



# 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 23, 2017

5:00 PM

210 Martin Luther King, Jr. Blvd.  
Room 103-A (City-County Building)

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### CALL TO ORDER / ROLL CALL

Corigliano, chair, called the meeting to order at 5:01 pm and explained the appeals process.

**Staff Present:** Matt Tucker and Gretel Irving

**Present:** 5 - Peter A. Ostlind; Susan M. Bulgrin; Dina M. Corigliano; Winn S. Collins and Frederick E. Zimmermann

**Excused:** 1 - Agnes (Allie) B. Berenyi

### APPROVAL OF MINUTES

A motion was made by Ostlind to approve the Feb 9, 2007 minutes, seconded by Collins. The motion passed (5-0) by voice vote/other.

### PUBLIC COMMENT

There were no public comments.

### DISCLOSURES AND RECUSALS

There were no recusals or disclosures.

### PETITION FOR VARIANCE OR APPEALS

1. [46448](#) Dane County Regional Airport, 4000 International Ln, requests a variance from the parking lot landscaping requirements to construct a surface parking lot.

Tucker introduced the project as a request for an exception from the requirements for islands and landscaping within the islands (MGO 28.142(6)) for relocated employee and cellphone parking lots, in order to comply with FAA regulations.

Speaking on behalf of the Airport were Mike Kirchner, Michael Stephens, Dave Elder and Levi Ney (Mead & Hunt). The existing parking lot needs to be moved out of the Runway Protection Zone for Runway 3 but remain within a reasonable distance of the main terminal.

The FAA regulations limit both lighting and landscaping to less than 15 ft. The FAA also discourages plantings that may create habitat for wildlife. Kirchner stated the project will comply with all other Zoning requirements including lighting. The Airport conducts regular surveys to ensure compliance as FAA regulations are revised, which is how they discovered the existing lot was no longer acceptable; the proposed new site meets FAA regulations while also considering employee access and safety. The Airport also regularly surveys for height obstructions, including removing or topping trees that have reached 15'.

Corigliano asked if the Airport would be taking other measures to reduce the 'heat island' effect. Kirchner clarified that the existing lot would be restored to turf; large areas of turf are easier to maintain without attracting wildlife.

Collins moved to approve the request; Bulgrin seconded the motion.

Standard #1: This is the only airport and the only Airport zoning district in the City.

#2: While there are large amounts of paving at the airport, they are balanced by large areas of green space. Parking lot islands are unlikely to mitigate the 'heat island' effect but the return of the existing lot to green space is deemed by the Board as an acceptable counterweight to the new lot. Both the applicant and staff reports effectively argue that islands with landscaping that met the height requirements would be ineffective in reducing heat and unlikely to grow successfully.

#3: The applicant argued effectively that any other location suitable for parking would fall under the same FAA requirements and require a similar variance.

#4: The Board agreed the difficulties facing the applicant are the FAA requirements.

#5: This variance would have little to no impact on adjacent properties.

#6: The Airport itself constitutes the 'neighborhood'

The motion to approve the variance request passed (5-0) by voice vote/other.

2. [46449](#) Kendra Kreutz, 2402 Commonwealth Ave requests side-yard, rear-yard and Useable Open Space variances for additions to a two-story single-family home.

Tucker introduced the project as requests for variances in the minimum setbacks for the reverse-corner side yard and rear yard and in the minimum Useable Open Space requirement. Tucker used a map to illustrate how the yards were designated as this is a triangular lot with street frontage on two sides and the adjoining property is a thru-lot with two front yards, creating the two reverse-corner side yards.

The proposed addition in the rear yard is acceptable as an encroachment into the setback. However it bisects the existing Open Space. Qualifying Open Space cannot include areas in the front yard, areas in the side yard extending to the street or areas of less than 200 sq ft. In response to questions from the Board, Tucker added that side yards extending to the rear yard lot line and areas that include driveways and/or parking (even if porous/permeable) do not qualify as Open Space per the Code. The area must also be 8 ft or greater in width. If the 175 sq ft area to the side of the proposed addition were enlarged to meet the 200 sq ft minimum, the variance would not be needed.

