



# City of Madison

City of Madison  
Madison, WI 53703  
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## Meeting Minutes - Approved ZONING BOARD OF APPEALS

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Thursday, March 21, 2019

5:00 PM

215 Martin Luther King, Jr. Blvd.  
Room 013, Madison Municipal Building

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### CALL TO ORDER / ROLL CALL

Corigliano, chair, called the meeting to order at 5:04pm and explained the appeals process.

**Staff Present:** Matt Tucker and Cary Perzan

**Present:** 5 - Peter A. Ostlind; Agnes (Allie) B. Berenyi; Patrick W. Heck; Dina M. Corigliano and Winn S. Collins

**Excused:** 1 - Jessica Klehr

### APPROVAL OF MINUTES

A motion was made by Collins to approve the February 21, 2019 minutes with amendments, seconded by Berenyi. The motion passed (5-0) by voice vote.

### PUBLIC COMMENT

### DISCLOSURES AND RECUSALS

Berenyi disclosed that she knows Christi Weber professionally and had previously worked for TDS Custom Construction, but stated these will not affect her decision.

Ostlind disclosed that he has worked in a professional capacity with one of the applicants for 2522 Chamberlain Ave. and knows the applicants personally too, but stated these will not affect his decision.

Corigliano disclosed that her husband had done work for one of the applicants for 2522 Chamberlain Ave. in a professional capacity, but stated this will not affect her decision.

### PETITION FOR VARIANCE, AREA EXCEPTIONS OR APPEALS

1. [55010](#) Melissa Destree, representative of the owner of property at 4205 Mandan Crescent, requests a rear yard setback variance to construct a single-story addition to the rear of the existing single-story, single-family dwelling. Alder District #10

Tucker explained that the property in question is a single-family dwelling zoned TR-C1 in the Nakoma neighborhood on the west side. The request is for a rear yard setback variance to build a rear single-story addition onto the existing single-story dwelling. The zoning code requires 31.91 ft.; 30.83 ft. is provided, requiring a 1.08 ft. variance.

Melissa Destree, representative of the applicant, provided background information about the initial analysis conducted for the project with Tucker. She noted there is a requirement for 36 in. exterior doors in the building code and that to accommodate that need she felt applying for the variance would be the correct path considering the change to the zoning code and the irregular lot shape. The plans show the interior door going from the kitchen addition to the screen porch. Destree noted the house already has two portions that jut out into the rear setback and that this variance would not exceed those areas, and so would not be detriment to adjacent properties.

Tucker noted that in the family room addition plans from 2001, before the most recent changes to the zoning code, this small triangular area would have been outside the rear setback. He noted that this change to the code affecting homes in such a manner is very common in this area with irregular lots.

The Board questioned the representative about current access and alternative options other than the one proposed to the Board. Destree responded that the owner wished to be able to access the porch without going outside, and this proposal allowed for a walk-in closet to be added in a home with few closets, which is very beneficial to the use of the house.

The Board requested clarification about the roofline. Destree responded that the roof would be redone with an asphalt shingle that would have a slight pitch change to improve water drainage. Tucker noted that this type of change does not affect zoning consideration because no usable headspace is being added.

Destree ended by noting that the screen porch is original to the house, unlike the 2001 family room addition, which also is non-compliant with the rear yard setback requirement.

Berenyi moved to approve the variance as stated; Ostlind seconded the motion.

Review of Standards:

Standard 1: The Board noted the Staff Report addressed the uniqueness of the irregular lot and the backyard lot line well. The Board acknowledged that parts of the existing house already project into the rear yard setback.

Standard 2: The Board noted that the Staff Report again addressed the rear

yard setback is to create buffering between properties. The Board acknowledged that before the zoning code change, this addition would be compliant, as the existing jutting areas had been. Thus, this small addition will not impact the buffering beyond what already exists.

**Standards 3 & 4:** The Board noted it is both a burden and a hardship to design any improvement that increase flow and accessibility when a recent ordinance change created an area of compliant vs. noncompliant space within the existing home. The Board acknowledged that it is also a hardship to have two different codes at odds with each other: the building code requires a certain size door, which creates a violation with the zoning code to accommodate that. The additions are not unreasonable and seek only to improve existing spaces – the kitchen and an additional closet.

**Standard 5:** The Board noted that Standard 5 is connected with Standard 2. The people most affected by the zoning code change are all affected by being non-compliant by default. There is no buffering change because this is between two existing areas that project further.

