



City of Madison

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

Thursday, September 12, 2013

5:00 PM

215 Martin Luther King, Jr. Blvd.
Room LL-110 (Madison Municipal Building)

CALL TO ORDER / ROLL CALL

Basford, chair, called the meeting to order at 5:03 pm and explained the appeals process.

Staff Present: Matt Tucker and Chrissy Thiele

Present: 5 -

John W. Schlaefler; Diane L. Milligan; Susan M. Bulgrin; Dina M. Corigliano and Michael A. Basford

Excused: 2 -

Frederick E. Zimmermann and Winn S. Collins

APPROVAL OF MINUTES

Schlaefler motioned to approve the minutes, seconded by Corigliano. The motion passed by voice vote/other.

DISCLOSURES AND RECUSALS

There were no disclosures or recusals.

PETITION FOR VARIANCE OR APPEALS

1. [31434](#) Martin Halek, owner of property located at 2237 Hollister Avenue, requests a side yard variance to construct a two-story addition to a two-story single family home. Ald. District #5 Bidar-Sielaff

Attachments: [2237 Hollister Ave.pdf](#)
[2237 Hollister Ave Staff Report.pdf](#)

Tucker introduced the project as having a zoning code requirement of 6' side yard setback, while the construction of the addition would provide a 4.1' setback. Therefore, the owners are requesting a 1.9' side yard variance. Property is zoned TR-C2.

Denise Clearwood, the owner's representative, explained that there is currently a sunroom where they plan to add the first and second floor addition, and a small part of the sunroom exists in the side yard setback. She stated that they plan on using the foundation that is currently there and then meeting the side yard setback for the rest of the addition. Clearwood explained that it would be difficult to make the second floor addition structurally sound if they were to make the entire second floor addition meet the side yard setback. There would also be issues with waterproofing and they thought the proposed plans are more aesthetically pleasing. She pointed out that the addition is next to the

neighbor's garage and wouldn't negatively affect the home.

Corigliano motioned to approve the variance, seconded by Schlaefer.

Board members determined that the existing house was built too close to the property line and the neighbor's garage mitigates the impact of the addition, if there is any. They agreed that the applicant reduced their impact as much as possible by meeting the setback requirement for the remainder of the addition and thought it would look worse if it were to entirely meet the setback requirement versus what is proposed. They also found the design to fit in with the neighborhood.

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

2. [31435](#)

Ebby Melahn, owner of property located at 730 Dempsey Road, requests a side yard variance to construct a single-story attached garage addition onto a two-story single family home.

Ald. District #15 Ahrens

Attachments: [730 Dempsey Rd.pdf](#)
[730 Dempsey Rd Staff Report.pdf](#)

Tucker introduced the project as having a zoning code requirement of 7' side yard setback, while the addition of the attached garage would provide a 5' setback. Therefore, the owners are requesting a 2' side yard variance. Property is zoned TR-C2.

Dan Flanders, a representative for the owner, assured board members that the structure replacing the current dilapidated garage would look relatively the same and would be the same width; the owner just wishes to extend the garage four feet in the back for storage of outdoor equipment. He explained that the garage did not have a proper foundation and over the years has shifted, causing the garage door not to shut all the way and allowing water and rodents to enter. The water entering the garage has also caused damage to the basement of the house and they need to put a proper foundation under the garage in order to fix this problem. They plan on using the same pitch for the roof in the front and same style of garage, so it will fit with the house and the character of the neighborhood. Flanders explained that the electric and utility are attached to the side of the house behind the garage, and the grade of the property also drops behind the house, making it difficult to build the garage further back into the property and away from the setback. They would also have to take down mature trees growing in the back yard.

Milligan motioned to approve the variance, seconded by Corigliano, with the condition that a double hung window be added to the side of the new garage and be shown in the plans.

Board members determined that the current location of the house, driveway, and curb cut, as well as the mature trees and utility connections, make it difficult to place the garage anywhere else besides where it is currently sits. The yard is also irregularly shaped. They also determined that the new proposed garage is reasonably sized, wouldn't detrimentally affect the surrounding properties, and fits with the neighborhood.

The motion to approve the variance with the condition of the double hung window passed (5-0) by voice vote/other.

Board members unanimously agreed to review agenda items four and five before addressing item three.

4. [31437](#)

Patrick McCaughey, owner of property located at 801 Erin Street, appeals the Zoning Administrator's interpretation in regard to bay window projections. Zoning Code Ordinance section 28.132(1).

