

ZONING ADMINISTRATOR'S REPORT  
VARIANCE APPLICATION  
161 Division Street

**Zoning:** TR-V1

**Owner:** Joe Krupp

**Technical Information:**

**Applicant Lot Size:** 40' x 120'      **Minimum Lot Width:** 40'  
**Applicant Lot Area:** 4,800 sq. ft.      **Minimum Lot Area:** 3,000 sq. ft.

**Madison General Ordinance Section Requiring Variance:** Principal Structure: 28.047(2)  
Accessory Structure: 28.131(1)(e)

**Project Description:** New Construction. Construct new two-family two unit building with detached garage. For the dwelling, the project includes a finished basement area. Setback variances requested for front yard setback and accessory building placement.

Principal Structure

*Dwelling*

Zoning Ordinance Requirement: 15.5'  
Provided Setback: 5.0'  
Requested Variance: 10.5'

Accessory Structure

Zoning Ordinance requirement: 3.0'  
Provided Setback: 1.0'  
Requested Variance: 2.0'

*Open Porch*

Zoning Ordinance Requirement: 8.5'  
Provided Setback: 5.0'  
Requested Variance: 3.5'

**Comments Relative to Standards:**

1. Conditions unique to the property: The subject property meets minimum lot width and exceeds lot area requirements, and is otherwise a complaint regular lot. The lot contains a large and significant specimen tree, which the petitioner wishes to preserve with this infill project.
2. Zoning district's purpose and intent: The project does not project into any driveway vision clearance area, so the project should not create pedestrian-vehicle conflicts, and thus not contrary to the public interest

### Principal Structure

The regulation being requested to be varied is the *front yard setback*. In consideration of this request, the front yard setback is intended to provide buffering between developments and the adjacent streets/sidewalks, resulting in a relatively uniform orientation of buildings to the street.

The zoning code allows setback averaging to reduce the required front setback to a block average, but not less than 10', and also allows "open" porches to project into the required setback area. On this block, there is a mix of structures with varying setback for the homes, resulting in a varying development pattern for the block from a setback calculation perspective.

With this project, the proposed home is placed forward of the homes on either side, and includes a basement-level finish under the open porch and first and second level living space, which projects into the front setback area. The proposed placement is inconsistent with the front yard setback requirement and front yard setback averaging allowances, by placing this new structure forward of where it would be otherwise permissible on the lot, and inconsistent with the intent and purpose of these requirements. Since this is new construction, a project could be designed consistent with the intent and purpose of the ordinance.

### Accessory structure

The regulations being requested to be varied are the *Lot line setback* requirement. In consideration of this request, the *lot line setback* for detached accessory structures requirement is intended to provide minimum buffering between buildings on a lot, generally located behind the principal structure on a lot. The proposed placement appears to be a function of the home placement design. Given the proximity of the structure to the tree trunk, it does not appear that placement at a compliant setback would make much difference in regard to tree impact.

3. Aspects of the request making compliance with the zoning code burdensome: The proposed placement attempts to address both the protection of the tree and provide ease of access to the garage for a vehicle. For the dwelling, the front setback variance to accommodate the finished basement space beneath the open porch and the living space on the two levels of the building appear driven by the desire of the petitioner, rather than a hardship. For the garage, the closer the garage is placed to the home the more challenging it is for a vehicle to access the garage. It appears the proposed garage setback is intended to improve vehicle access, but graphics representing this vehicle movement have not been provided. For both the home and the garage, it appears that an alternative design incorporating a side-loaded attached garage more centered on the lot could resolve both the desire to protect the tree and the front yard setback encroachment.
4. Difficulty/hardship: The subject property is a vacant lot. Typically, with a vacant lot, new construction can be designed to meet the zoning code requirements. As noted above, the specimen tree does impact where structure can be placed on the lot, however, an alternative design in compliance with zoning code requirements appears possible. It does not appear this standard has been met.

5. The proposed variance shall not create substantial detriment to adjacent property: The proposed project does not appear to negatively affect the light and air on adjacent properties, above and beyond what would otherwise be permitted. However, the small setback of the garage on the neighboring property to the south could impact development on that property.
6. Characteristics of the neighborhood: In regard to design, the proposed principal structure and garage appear to present a design consistent with development found in the general area. However, the stair directly abutting the sidewalk is not normal or common, with limited examples in the area. This stair placement would negatively impact the pedestrian experience on the sidewalk. In regard to the garage, the structure includes a stair to access a storage area in the attic, which is not common for the area, but does not require a variance.

**Other Comments:** The petitioner has provided a statement from a tree professional. This letter supports a design to pull building mass further from the tree trunk, towards the street.

In regard to garage placement, the submission includes an alternative garage placement plan. This plan presents one option for placement, but does not include vehicle turning templates. Either of the alternatives appear to have some impact on the tree, and it is not clear that any of these designs have differing impacts: the requested variance, a slight shift to comply with the 3' setback, or the alternative design.

The project includes an egress well to the front, which the petitioner has agreed to modify to the legal size allowed for such a projection into the setback.

The proposed garage provides a very small setback to the property lines. The placement leaves little room for maintenance of the structure. In situations where less than a 2' setback is being requested which would result in challenges in maintaining the structure, the ZBA normally requires the following condition of approval: *the petitioner must secure and record a maintenance agreement between the subject property and the property to the south.* A draft of a maintenance agreement has been included with the application.

**Staff Recommendation:** The burden of meeting the standards is placed upon the petitioner, 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 be driven by the petitioner's desire as reflected in their proposed design, rather than a hardship. Staff recommends that the Zoning Board find that the variance standards are not met and **refer** the case for more information relative to the standards of approval, or **deny** the requested variance as submitted, subject to further testimony and new information provided during the public hearing.