

DATE: October 19, 2022

TO: [zoning@cityofmadison.com](mailto:zoning@cityofmadison.com) Cc: [mtucker@cityofmadison.com](mailto:mtucker@cityofmadison.com), [kbannon@cityofmadison.com](mailto:kbannon@cityofmadison.com)

FROM: Chuck Gates, 5042 Lake Mendota Dr, Madison WI

RE: October 20, 2022 Zoning Board of Appeals Meeting  
Item 3 74187 5050 Lake Mendota Dr. Variance Request

Dear Members of the City of Madison Zoning Board of Appeals,

I do not support a variance. It would be contrary to the spirit, purpose, and intent of the zoning regulations, contrary to the public interest and without unique conditions justify it. The Harrisons have a varied lot with great views of the lake from anywhere on their property and many outdoor spaces to enjoy that view and ambiance, but I believe, they made an unfortunate choice for this project with regards to specific location and the overall magnitude and scope. Below are my comments addressing the 6 variance standards.

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

The applicants described the steepness of their lot as unique but it's not as steep or unique as described and doesn't create a specific hardship with regard to deck setbacks. The land immediately adjacent to the west has the same gradient from house to lake as most of the Harrison lot and has only one small retaining wall right behind the canoe rack, and no need for any from a stabilization. The prior owners did add some DIY terracing but the ground was stable with minimal terracing and had good vegetative cover for the nearly 30 years prior that I had witnessed firsthand.

**Please see photo 1 view from the lake in support, showing elevations up the hill.**

Yes the lot, and neighbor's lot, have significant specimen Oak trees but there were other location options that could have been chosen, such as on the 50 foot wide portion above that would have been far less damaging to the trees than the chosen site. More on the trees in Standard #3.

City staff are not correct when they write that the previous owner's selling of lakefront property that expanded Merrill Springs Park caused the narrowness of the portion of this lot. The narrow strip should not be considered a unique feature for purposes of this variance as I will explain Standard #2.

**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**

The neighborhood is zoned TR-C1, which requires 50-foot-wide lots. What is now the Harrison's lot was a 50-foot-wide lot did not have lakefront access until 2008. The previous owners also owned the lakefront lot below as well. In 2008 those owners, then living at 5050 LMD, decided to sell their lakefront property but carve out a narrow strip that would give them the minimal lake access they wanted, and would maximize value of the lakefront property they wanted to sell. They first considered a 20-foot strip and discussed it with us verbally and in email. We, thinking substandard width lots weren't consistent with the spirit of the intent of the zoning standards or the character of the neighborhood, encouraged them to widen the strip. They decided on 26 feet. Note the property was for sale for years thereafter prior to the City making an offer in 2011. No hardship was created by the sale to the City.

I consider the ability to split off this narrow strip by the previous owners to be a loophole in the zoning ordinance. The loophole is minimum lot width is only measured at the road, in this case 50 feet minimum required by zoning ordinance. There are other examples where special rules apply to lakefront property, including lakefront setbacks, and I believe minimum width at the lake should be added as a criteria. Granting a variance and allowing a larger structure than laws allow on such a narrow strip intended only for lake access and created to maximize sale value for someone is contrary to the spirit, purpose and intent of the regulations.

The stated purpose(s) of zoning ordinances are “to protect and encourage throughout the city, essential characteristics of mature residential areas.” **Please refer again photo #1.** To me this very prominent deck with railing that will be approximately nine feet total height higher than the adjacent property on a narrow strip of land intended to merely give lake access specifically goes against “preserving the essential character of (this) mature residential area. zoned TR-C1.

A prominent hard structure with deck that does not meet ordinance requirements is also contrary to the public interest, which is the last requirement stated in standard #2. It’s not in the public interest to go beyond existing rules and add to density and hard structure on the lakeshore, especially adjacent to a park. Rather we should aim to preserve as much natural habitat as possible within reasonable limits, so we all can enjoy our lakes and protect our environment.