Edward Kuharski and Kendra Kreutz appeared in support of the request. Kuharski explained that the designs are intended both to mirror the nearby properties and to create useable work space within the house. The rear addition would expand a porch into an office; a smaller space would not be useful. Kuharski presented several photos of the adjacent property to the Board.

The Board asked what steps had been explored in the rear addition to reduce the size of the Useable Open Space variance and if there were reasonable changes that could be made to the design so that it not would require a variance. Kreutz stated that the location of the utilities influenced the design. The Board discussed multiple ways of modifying the design. Tucker suggested that, in similar cases, the Board had referred requests to allow applicants to come back with revised designs.

The Board briefly discussed the kitchen addition with the reverse-corner side yard and rear yard variances.

Collins asked the applicant if she would consider a referral to the next meeting of the Board to present a design which would come closer to the Useable Open Space requirement. Kreutz requested that the Board decide the issue at this meeting. The Board and the applicant agreed that the requests could be considered separately.

Collins moved to approve the reverse-corner side- and rear-yard variances; Ostlind seconded.

#1. The Board agreed this is a highly-unusual property in its relationship to the streets and adjacent properties.

#2. The intent is not to impede on the adjacent property; in spirit, the kitchen addition acts more like a side yard and is unlikely to affect the neighbor.

**#3.** The Board agreed enlarging the kitchen in a different way would negatively affect the footprint of the rest of the house. There are not many other options for getting this extra space without the variance.

**#4.** The Board questioned the degree of hardship posed by the existing kitchen but were generally satisfied that the applicant's request was modest and reasonable.

**#5.** The Board agreed the kitchen addition would not cause substantial detriment to the adjacent property.

**#6.** The Board agreed the addition fit the style of the neighborhood.

The motion to approve the variance request passed (5-0) by voice vote/other.

Ostlind moved to approve the Useable Open Space variance; Zimmerman seconded.

**#1.** The Board agreed this is a highly-unusual property in its relationship to the streets and adjacent properties.

**#2.** The purpose is to provide a generally uninterrupted space for recreational use. In this case, the unusual nature of the property limits the Useable Open Space available but does not necessarily justify reducing the space further. In response to a question from the Board, Tucker stated that the TR-C3 designation was created in consideration of these older, smaller lots. The 500 sq ft requirement is reduced from the 1000 sq ft required under the previous code.

**#3 & 4.** The Board questioned whether the hardship of a lack of office space outweighed the potential burden of a lack of open space. It may be possible to enlarge the office space while still meeting the code. While it may seem burdensome to the current owner, the opposite may be true for future owners.

**#5.** There would not be a substantial detriment to the immediately adjacent property although there may be a detriment to the broader neighborhood of loss of space.

**#6.** Corigliano referenced the Zoning Administrator's explanation that the reduced lot sizes had already been taken into account in the zoning code. Ostlind stated that architecturally the addition would fit the neighborhood.

Collins stated his belief that standards 1, 5 & 6 had been met but that 2 & 4 had not been satisfied. Corigliano concurred.

The motion to approve the variance request failed (1-4) with Zimmerman voting in favor and Corigliano, Bulgrin, Collins and Ostlind voting against.

3. [46450](#) Daniel Gorman, 5451 Whalen Rd, Oregon WI, requests an appeal to the Zoning Administrator's determination of Sec 28.211 as it pertains to a residential construction project at 138 S Franklin St, which would result in a residential structure with two dwelling units. Ald. District #6

Tucker explained that , unlike variance requests, appeals of interpretation have no specific standards for review. The Zoning Administrator first explains their interpretation of the particular ordinance, then the applicant has an opportunity to respond and the Board may ask questions of either at any time. Corigliano clarified that the assumption is that the Administrator's interpretation is correct and the burden is on the applicant to show that it is incorrect.

Tucker explained the related project as the remodel of an existing two-story building into two dwelling units with one unit to the front and one unit to the rear. Sec 28.211 defines Two-Family Dwellings as either 'Twin' - sharing a side wall but in the same horizontal plane or 'Two-Unit' – "generally stacked" with one unit on top of the other but with the top unit having access to grade usually via a stairwell or exposed deck. Subchapter 28K specifies Building Form Standards. Sec 28.172(3) describes both in text and drawings the design aspects of Two-Unit Buildings, including both the stacked Two-Unit and side-by-side Twin. The Zoning staff determined the project in question did not meet the definitions in either 28.211 or 28.172(3) and thus was not permitted.

