

Tanya Cunningham
5646 Lake Mendota Drive
Madison, WI 53705

31 January 2020

City of Madison
Zoning Board of Appeals

Re: 5642 Lake Mendota Drive zoning variance request – File #59347

Dear ZBA members,

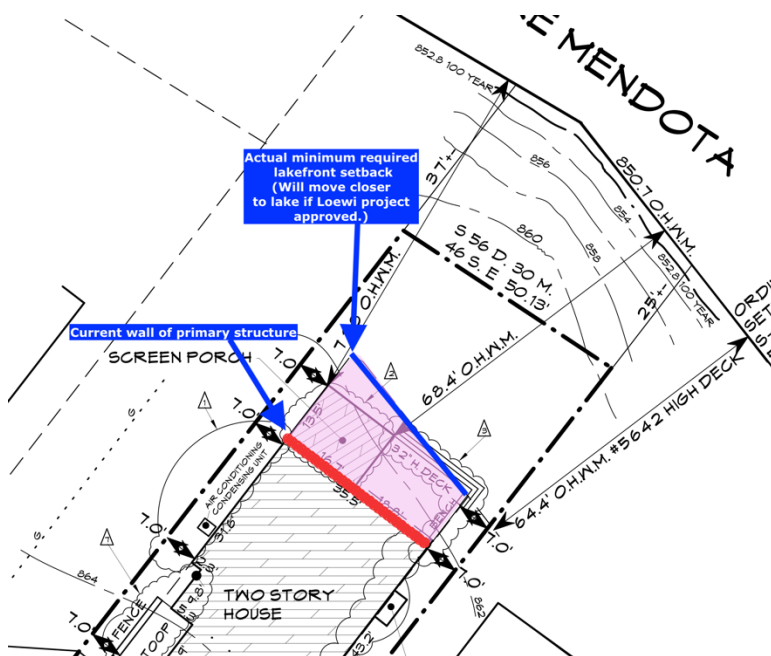
I am one of the abutting property owners to 5642 Lake Mendota Drive, my property being directly to the west, at 5646 Lake Mendota Drive.

There are several items I wish to address on the issue of this requested variance.

1. The Loewis have never presented me with any plans or detailed description of their intended project, so I have had no certainty whether I would object to their plan or not. As far as the existing, partially completed construction of a deck addition, it does not seem like something that I would object to – with the exception of any planned steps from the deck toward our house - but I reserve final disposition of my standing until I know the full and complete extent of the intended project.
2. With regard to steps, I request that there be *no steps* that extend toward our house, and their side yard. When we presented the plans for our new house construction project 2 years ago, Janet objected to planned steps from our deck to the side yard, despite the fact that they were within permitted uses, **AND** despite the fact that *they* had side steps in exactly the same location on their own deck, opposite ours. Her stated concern was that she wanted there to be room to have screening plantings to replace a large bush we'd had to remove for construction. In spite of the fact that our planned stairs were an allowed use, and not a zoning issue, she managed to get the alder (Mark Clear at that time – and shame on him!) to withhold his approval of the project until we altered our plans to remove the planned steps! This was an important detail in our plan, and traumatic for me that we were forced to remove it, for what seemed like a fairly trivial reason. Based on Janet's own reasoning, and since she felt so strongly about leaving space for large plantings between our two houses that **we** should not have steps there, I urge that the Loewis **not** have *side* steps from their deck.

3. Although I agree that visually there would be a negligible change to the lakefront setback as a result of this deck expansion, I **strongly disagree** that making an exception to the lakefront setback rules for this project is in keeping with the intent of the ordinance. My understanding is that the intent of the lakefront setback rules is not just to prevent structures from creeping ever further *toward* the shoreline but also, as new projects are constructed, to gradually ensure a *pullback from* the shoreline.

When planning our project, we quite intentionally avoided utilizing all of the area next to the lake that was available to us, opting instead to keep the lake-facing wall of the primary structure fully 20 feet further back from the lake than was required! We not only observed the intent of the lakefront setback rule, we exceeded it - in the extreme! Despite this rigor and restraint in our project planning, Janet, on numerous occasions, attempted to have the lakefront setback rules be incorrectly applied to our project, hoping to force us back by an additional 18 feet from our current setback, which is already **well behind** the required setback.



Janet has a unique association with MGO 28.138 – Lakefront Development. She (according to her own claim) was part of the group that developed that specific ordinance, and she professes to have strong attachment to that particular ordinance being painstakingly adhered to. Unfortunately, she seems to have a less-than-complete grasp of all of the details of the ordinance and their application.

