

From: Diann Danielsen
To: [Zoning](#)
Subject: Petition for Variance #74187 - Kendall and Jessica Harrison, 5050 Lake Mendota Drive
Date: Thursday, October 20, 2022 2:06:23 PM

Please consider these comments at tonight's zoning meeting.....

1) Over the course of the summer, one property owner has destroyed the character and use of a public asset, indeed a public treasure in Madison - Merrill Springs Park. Anyone could have bought the property at 5050 Lake Mendota Drive. Unfortunately for the city of Madison and park users, the new owners leveraged a flawed title issue into two sleights of hand with city agencies and today are "asking forgiveness" for a second time because they could not follow the normal city processes. They did not do this on their own, of course, they have been successful only because the city has granted after the fact forgiveness instead of holding the owners accountable for their improper actions. City staff is supposed to prevent one person from completely changing the character of a public asset. Instead, they are facilitating the loss of a treasured park.

2) Since mid-summer when the property owners abused their (defective) easement rights and clear cut the property without prior written city permission, the park is near ruined. All vegetation and screening have been removed from the SE corner of the park and the east property line. Looking eastward makes me think of the Jersey shore; it looks like commercial development, not residential homes. It certainly does not look like a park boundary. Gone are the old growth trees and native vegetation that screened the south and east sides of the park. The second deck is a towering abomination. Just wait till they add the lights and pergola. Because you they will.

3) Privacy to enjoy the park has been destroyed in the name of a view easement that is defective. The defect being that the view to be preserved was never defined as the easement spelled out and required. THERE IS NO LEGALLY DEFINED VIEW because the filing of photos in 2012 was never done. Instead of curing this defective easement, indications are that the city is trying to avoid addressing the 800 lb gorilla (no defined view), they want to "construe the intent" of the view easement but not in a typical real estate law manner with an affidavit from original property seller to city or completing the filing with the city clerk as specified in the easement, Instead, they may be relying on a "to whom it may concern" letter that was floating around this summer and is not in affidavit form and contains language that conflicts with the original easement language. The city is trying to construe intent using a flawed document and flawed evidence. Why not just correct or amend the easement in the proper and standard legal way?

4) *Or better yet, exercise the termination rights in the easement because the easement holder has clearly defaulted on many terms of the easement.*

If the city accepted the easement back from the current easement holder in lieu of fines or other action from the city regarding the park clearing and deck construction, the city could manage the park for the benefit of the public instead bending over backwards to accommodate every wish and desire of of the one adjacent neighbor. The SE corner

could be replanted, park privacy restored, and the character of the park remain as it had been for a century.

5) There is an error in the last paragraph of Item #2 in the staff report on this variance request -

"The City has an easement which protects views from the property across the park and to the lake, and the deck provides an opportunity for the property owners to enjoy that view. "

* The City does not have an easement. The Harrisons hold the easement.

* The easement granted the right to enjoy the lake view from the residence, It does not mention decks.

The purpose of the view is defined in #1 of the easement document (this document has been entered into the record for this meeting):

"The purpose of the Easement is to preserve the existing view of Lake Mendota from the Grantee's residence"

The purpose of the view is not preserve it for enjoyment from a secondary deck removed from the residence. In fact, in reviewing the appraisal and other acquisition document received from the city, it is clear that the view was to be defined from the upper living space, not the downstairs bedroom (the easement holders now appear to be trying to lower the floor of that viewshed by one story of the house! They just never stop, do they?)

6) I will never understand why the city did not do the normal archeological and historical studies that are required for a property surrounding by Native American mounds, a sacred natural spring, and the history of the Park & Pleasure Ride Association and the 1930" WERA stonework. I suspect that if the Parks Dept. were forthcoming about all funding sources used for this acquisition, there would have been requirements to conduct these studies and the tribal outreach.

Unfortunately, the changes at Merrill Springs Park - in one summer, by one property owner - and the lack of city interest in protecting the park and park users, leaves me feeling like many long time park visitors.I'm not sure if I ever want to return to the park. I know how beautiful the park was and how much I loved spending time there. Now I look to the east and see Jersey style commercial development of a lakeshore. I look to the SE and south and see huge fishbowls called homes, decks without end (at residence and now the lower deck), and no greenery no trees no shrubs no growth no enjoyment. Just a lot of manmade landscaping that is incongruent with the park.

This zoning variance should not be approved. Merrill Springs Park is not the playground on one property owner.

Denying a second deck is not a hardship, They already have a deck. This is their second deck.

Please. Start protecting the rights of the park and park users. Please repair the damage

that has been done and restore our beloved park.

...crying every time I think of this treasured little park...

Most sincerely,
Diann Danielsen