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

I’ve already pointed out the Harrison’s had many other options for compliant deck placement and the narrow strip down to the lake was a poor choice for this size of project. The applicant proposed, under this criteria, that it would be burdensome at this point to make changes because their yard above is complete. I will explain via the next criteria how that situation is entirely of their own making but note here they can easily bring the wooden deck into compliance simply by reducing the width.

The second argument made was they could simply remove the deck, turn it into a patio, and comply, that they say is a not viable option because they want to protect the adjacent mature oak tree. I’ve read their arborist recommendations and the description of their desire and actions to protect their tree. Seeing as they made trees a point, I think you should be aware of the major discrepancy between stated intentions and what actually transpired to their – and neighbors - trees. The choice of site, scope of project and construction methods resulted in a worst-case scenario for the trees.

**Please refer photos # 2, 3, and 4.**

Note deep excavations right next to the trees and across the entire lot, soil removal, roots cut and heavy equipment compacting soil. And all during Oak Wilt season. It was impossible to make any meaningful mitigation measures with this project in this specific location, and especially using heavy equipment as they did. Please see photo #4 that explains the most damage is to the neighbors’ tree with three heavy rock terraces adjacent. What’s not shown in any of these photos is the much larger backhoe that ran up and down that hill for much of the summer over excavated areas with no hard protection from compaction.

Its obvious at this point that a deck is a less onerous solution than patio pavers, but again they can easily just shorten the width of the deck to comply.

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

Here is the timeline of events based on information obtained about the permit issuance. All but the first and last entry refer to an email string between Trent Shultz, Zoning Inspector (City Staff), and Adam Graap of Corning Graap and Associates (CG), the Harrison's landscape designer, email attached.

\*July 1 - Holes for the foundation were drilled on July 1<sup>st</sup> (Time stamp on photos)

\*July 12 CG emails project plans to City Staff

\*July 14 City staff replies to CG and asks for an updated plan showing side yard setbacks (and more)

\*July 18 CG emailed a (presumably) updated plan.

**\*July 20 City Staff replies and states: "I have reviewed the site plan with other Zoning staff, and we need clarification on what portions of the deck are above three feet from grade. Based on the site plan provided, the deck appears to be encroaching into the 6' side yard setback".**

**\*July 20 CG replies " As I stated on the phone, no portion of the proposed deck will be greater than 3 feet above grade below"**

\*July 20 permit was issued by City Staff (determined by date on the permit).

Note the foundations were at least drilled and formed 20 days before the permit was granted. Then the person representing the Harrison's in the permitting process, (CG) created "hardship" and "need" for a variance by giving incorrect written information that height of the deck would be no more than 3 feet above grade to the City Staff, who had explicitly called out the 6' setback requirement based on their interpretation of plans submitted. It is obvious that the permit would not have been issued then if an accurate representation was made, and I'm at a loss to understand how the designer of the project could have stated no portion of the deck would be more than 3' off the ground.

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

The damage is already done, but there has been very substantial impact on the adjacent neighbor's trees that we also enjoy. As the neighbor in the house closest to the structure, I have made it clear so far, I think the project is over the top and out of place and request no structures beyond what is supported by the ordinances should be allowed. Public park land is also immediately adjacent. So as a citizen and park user I think the prominent stone structure with deck reduces the natural character of the park, and its proximity and height give the inappropriate feel of an observation post from a park user's perspective, so again, no variance from what is allowed by ordinance should be approved.

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

There are no similar structures in the immediate area with this level of impact. Please again refer to photo #1 and ask what looks out of character in this wooded neighborhood. To me it is the massive wall and deck rising from the landscape, vs blending in.

In conclusion, there are no special hardships or unique circumstances justifying a variance, and the public interest is served by limiting the size of the deck to what is allowed without a variance. The city performed all due diligence in the permitting process and lacking any other evidence to the contrary, applicants should not be rewarded for misrepresentations made.