**Standard 6:** The Board noted again that being non-compliant because of the zoning code change is a characteristic of the neighborhood. The design itself matched the existing structure.

The Board voted 5-0 to approve the requested variance by voice vote.

2. [55011](#)

Sam Breidenbach, representative of the owner of property at 2522 Chamberlain Ave., requests a front yard setback variance to enclose a portion of the existing open porch on the two-story, single-family dwelling. Alder District #5

Tucker explained that the property in question is a single-family house, zoned TR-C2, in the Regent neighborhood. The request is to partially enclose a porch with screens. The zoning code requires 18 ft. 1 in.; 16 ft. 1 in. is provided, requiring a 2 ft. variance.

Christi Weber, representative of the applicant, described the desire of the owners to enclose their front porch with screens to be able to use their porch in the same manner as neighbors with similar setback requirements. The porch will not be expanded, but the zoning code treats open vs. enclosed spaces differently, leading to the necessity of a variance. Weber noted that were the project to be compliant, the owners would only have 5 ft. of enclosed space, which is not a functional porch in her mind.

The Board questioned Weber about what difficulty it is to have an open porch. Weber responded that the prevalence of mosquitoes and other flying insects make using the porch in the summer difficult. An enclosed space makes it habitable, while still affording the ability to interact with neighbors, albeit to a lesser degree, like an open porch. Weber then presented photographs of nearby houses with similar enclosed porches and listed nearby addresses with comparable setbacks and porch type. Tucker verified the presented setback data as accurate.

The Board requested information about how the existing features of the porch would be affected by enclosing the space. Weber responded that many of the features would be maintained, such as the railing, with the screens placed behind the posts to preserve the aesthetic but improve functionality.

Ostlind moved to approve the variance as stated; Heck seconded the motion.

**Review of Standards:**

**Standard 1:** The Board noted the current placement of the porch is difficult to consider unique for the block if approximately half the houses are in the front yard setback. However, the porch really becomes an issue if the owner wishes to enclose an open porch. To be compliant, 2 ft. of the porch would need to remain unscreened, limiting the functionality of the porch. The Board acknowledged that despite the porches in front yard setbacks being a common issue, the specific numbers for the calculation for this property are unique. Tucker noted that at the time of construction, decades ago, differing types of front porches was the norm, and now this type of zoning appeals case is common and must be decided case-by-case.

**Standard 2:** The Board noted that the intent of the zoning code is to present houses in a uniform alignment with the front yard setback. The Board acknowledged that porches do not count toward this and, in this case, the porch's alignment will not change; the only difference is open vs. enclosed, which is a minor change physically, but more significant in the view of the zoning code. In addition, a screened in porch still allows for interaction with the street and the applicants are only asking for a 2 ft. variance, which is

reasonable.

**Standards 3 & 4:** The Board discussed the variations of applicability of the standards of burdensome and difficulty: general conditions presented vs. maintenance required to be undertaken by a property owner. The Board agreed that the conditions presented create the burden and difficulty to use an unenclosed porch in the summer with the buggy conditions. The Board also noted that the calculations for the front yard setback is a burden and essentially forces the resulting number to be smaller, thereby reducing the amount of porch that can be enclosed and compliant.

**Standard 5:** The Board noted that there would be some negligible impact to adjacent property at 2520 Chamberlain Ave. in terms of air and light, but a screen porch would still allow enough to pass through to be acceptable.

**Standard 6:** The Board noted that the testimony and photos submitted show that an enclosed porch would be in keeping with the characteristic of the neighborhood.

The Board voted 5-0 to approve the variance as stated by voice vote.

3. [55012](#)

Kathleen Cox, owner of property at 5454 Lake Mendota Dr., requests a lakefront setback variance to construct a new two-story, single-family dwelling.  
Alder District #19

The Board took a 10 minute (6:05-6:15) recess to read newly presented letters pertaining to the final agenda item.

Tucker explained that the property in question is a lakefront single-family house, zoned TR-C2, in the Spring Harbor neighborhood. Tucker described the implications of the property having one of the few wet boathouses in the City and the impact that feature had in calculating the numbers for the lakefront setback for the property. Tucker stated the rules for the calculation of the lakefront setback is described in detail in the Staff Report. Tucker also noted that while the applicant is completely demolishing the existing structure to rebuild, the only portion to be considered is an area of the back deck. The request is for a lakefront setback variance: 123.8 is required; 109.2 ft. is provided, requiring a 14.6 ft. variance.

