

ZONING ADMINISTRATOR'S REPORT
VARIANCE APPLICATION
2012 Fisher Street

Zoning: TR-V1

Owner: Salli Martyniak

Technical Information:

Applicant Lot Size: Irregular, double-frontage

Minimum Lot Width: 50'

Applicant Lot Area: 17,424 sq. ft.

Minimum Lot Area: 6,000 sq. ft.

Madison General Ordinance Section Requiring Variance: 28.142 (11) (a) 5

Project Description: Construct ornamental fence in front yard area of property atop an existing retaining wall, which measures 8'± tall at its highest point.

Zoning Ordinance Requirement: 6' Maximum Height

Provided fence height: 8'

Requested Variance: 2'

Comments Relative to Standards:

1. Conditions unique to the property: The subject property is a double-frontage lot that shares its parking and loading with the adjacent Boys and Girls Club facility (a planned multi-use site). The existing (and required) playground facility for the daycare is built upon a retaining wall at the street sidewalk, to create a level grade in the front yard area for children using the playground.
2. Zoning district's purpose and intent: The requested regulations to be varied are the *ornamental fencing height restriction in the front yard setback area*. In consideration of this request, the *ornamental fencing height restriction in the front yard setback area* is intended to allow fences of a reasonable height for whatever purpose the occupant/user decides, and to ensure that an overly-tall fence is not placed in a front yard area, creating a negative aesthetic condition on the subject property or surrounding properties. Playground facilities for daycares such as this must be fenced, typically with a 4'-6' tall solid or ornamental fence. This fence replaces an existing noncompliant fence in regard to design, is generally consistent with the style and type of fencing found at a contemporary day care facility, and would have little impact above/beyond what would otherwise be allowed.

Being nearly fully see-through, the proposed fence will not create any safety hazard for pedestrians on the sidewalk.

3. Aspects of the request making compliance with the zoning code burdensome: Most places with daycare facilities locate the playground areas outside of front yards, but since this is an existing facility with limited opportunities for the required outdoor recreation, the front yard area is necessary for the playground location, while maintaining necessary existing access and shared parking with the neighboring site. It would be a significant effort and change to knock the retaining wall down to level grade and the created slope would affect children using the playground. Also, setting the fence 4' back from the retaining wall would take up about ¼ of the area available for the playground, approximately 400 sq. ft.
4. Difficulty/hardship: See comments 1 and 3, and commentary below.
5. The proposed variance shall not create substantial detriment to adjacent property: The fence would be a design improvement and a complement to the recently-renovated facility, and will have little adverse impact above/beyond what would otherwise be allowed.
6. Characteristics of the neighborhood: The general area is characterized by a variety of residential uses and some institutional uses. Some of these uses have fencing, but few meet the design requirements for vinyl coated chain-link style fencing. Some fences are 6' tall. This facility is quite different than other uses in the area, so having a taller fence would not be out of character for this use.

Other Comments: The property has been used as a daycare facility dating back to 1969. The use was recently re-established after it had sat vacant for a period of time exceeding one year. The proposal is primarily based upon the need to upgrade and improve the historic fencing, both for aesthetics and security for the site, which is the last part of the significant renovation that the facility has undergone over the past year. At its June 8, 2015 meeting, the Plan Commission approved a Conditional Use request for a daycare facility at the subject property.

Daycare facilities must provide 75 sq. ft. of playground space for every child 2 years of age or older and 40 sq. ft. of play space for each child under age 2, using the space at any given time. The total amount of provided play space shall not be less than 1/3 the amount required for the number of children licensed for the facility. This facility is licensed to have 110 children of varying ages. The site appears to provide about 3,000 sq. ft. of play space, enough for 40 children over age 2 to play at any given time. Any loss of the space, such as the loss resulting from shifting the fence back 4 feet from the retaining wall (about 400 sq. ft.), creates capacity problems for the facility.

The proposed fence meets the definition of a “fence, ornamental”, which follows:

Fence, Ornamental. A fence that is no more than fifty percent (50%) opaque.

The measurement of height for a fence placed on a retaining wall uses the “average grade” adjacent to the fence, to the top of the fence. In this case, the average grade of the sidewalk (0') and the grade at the elevated playground and the (+4') will result in the measured increase of 2' to the actual height of the fence itself (6').

The balance of new fencing located outside the side and rear yard areas does not require a zoning variance, because ornamental fencing does not have a height restriction in these areas.

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.