Ald. District #13 Ellingson

Attachments: [801 Erin St_702 West Shore Dr appeal 28.132.pdf](#)

Tucker explained to board members the different kinds of structures the zoning code allows into a setback. He also explained his interpretation of how a bay window without floor space would be an appropriate structure, but what the appellant proposed is considered a cantilevered building addition, not a bay window.

Amy Hasselman explained that they agree with Tucker that the zoning code is clear that a bay window can only project one story in height into the setback. However, the code does not define what a bay window is, just what a story is and that includes the space between the floor and the surface above. She then provided handouts from "Everyman's Concise Encyclopedia to Architecture", defining what a bay window is and images of various types of bay windows used today.

Tucker reiterated that he believes that the appellant's proposed bay windows are actually cantilevered building additions because of the floor space, even though there are windows there. If the bay windows didn't feature floor space, they would then be allowed into the setback without a variance. He also informed board members that this is a carryover from the old code and had not been changed when the new code was approved. He stated that he has never in the past allowed for a bay window to have floor area in a setback without a variance, just bay windows with window seats or to shelve items.

Arlan Kay argued that bay windows come in a variety of styles, widths, and heights. He also argued that the code doesn't define what specific types of bay windows are allowed to project into the setback, just what a story is.

Corigliano motioned to deny the appeal of the Zoning Administrator's decision, seconded by Milligan.

Board members debated whether or not the code permits occupiable floor space of bay windows when they are built into the setbacks without needing a variance. Some argued the purpose of the code is to allow projections of bay windows without floor space into the setback as long as it doesn't exceed one story. Once they have a floor area, it shouldn't be considered a structure or a feature. Also, the zoning code is a permissible ordinance, and it doesn't list things aren't allowed, just what is allowed. Others argued that what the appellant is proposing in their plans are bay windows by industry standards, and even though they have floor space, without a more specific definition as to what types or sizes of bay windows are allowed into the setback, it meets the other requirement of being one story maximum in height. They also pointed out that maybe the code should be revised to clarify what types of bay windows are allowed.

The motion to deny the appeal failed (2-3) by voice vote/other.

Milligan motioned to approve the appeal of the Zoning Administrator's decision, seconded by Schlaefer.

The motion to approve the appeal passed (3-2) by voice vote/other.

5. [31440](#)

Patrick McCaughey, owner of property located at 801 Erin Street, appeals the Zoning Administrator's interpretation in regard to the definition of a story and occupiable areas above the 2nd story of a two-story dwelling, Zoning Code Ordinance Section 28.211.

Ald. District #13 Ellingson

Attachments: [801 Erin St_702 West Shore Dr appeal 28.211.pdf](#)

Tucker explained to board members how the zoning code defines a story and how many stories are allowed for a TR-C3 residential district. He stated that areas above the second story under a roof pitch of 8:12 or greater are not considered a third story and could be occupied as long as they met the requirements for human occupancy. He clarified that what the appellant is proposing is a deck area above the second story and open to the sky, not under the roof line, and because of that it is considered be a third story.

Amy Hasselman explained the enclosed space above the second story does comply with the requirements to be occupiable and believes it should not be considered a third story, as it doesn't have a roof or another floor above it, and is outside the building. She also pointed out that if they enclosed the entire area above the second story, which they believe would create more bulk, would be allowed and not need a variance. Hasselman questioned if someone were to put a roof deck on a two story flat roof home, if it would then be considered a third story, even if there wasn't a railing.

Arlan Kay pointed out that they are allowed to have 400 square feet of occupiable space above the second story, along with attic space. If they were to extend the roof over the porch to make it comply with zoning staff's interpretation of a story, it would make it easier for a home owner to illegally add more occupiable area by going around building and zoning review. He argued by having it as an open porch, it becomes "Murphy Proof" and makes it impossible for future owners to add more occupiable space without first being properly reviewed.

Tucker viewed the roof deck to be a third story because it creates a floor level that is open, not under the roof, and above the second level. He informed board members the arguments about the creation of bulk, as well as the square footage allowed by the building code, are irrelevant to discussion of what's allowable above the second story as it pertains to the zoning code. He also questioned board members what it would then be called if they determined that it wasn't a third story. He then provided examples of allowing a porch above the second story that wouldn't need a variance request.

Corigliano motioned to approve the appeal of the Zoning Administrator's decision, seconded by Milligan.

Board members decided that a porch is part of the building, and therefore the definition of a story would apply. They also agreed that the definition of a story in the ordinance is clear, that the area above the second story must be

between the eaves and the ridge line of a roof with a pitch 8:12 or greater, in order to not be considered a story.

