zoning Board of Appeals approved a side yard setback variances to construct an addition to the rear (lake-side) of 725 Jenifer St.

At its October 24th 1991 meeting, the Madison Zoning Board of Appeals approved a side yard and lake setback variances to construct an elevated deck addition to the rear (lake side) of 725 Jenifer St.

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. Since it appears this request is based upon desire of the petitioner rather than a definable hardship, at this time staff recommends **denial**, unless further testimony and new information is provided during the public hearing to address the standards of approval.