Kathleen Cox, applicant, described the process she went through in working with the Zoning Department and the Wisconsin DNR after she purchased the property in May, 2017 to build a new house on the site. She rebuilt the existing wet boathouse according the proscribed standards required, and only then was it discovered that the wet boathouse feature and the resulting high water point affected her properties calculations for the lakefront setback. This meant instead of having a setback of 115 ft. it is now 123 ft., which encroaches only on her planned deck. Cox asked for clarification about the definition of "adjacent" the Board uses when hearing cases. Tucker responded that "adjacent" technically means abutting properties, but the Board certainly has the ability to use a broader application as it sees fit.

Ron Klaas, representative of the applicant and civil engineer on the project, noted that he helped the applicant determine the originally calculated lakefront setback number before the implication of the wet boathouse was understood. Ron Callow, representative of the applicant and architect on the project, again noted that the revised calculation due to the wet boathouse deranged plans for construction as applying for a variance was now necessary, which delayed a response from the Plans Commission. The Board requested further information about the deck project, which was not clear from the submitted plans. Callow described the tapered deck as having a retractable screen feature on the first floor, in one section, and a solid wall on one site for the installation of a hood for an outdoor grill. The basement (ground level) would be an open walk-out and have an open sun deck on the second floor deck. Callow demonstrated on plans where setback line would impact deck features on all levels of the structure, which was originally designed to end within 6 in. of the originally calculated lakefront setback. Callow mentioned 5510 Lake Mendota Dr., which was rebuilt in 2013 further back from the original structure's location. Tucker clarified that 5510 Lake Mendota Dr. was required to move back to meet lakefront setback requirements.

The Board questioned whether the applicant had considered fully removing the wet boathouse and filling it in to recreate the natural shoreline, negating the wet boathouse's high water mark. Cox responded that by the time the boathouse would impact the high water mark, the rebuilding of the boathouse

was nearing completion, making that a non-option. Callow added that they did do some redesigning to mitigate the non-compliance of the deck, but to redesign the whole project would be costly and would sacrifice features the owner desires. The impact of the wet boathouse on calculations for the setbacks of adjacent properties is also a concern. Tucker clarified that 5450 Lake Mendota Dr. is not affected by the boathouse because the closest point is a different area of shoreline. The only properties negatively affected by the wet boathouse calculations are 5454 and 5458 Lake Mendota Dr.; other properties to the south benefit from the calculation.

Domingo Figueroa and Hailey Pirus of 1709 Camus Ln. #5 spoke in support of the proposed variance application. Figueroa stated that while he is not in an adjacent property, he does not think the proposed deck is a detriment to any nearby property and is in favor of property rights.

Derrick Buisch of 5511 Lake Mendota Dr. spoke in opposition to the proposed variance application. Buisch stated the project affects the entire neighborhood because it sets a precedence for inviting further applications for variances to encroach on the shoreline, which is already threatened. He noted that absence of adjacent property owners should not be taken as a form of approval.

Alice Erickson of 5109 Spring Ct. spoke in opposition to the proposed variance application. Erickson stated other area projects have been affected by last minute discoveries, such as sewers, and had to adjust accordingly to comply. The wet boathouse was a known entity before the project was started, and its implication should have been more thoroughly investigated beforehand to make the plans compliant during the planning stage.

Don Carlson of 5445 Lake Mendota Dr. spoke in opposition to the proposed variance application. Carlson stated the construction of such a large structure that will extend so far into the setback will impede the view of his property across the street. He stated he sent a more detailed letter outlining his opposition for the Board's consideration.

Kim Vergeront and Andrew Cohn of 5517 Lake Mendota Dr. spoke in opposition to the proposed variance application. They stated their main points had been discussed by others in opposition already.

Mike Kull of 5501 Lake Mendota Dr. spoke in opposition to the proposed variance application. Kull reiterated that properties across street will have their views affected. He also stated that when the boathouse was rebuilt, it was built larger and thus the shoreline and high water point was modified by choice by the applicant. Kull continued that City codes should be enforced equally and fairly so that all in area can enjoy both personal property and the area overall.

The Board requested clarification about any changes to the boathouse during its reconstruction. Cox stated that the square footage remained the same, but the layout was reconfigured slightly, all changes were approved by both the DNR, the Corps of Engineers, and City of Madison plan review. Tucker stated that as far as the City is concerned, the boathouse construction is in compliance with City approved permits.