The motion to approve the appeal failed (0-5) by voice vote/other.

3. [31436](#)

Patrick McCaughey, owner of property located at 801 Erin Street, requests a reverse-corner side yard variance and a Useable Open Space for a new home and detached accessory structure.

Ald. District #13 Ellingson

Attachments: [801 Erin St Original.pdf](#)
[801 Erin St Revised.pdf](#)
[801 Erin St Staff Report.pdf](#)

Tucker introduced the project as having a zoning code requirement of 500 square feet usable open space and a 20' reverse-corner setback, while the construction of the detached garage wouldn't provide any usable open space and a 10' 4" reverse-corner setback. Therefore, the owners are requesting a 500 square foot usable open space variance and a 9' 8" reverse-corner variance. The owners are also requesting a third story variance, as the code only allows for two stories and the proposed home would have three stories. He informed board members that there is an active request with the Plan Commission to rezone this property from TR-C2 to TR-C3, and the applicant has requested that the variance requests be compared to the TR-C3 requirements.

Patrick McCaughey explained to board members that he used to live on West Shore Drive when he was younger and would like to return to the area. The home on this property has been vacant for awhile and the neighbors are receptive to the project. He plans on living here, but would also like to have the house designed for a family when he resells it. McCaughey pointed out his effort to work with home owners in the surrounding area, the alder, the neighborhood association, and city staff to make this possible.

Arlan Kay handed out pictures of homes and garages in the area to show the various types and styles found in the neighborhood, many of them with usable areas above the second story, as well as look-out basements due to the water table. He explained how the reverse-corner lot is a hardship as it won't allow the square footage in side yard by West Shore Drive to be part of the usable open space. Kay also explained how the two story garage was designed to allow for storage, as well as be compatible with the proposed house. He pointed out that the average lot coverage for the area is 75 percent and they have minimized their coverage less than that.

Amy Hasselman explained that without the variance for the garage, it wouldn't be deep enough to hold a car, and then they have added space on the side for storage of outdoor equipment. She pointed out this lot is very small, as well as a reverse-corner lot, making it difficult to work with. The area most obvious for the usable open space requirement is where they would like to construct the detached garage. She argued that the usable open space would be of better use on the property where there is a great vantage point of the lake and capitol, which is located in the front yard and can also be viewed on the third level deck.

Tucker informed board members that the code only allows for decks to count as usable open space in multifamily zoning districts with multifamily properties

and some commercial and employment districts that allow residential uses. He also informed board members that if this lot were not a reverse-corner lot, it would still have trouble meeting the usable open space requirement.

Diane McCaughey, neighbor to the property and relative to the applicant, expressed her support for the project. She pointed out that with the new home she will have a better view of the lake from her dining room.

Corigliano motioned to defer the usable open space and reverse-corner side yard variance requests to a meeting no later than November 7, seconded by Bulgrin.

Board members agreed that the applicant could obtain a minimum of 200 square feet for usable open space if they modified the size of the garage. They also felt the proposed garage was larger than needed by the applicant, especially if it already has a second level for storage space.

The motion to refer the variances passed (5-0) by voice vote/other.

Milligan motioned to approve the third story variance, seconded by Corigliano.

Board members understood that the lot was small, but it met the minimum area requirement of the proposed TR-C3 district. They felt the applicant was already maximizing the building envelope available and wanted to go even further by having a third story. Board members pointed out that because this would be a new building, they have opportunity to design whatever they want while being mindful of the setbacks. They also felt that the third story deck would provide more occupiable space than what would be available under the pitched roof, going against the intent of the code and, again, trying to go beyond the space available on the lot. The proposed house is already a nice size without the third story variance, which has a porch and a second story deck, and if they were to cover the proposed third story deck with a roof, they would have another nicely sized deck. They were also concerned with the privacy of neighboring properties if the third story variance were to be approved.

The motion to approve the third story variance failed (1-4) by voice vote/other.

DISCUSSION ITEMS

6. [08598](#) Communications and Announcements

Tucker announced to the board members that the applicants for 448 Jean Street are working with a new architect and have requested an extension for ZBA to review their variance request. Therefore, he allowed that the application be postponed to a meeting no later than the October 24 meeting. He also informed them that the variance application for 624 N. Lake Street has been withdrawn.

Board members requested that the meeting minutes from deferred variance requests be included in the informational packets sent to them when the applications are next discussed.

ADJOURNMENT

Meeting adjourned at 8:31 pm.