Tucker read from Sec. 28.004 (1) emphasizing the phrase "in the absence of a variance...any uses or structures not specifically permitted by the ordinance are prohibited." Tucker stated the ordinance is a 'permissive' ordinance meaning that it is written in terms of what is allowed rather than what is not allowed. Tucker stated the code was written with the intent not to allow units behind units; the City did not want units placed sideways on lots due to the isolation of the rear units. While this particular building did get Landmark Commission approval, that board does not consider internal design, only the external remodel; their considerations are distinct and separate from Zoning considerations.

Collins asked why Sec 28.211 included the word "generally" but Sec 28.172(3) (a) did not. Tucker noted that Sec. 28.172(3)(a) has a picture to illustrate what the word "generally" illustrates in Sec 28.211. Sec 28.211 emphasizes land use where Sec 28.172 emphasizes building forms. Ostlind asked for the distinction between units behind units and Accessory Dwelling Units. Tucker clarified ADUs are a Conditional Use and are limited to single-family, owner-occupied dwellings.

Gorman introduced his appeal by clarifying that he also does not believe the project qualifies as a Two-Family-Twin because the units do not share a side wall, rather the front wall of one unit is the side wall of the other. Gorman noted that he had worked extensively with the Landmarks Commission and had discussed the project with Zoning staff several times but that he was not informed that the building form was not allowed until applying for a building permit. Gorman stated that the word "generally" was included in the ordinance to indicate that there are other viable forms for two-unit dwellings.

Because some Zoning staff had not objected to the building form earlier, Gorman argued this demonstrated approval by Zoning staff of the building plans.

Gorman presented the text of Subchapter 28 O, Sec 28.210(1) to the Board, emphasizing phrase (d): "The word "may" is permissive" as demonstrating that items not specifically prohibited in the code are therefore allowed.

Collins asked for confirmation that both the Zoning Administrator and the applicant agreed that the building is not a Two-Family-Twin. Both parties agreed this statement was correct. Corigliano asked, since the units did not appear to be vertically stacked, in what way does Gorman feel the Zoning Administrator's interpretation is incorrect? Gorman stated that because the word "generally" is specifically included in the definition, this indicates that other forms are permitted. Gorman stated again that because members of the Zoning staff had not explicitly objected to the building form before he applied for a building permit, that implied they agreed the building form was allowed. Tucker responded that while he would be disappointed if staff had misinformed Mr. Gorman, he stood behind his interpretation.

Collins stated that regardless of earlier conversations, the issue before the Board is whether the project fits the definition of Two-Family Dwelling-Two-Unit, narrowing the question further to the phrase "that generally are vertically stacked one above the other". Collins stated concern that defining "generally" as broadly as the applicant advises would make the rest of the phrase superfluous. Ostlind noted that the code uses "generally" rather than "may" and does not reference front-to-rear units at all. Collins noted that "generally" and "may" are not commonly interchangeable; "generally" qualifies "vertically stacked"- it does not subsume "vertically stacked". There was also discussion of "permissive" in regard to the Zoning Code as meaning either generous/liberal in allowance or meaning that it outlines allowed uses rather than prohibited uses. Gorman argued that the term "may" is defined in the ordinance under Sec 28.210(d). Tucker responded that this section is drawn from the Rules of Construction rather than the Definitions section of the Zoning Code.

Ostlind summarized the debate as to whether the proposed project fit the definition of Two Family Dwelling- Two-Unit. Collins framed the question as the meaning of "permissive" but noted that this word is defined in the Code itself. Collins respectfully disagreed with the applicant's interpretation of "generally" as overly broad and negating the text that follows. Corigliano concurred. Bulgrin added the drawings in the code illustrate the meaning of the text.

Ostlind moved to approve the appeal of the Zoning Administrator's interpretation; Bulgrin seconded.

The motion failed (0-5) by voice vote/other.

4. [08598](#)

Communications and Announcements

Susan Bulgrin will be leaving the Board due to her appointment to the Economic Development Board. Patrick Heck has been nominated by the Mayor to the Board.

**ADJOURNMENT**

The meeting adjourned at 7:17 pm.