

ZONING ADMINISTRATOR'S REPORT
VARIANCE APPLICATION
5050 Lake Mendota Drive

Zoning: TR-C1

Owner: Kendall and Jessica Harrison

Technical Information:

Applicant Lot Size: 50.36' x 275' **Minimum Lot Width:** 50'

Applicant Lot Area: 10,082 sq. ft. **Minimum Lot Area:** 6,000 sq. ft.

Madison General Ordinance Section Requiring Variance: 28.042 (2)

Project Description: Petitioners request a side setback variance to construct an uncovered deck elevated over three feet above adjacent ground level.

Zoning Ordinance Requirement: 6'

Provided Setback: 3.25'

Requested Variance: 2.75'

Comments Relative to Standards:

- 1. There are conditions unique to the property of the applicant that do not apply generally to other properties in the district:**

The property has significant slope from the front lot line to the rear lakefront lot line on Lake Mendota. The property cannot be safely traversed from the street or from the house to Lake Mendota without steps or some other manipulation of grade.

The lot contains significant specimen trees, which limit potential construction/improvement on the lot.

The previous owners of the property sold a portion of their lot to expand the City of Madison's Merrill Springs Park, located to the west of the property. This sale created a narrowness in the rear half of the lot which resulted in a unique condition.

The property has a view preservation easement with the City, which preserves the owners' views to Lake Mendota across Merrill Springs Park (see attached). The easement restricts the construction of buildings and planting of trees which would block views from the property and allows the property owners to trim trees and maintain land in the easement to preserve the view across the park and to the lake.

2. The variance is not contrary to the spirit, purpose, and intent of the regulations in the zoning district and is not contrary to the public interest.

Side setbacks are intended to provide minimum buffering between structures on lots and to align structures within a common building envelope, common back yards, and generally resulting in space in between the building bulk and commonality of bulk constructed on lots.

Uncovered decks *not* more than 3 feet above adjacent ground level are allowed to fully encroach within all setbacks, including side setbacks. This encroachment is allowed because these decks do not add significant bulk above grade. Decks that are elevated over three feet above adjacent ground level are required to meet the side setback of the zoning district because they are assumed to have bulk and impacts beyond a shorter deck.

The owners are proposing a deck where two sides of the four sides of the deck are elevated over three feet from adjacent ground level. However, the property's adjacent ground level has a substantial grade change that the code does not anticipate in its distinction between decks 3' or under in height and decks over 3'. The proposed deck will not add bulk beyond the steps and terracing that are allowed and built into the grade so this variance would not be contrary to the spirit, purpose, and intent of the regulations.

The property is adjacent to a public park, Merrill Springs Park. The variance would not be contrary to the public interest because it will not have impacts beyond ordinary use of a residential property adjacent to a park. 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.

3. For an area variance, compliance with the strict letter of the ordinance would unreasonably prevent use of the property for a permitted purpose or would render compliance with the ordinance unnecessarily burdensome.

Decks and patios overlooking the lake are a common and expected feature for lakefront properties. Due to the property's substantial grade change, building a deck adjacent to ground level on all sides is not possible on much of the lot.

A patio is not required to have a side setback and could be built in this location on the terraced step without a variance. However, the owners wanted to preserve the existing oak tree on the property and consulted with an arborist (see attached letter from arborist). The arborist advised against a patio and recommended a deck because it would have a lower impact. Patios require compaction which can slowly kill a tree. With a deck, a small number of footings which avoid large roots and do not require soil compaction can be used to save the tree.

4. The alleged difficulty or hardship is created by the terms of the ordinance rather than by a person who has a present interest in the property.

The existing house was constructed in 1995 and purchased by the current owners in 2020. At that time, the retaining walls were failing, and it was not possible to safely access the lakefront (see photo). See comments #1 and #3 above.

5. The proposed variance shall not create substantial detriment to adjacent property.

The deck is incorporated within the terracing on the property and should not have any impacts on light or air to adjacent property.

6. The proposed variance shall be compatible with the character of the immediate neighborhood.

Sloped lots with patios and decks on steps and terraces are a common feature of properties in the neighborhood. The deck would be similar to others in the area and compatible with the character of the immediate neighborhood.

Other Comments:

As noted above, the petitioner has submitted a letter from a certified arborist, which discusses the impact of the tree on the lot and challenges associated with construction in proximity to the tree. The arborist visited the property and confirmed that the deck was built in accordance with his recommendations.

The owners' contractor spoke with Zoning staff prior to securing permits for the construction of the deck. The owners intended to build a deck which would be an uncovered deck not more than 3 feet above adjacent ground level. However, due to a misunderstanding about the interpretation of *adjacent ground level* and the changes to the existing grade that were constructed as part of landscaping for the project, the deck was constructed so that it is considered an uncovered deck elevated over three feet.

Staff believe that the owners acted in good faith and intended to comply with the zoning code when they built the deck. When a stop work order was issued, they immediately ceased work on the deck and spoke with staff about possible solutions. The owners have agreed to cut back the deck so it is flush with the retaining wall blocks below to meet their intent to have a deck which has no impacts beyond the impacts that a patio in the same location would have.

At its October 24, 1996 meeting, the Madison Zoning Board of Appeals approved a variance for construction of a detached garage in the front yard setback area.

Staff Recommendation: It appears standards have been met, therefore staff recommends **approval** of the variance request, subject to further testimony and new information provided during the public hearing.