

ZONING ADMINISTRATOR'S REPORT
VARIANCE APPLICATION
2039 Winnebago Street

Zoning: TSS

Owner: Richard Gehrke

Technical Information:

Applicant Lot Size: Irregular, 44' frontage on Winnebago **Minimum Lot Width:** None

Applicant Lot Area: 9,103 sq. ft.

Minimum Lot Area: None

Madison General Ordinance Section Requiring Variance: 28.065(3)

Project Description: Two-story mixed-use building. Construct pergola additions/detached pergolas over sidewalk on right side of building. Because the neighboring property has windows within 6' of the side lot line, a side setback is required for this lot.

Zoning Ordinance Requirement: 4.4'

Provided Setback: 0'

Requested Variance: **4.4'**

Comments Relative to Standards:

1. Conditions unique to the property: The subject property is irregular in shape but otherwise developed in a fairly common pattern to other similarly zoned property developed around a similar time period. There does not appear to be a unique condition limiting development at this property, as compared to other similar properties.
2. Zoning district's purpose and intent: The regulation being requested to be varied is the *side yard setback*. In consideration of this request, the side yard setback is intended to provide buffering between developments, generally resulting in a space between bulk placed on lots, to mitigate potential adverse impact, particularly when adjunct lots have buildings with windows within 6' of a common property line. The proposed pergolas do not necessarily result in development that is consistent with the purpose and intent of the TSS district, however, there does not appear to be a case made as to why the pergolas should be allowed.
3. Aspects of the request making compliance with the zoning code burdensome: In this case, the pergolas provide an aesthetic improvement to the site, which in turn violates the zoning code requirements. This case is primarily based upon the desire for the pergolas to remain, which were initially built without approvals.

4. Difficulty/hardship: See comments for standards #1 and #3. There does not appear to be a hardship case provided.
5. The proposed variance shall not create substantial detriment to adjacent property: The pergolas introduce limited adverse impact to the adjacent property (except that they currently span the property line, a condition that must be rectified if the pergolas are to remain). The pergolas are generally open and airy, they are not located alongside where existing building is placed on the neighboring lot, so light and air impacts do not appear to be adversely impacted. However, future development on the neighboring lot could be adversely impacted or limited if the pergolas are approved.
6. Characteristics of the neighborhood: The general area is characterized by a variety of different development patterns for property. Some properties appear to have pergolas, where the code allows.

Other Comments: As noted above, the pergolas appear to be constructed across the property line, both the eave overhangs and the supporting posts. If approved, the pergolas must be reconstructed on the petitioners' property. The pergolas are also constructed as integral with existing fences, which may need to be modified if required by code, or may remain if allowed by the neighboring property owner.

At its March 4, 2004 meeting, the Madison Zoning Board of Appeals approved lot area and Useable Open Space variances to convert office space into dwelling units at the subject property.

At its June 23, 2005 meeting, the Madison Zoning Board of Appeals approved a Useable Open Space variance and a side yard setback variance to construct a new dwelling unit and elevated deck at the subject property. The deck was not constructed.

At its May 14, 2009 meeting, the Madison Zoning Board of Appeals approved a Useable Open Space variance and a side yard setback variance to construct a new dwelling unit and re-approved the 2005 variance for the elevated deck at the subject property. The deck was not constructed.

There appears to be a "light and air easement" granted between the subject property and the adjacent office building on the side where the variance is being requested, however, a copy of that easement and what it allows has not been submitted with this request. Staff has requested this document, but it has not been provided by the petitioner. This easement could have some affect on the variance request.

Staff Recommendation: The burden of meeting the standards is placed upon the applicant, who must demonstrate satisfaction of all the standards for variance approval. It is not clear that this burden has been met. This request appears to be primarily based on the desire of the applicant to keep a structure constructed without approvals or permits, rather than a definable hardship. Staff recommends that the Zoning Board find that the variance standards are not met and **deny** the requested variance as submitted, subject to further testimony and new information provided during the public hearing.