Photo #1 Lakeside view.



**Photo #2 Harrison's tree and foundation auger taken July 1, 20 days before the permit was issued. Note amount of soil removed and heavy equipment on subsoil.**



**Photo #3 close up showing the depth of the digging immediately adjacent to the tree.**



**Photo #4 Neighbor's tree down slope of the deck, visible in Photo #2, and before two additional large stone terraces were added right next to this tree using heavy equipment. Note major excavation of topsoil with roots removed, deep roots cut, later with more stone terraces to be added, then filled and compacted. What has been done to this tree is exactly what the Arborist said would kill the Harrison's tree over time – heavy stonework and compaction immediately adjacent to the tree.**



**From:** Adam Graap  
**To:** [Schultz, Trent](#)  
**Subject:** Re: Harrison Job - 5050 Lake Mendota Drive  
**Date:** Wednesday, July 20, 2022 2:35:44 PM  
**Attachments:** [image001.jpg](#)  
[image001.jpg](#)

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Caution: This email was sent from an external source. Avoid unknown links and attachments.

Trent

Thanks for taking my call this afternoon.

As I stated on the phone, no portion of the proposed deck will be greater than 3 feet above grade below.

Thanks again,

Adam Graap

On Jul 20, 2022, at 1:11 PM, Schultz, Trent wrote:

Hi Adam,

Thanks for providing the updates. I have reviewed the site plan with other Zoning staff and we need clarification on what portions of the deck are above three feet from grade. Based on the site plan provided, the deck appears to be encroaching into the 6' side yard setback. However, any portion of the deck that is below three feet from grade can go right up to the side property line or into the lakefront yard.

Regards,



**Trent Schultz** (he/him)  
Zoning Inspector  
Building Inspection Division  
City of Madison  
215 Martin Luther King Jr Blvd, Suite 017  
Madison, WI 53703-2984  
(608) 266-5917

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**From:** Adam Graap  
**Sent:** Monday, July 18, 2022 8:16 AM  
**To:** Schultz, Trent  
**Subject:** RE: Harrison Job - 5050 Lake Mendota Drive

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Hi Trent,

Please find attached copies of the plan for the Harrison residence at 5050 Lake Mendota Dr.

The plan labeled Harrison Project is set to print on a 24x36 sheet at 1/8 scale. The plan labeled Harrison Project 20 Scale is set to print on a 11x17 sheet at 20 scale.

Thank you,  
Adam Graap

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**From:** Schultz, Trent

**Sent:** Thursday, July 14, 2022 12:07 PM

**To:** Adam Graap

**Subject:** RE: Harrison Job - 5050 Lake Mendota Drive

Hi Adam,

Thank you for sending me a site plan for the proposed deck at 5050 Lake Mendota Dr. Would you be able provide an updated site plan showing the setbacks of the deck, towards the side property lines and the ordinary high water mark? With an updated site plan we will also need a revised scale (no unit of measurement is provided) and confirmation that the deck meets the lakefront yard setback requirements per [Section 28.138](#).

Let me know if you have any questions.

Regards,



**Trent Schultz** (he/him)

Zoning Inspector

Building Inspection Division

City of Madison

215 Martin Luther King Jr Blvd, Suite 017

Madison, WI 53703-2984

(608) 266-5917

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**From:** Adam Graap

**Sent:** Tuesday, July 12, 2022 7:59 AM

**To:** Schultz, Trent <[TWSchultz@cityofmadison.com](mailto:TWSchultz@cityofmadison.com)>

**Subject:** Harrison Job - 5050 Lake Mendota Drive

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Good Morning Trent,

John Kohl asked me to send you a copy of the plan for the Harrison project at 5050 Lake Mendota Dr.. Please find it attached.

I am happy to answer any questions either by email or phone.

Thank you,

Adam Graap

Corning, Graap & Associates

C: 608.577.9633

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