While our project contributed to the intended, gradual pullback of structures from the lakeshore by keeping our construction well back of the required setback, thereby creating a larger setback requirement for future neighboring construction, the Loewi project, as proposed, would do precisely the opposite, and lessen the required lakefront

setback for future neighboring construction.

4. I urge the Board to keep in mind a similar variance request which came before this body in March of last year. File number 55012, 5454 Lake Mendota Drive, had an issue with lakefront set back with respect to a deck. There was a real similarity, in that there is an artificial alteration to the shoreline created by a boathouse (as there is for the Loewi property) such that the appearance is of a greater setback than actually exists. In the instance of the variance requested by the owner of 5454, and ***in spite of a strong recommendation from Matt Tucker to approve***, the board denied that request, with the minutes stating,

“The Board cautioned against setting a precedent of building a structure and then adding a non-complaint [sic] deck (or other structure) to create a hardship.”

Isn't that precisely what has occurred here? Build it, illegally, then claim a hardship because it's not allowed under current rules?

5. In reviewing the variance application, and the Standards for Variance:

(1) There are conditions unique to the property of the applicant that do not apply generally to other properties in the district. – *(Applicant's answer: Part of the deck is at grade, part elevated, due to a walkout basement below. Due to the meandering shoreline, this appears further from the lake (it's not as deep) as the other ½ of the deck, but is technically closer.)*

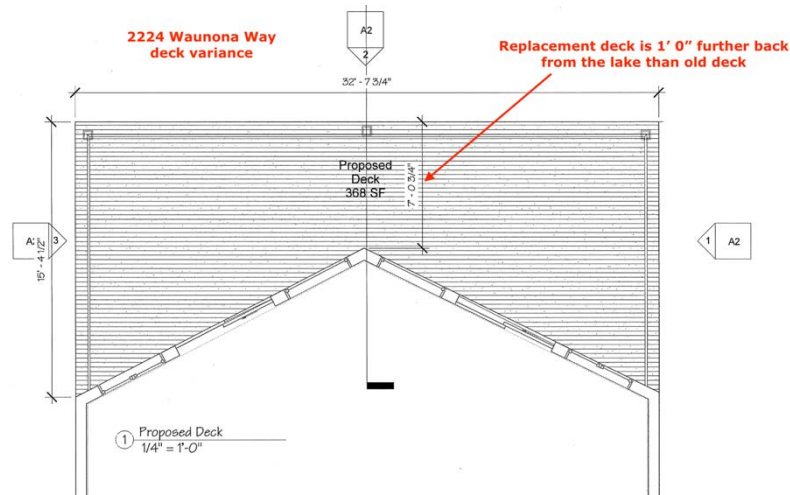
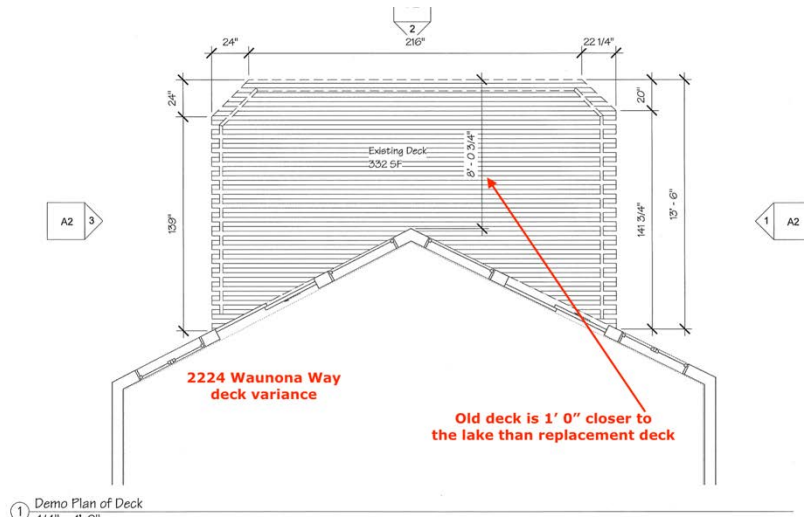
The issue of their walkout basement (a convenience for them, and part of the house construction) is hardly a “unique condition”, and further, it's a condition created by the homebuilder by choice. The fact that the shoreline meanders is also demonstrably not unique, as the shoreline is highly irregular and variable throughout the entire neighborhood. If that is to be taken as justification for reducing the required lakefront setback, then such variances should be granted to every household on the lake in this neighborhood. I'm not sure what is meant by “technically closer”? The deck as it exists, and as they propose to alter it, ***is closer*** to the lake than allowed by current setback rules – as measured by a certified survey.