The Board acknowledged letters of opposition from the following:

- Don Carlson of 5445 Lake Mendota Dr.
- Mike and Sally Miley of 5400 Lake Mendota Dr.
- Kimberly McBride of 5114 Lake Mendota Dr.
- Herman Felstehausen of 1009 Merrill Springs Rd.
- Mary and Ted Balistreri of 5442 Lake Mendota Dr.
- Tamara England-Zelenski of 5148 Spring Ct.
- Barry Mirkin of 5236 Harbor Ct.

The Board recalled Don Carlson for clarification about a point in his letter regarding other wet boathouses in the City. Carlson stated there are at least three wet boathouses, 5454 Lake Mendota, the UW's, and another by the Edgewater Hotel, which he learned about from the book *On Fourth Lake: A Social History of Lake Mendota* by Donald P. Sanford. Ostlind confirmed that this is by the old Vilas Mansion. Therefore, at least two commercial and one residential wet boathouses exist within the City.

Cox rebutted that none of the testifying neighbors live on the lake and that no official communication came from 5458 Lake Mendota Dr., the property that would be most impacted by the proposal. Cox added that she believes most neighbors' unhappiness originate from the size of the overall project, which is not to be considered in this lakefront setback variance case.

The Board requested further information surrounding the rebuilding of the wet boathouse. Cox confirmed that the configuration was altered, but the square footage matches the original building. Tucker verified the new boathouse is consistent with the old boathouse in shape. Tucker continued that there have been two to three generations of touching up the concrete of the boathouse foundation. Furthermore, Tucker said when he spoke to the DNR about the project, he did not ask if the shoreline had changed, just what is the current measurement. But, if the boathouse reconstruction had altered the shoreline, the resulting difference would only be by 1 or 2 ft. at most, which is marginal compared to the requested variance figure.

Heck moved to approve the variance as stated; Ostlind seconded the motion.

#### Review of Standards:

**Standard 1:** The Board noted the wet boathouse is a unique feature affecting the natural shoreline, as it is likely the only residential wet boathouse on Lake Mendota. However, the Board acknowledged that the jog created by the boathouse is not necessarily dissimilar to other jogs or juts created by the natural shoreline in other areas.

**Standard 2:** The Board discussed the concept of "slippery slope:" would approval impact other properties that would allow property owners within five properties on either side of the applicant use the variance for their own lakefront setback calculation? Tucker noted that the calculations to achieve alignment can be complicated and not solely dependent on the high water mark; Tucker listed several other scenarios that could impact calculations. The Board noted that three recent rebuilds, either recently completed or in process, 5510, 5450, and 5438 Lake Mendota Dr., all comply despite different calculations used. These properties, through rebuilding, are more in alignment than previous structures, which is the intent of the zoning code. The Board



also noted that the lakefront setback is important for people using Lake Mendota, not just property owners, so not just adjacent owners are affected.

**Standards 3 & 4:** The Board noted that meeting the requirement of burden and hardship is more challenging for complete rebuilding projects because it starts with a clean slate. The Board acknowledged that discovering the revised lakefront setback late in the planning process was a challenge for the applicant, but the same standard would still apply had construction been started. The Board noted that had the zoning code changed during construction that would be a hardship. However, the applicant did not demonstrate other considerations to try and comply with the revised lakefront setback or to mitigate the non-compliance, especially given the size of the lot and the scope of project. The Board cautioned against setting a precedent of building a structure and then adding a non-complaint deck (or other structure) to create a hardship.

**Standard 5:** The Board noted that the proposed plans align fairly well with adjacent properties; the wall behind the grill area in the outdoor kitchen does impact adjacent property with loss of openness, regardless if retractable screens are up or down. But from the evening's testimonies, it's clear that many people feel the proposed deck is a substantial detriment to the neighborhood.

**Standard 6:** The Board noted that lakefront property is unique because of the open water that many people in neighborhood use, making the impact of the proposal broader. The lakefront setback is meant to also buffer private houses from the public lake, which would be directly impacted with this proposal.

The Board voted 0-5 to deny the variance as stated by voice vote.

#### DISCUSSION ITEMS

4. [08598](#) Communications and Announcements

Tucker stated that a new zoning clerk, Nancy Kelso, had been hired and would begin training to take over Zoning Board of Appeals in April. Two cases for April – one new and the return of the deferral from February.

#### ADJOURNMENT

The Board adjourned at 8:01 pm.