(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. – *(Applicant's answer: There is no public access to this lot. There is a precedent on Lake Monona where a meandering shoreline created a similar problem, which was approved. We will remain at or behind our neighbor's deck and screened porch.)*

“There is no public access to this lot” is a meaningless and completely spurious argument. There is no public access to *any* private lot on the lake. At issue is not public

access, but public interest in protecting and maintaining an open shoreline. As stated in the ZBA decision to **deny a variance** for a deck at 5454 Lake Mendota Drive,

“The lakefront setback is meant to also buffer private houses from the public lake, which would be directly impacted with this proposal.”



In the case of the referenced project on Lake Monona (2224 Waunona Way), the replacement deck was actually *further back from the lake* than the old deck. In that instance, they were **increasing** their lakefront setback, not only for themselves, but for all neighboring future lakefront construction projects. In contrast, the Loewi project **decreases** their lakefront setback, and therefore also decreases the required setback for *all future neighboring construction projects*. Thus, I do not, in fact, see how this proposal is in keeping with **“the spirit, purpose, and intent of the regulation”**.

(3) For an area (setbacks, etc) 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. *(Applicant's response: We are removing two unnecessary sets of stairs, making the bulk of the deck smaller. The ½ of the deck we would like to increase is narrow, and will remain less deep than the other ½.)*

Where to begin on this (non)answer? Clearly, permitted use of the deck has *not* been prevented, as evidenced by the fact that they have been using the deck continuously since purchasing the home in 2007. I'm uncertain just how their intent to remove stairs (or where exactly that would be) or that the deck is wider in one part and narrower in another shows that compliance with the lakefront setback rules would unreasonably prevent use (it clearly has not) or make compliance unnecessarily burdensome?

(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. *(Applicant's answer: The contractor had started construction when the error in process was pointed out (in mid-August), at which time we stopped construction. We had a permit only to upgrade, not add this. We are the third owners since this deck was built, so are unsure why they chose this configuration.)*

Again, not sure how the applicant's response is relevant to requirement (4)? It is true that they began construction of the deck extension without a permit, and ceased when ordered to, but is beginning construction illegally grounds for being granted a variance to continue it? It is also a fact that the deck was built by previous owners, but how that relieves the present owners of being governed by City Ordinances is unclear to me. In point of fact, isn't the perceived hardship precisely created "**by a person who has a present interest in the property**" - that being the Loewis, and their desire for a larger deck? I cannot see how the hardship is created by the ordinance, which Janet had a hand in crafting, and has been in place for well over a decade, during which time the deck has been in continuous use?

(5) The proposed variance shall not create substantial detriment to adjacent property. *(Applicant's response: We will remain further back from the closest neighbors' deck; and this will in no way affect light and air or sightlines.)*

(6) The proposed variance shall be compatible with the character of the immediate neighborhood. *(Applicant's response: This type of deck is common on lakeside properties and this addition remains further [from adjacent houses] than the other ½ of the existing deck.)*

In summary, I agree that the deck extension is unlikely to have a negative impact on me or the use and enjoyment of my property – with the exception of any side steps from the deck toward our house, to which I would object. However, the Loewis have not seen fit to share their plans with us, so without knowing the full details of their intentions, I reserve the right to object.

I am not, at this time, formally objecting to the variance, but I **do** want to make clear, for the public record, that Janet has publicly and officially stated, in her capacity as a board member of the Spring Harbor Neighborhood Association, that **she is opposed to variances ever being granted**; that she specifically participated in drafting the lakefront setback rules as they now exist, with the intent that all new construction would contribute to moving the setback further from the lake; that she has, on numerous occasions, and in many ways, made clear that she is absolutely committed to seeing setback rules adhered to and enforced; and that she is now asking to be exempted from those very rules, in such a way as to reduce lakefront setbacks in our area for all future construction projects.

Finally, when I queried the City of Madison Zoning Administrator as to the status of the project, which has been sitting, half-done, since August 2019, his response, in part, was that the Loewis felt that it was “unfair” that they should be prevented from building an addition to their deck, and that, in his opinion, they would likely receive a variance. I remain shocked that “I feel like it’s unfair” should be anything like an accepted standard for requesting or receiving a variance. I hope that argument works for me the next time I need to request a variance!!

--Tanya Cunningham