

ZONING ADMINISTRATOR'S REPORT
VARIANCE APPLICATION
402 Gammon Place

Zoning: CC, WP-16

Owner: Gammon Place LLC

Technical Information:

Applicant Lot Size: 339' long x 315.5' wide

Applicant Lot Area: 106,293 square feet

Minimum Lot Width: No minimum

Minimum Lot Area: No minimum lot area for non-residential uses; 750 square feet per dwelling unit for residential uses

Madison General Ordinance Section Requiring Variance: 28.104(7), 28.104(8)

Project Description: Applicant requests variances from the site standards for buildings and the site standards for automobile infrastructure in the Transit Oriented Development (TOD) Overlay District for a new construction one-story non-residential principal building with a drive-through window, a drive-through drive, and automobile parking.

Zoning code changes to establish the Transit Oriented Development Overlay District were enacted in January 2023. The overlay is located along high frequency transit lines throughout Madison and requires site and building design which is intended to prioritize transit riders and pedestrians. The overlay also requires more efficient use of land to leverage the City's investment in transit and to reduce vehicle miles traveled.

In the overlay, automobile infrastructure "shall not be located between the primary street and the plane of the primary street-facing façade..." (MGO 28.104 (8)(b)1.). Automobile infrastructure is defined as "An area on a lot used for the storage, parking, circulation, maneuvering or outdoor servicing of motor vehicles including, but not limited to, motor vehicle parking, loading, drives, drive aisles, driveways, backing areas, drive-through windows and drives, gas pumps, gas station canopies, car wash vacuum stalls and electric vehicle charging facilities." (MGO 28.211)

The overlay also requires that a new principal building be at least two stories for a minimum of 75% of the building footprint. Story is defined in the zoning code as:

“that portion of a building, other than a basement or mezzanine, included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it...” (MGO 28.211)

The overlay has a maximum principal building setback of 20 feet and a maximum principal building entrance setback of 20 feet.

In May of 2024, Common Council passed a code change which added a requirement that drive-through windows to be located fully under an occupiable conditioned story when they are in the TOD Overlay.

When a new principal building is proposed, automobile infrastructure and the building are required to comply with the provisions of the TOD Overlay.

Variances are requested for:

1) Maximum Building Setback

Zoning Ordinance Requirement: 20’

Provided Setback: 44.1’

Requested Variance: 24.1’

2) Maximum Principal Building Entrance Setback

Zoning Ordinance Requirement: 20’

Provided Setback: 44.1’

Requested Variance: 24.1’

3) Minimum Number of Stories

Zoning Ordinance Requirement: 2 stories

Provided: 1 story

Requested Variance: 1 story

4) Drive-Through Drive Located Between the Building and the Street

5) Drive-Through Not Located Under an Occupiable Conditioned Story

Comments Relative to Standards:

- 1. Conditions unique to the property:** The property is a typical lot with no significant slope or grade changes. There is an existing three-story office building with a drive-through window which is proposed to remain. The lot is large with excess surface automobile parking, which appears to present many options for developing the site further. There do not appear to be any conditions unique to the property.
- 2. Zoning district's purpose and intent:** The purpose and intent of the automobile infrastructure location standards is to prioritize transit rider and pedestrian access to establishments located within close proximity to high frequency transit. The overlay requires site and building design which would allow pedestrians to enter an establishment without having to cross automobile infrastructure. Having a drive-through drive between the building and the street is contrary to that purpose and intent. Building a new building beyond the maximum building setback and principal building entrance beyond the maximum setback in the code is also contrary to this purpose and intent.

The purpose of the two-story building and drive-through requirements are to maximize the use of land, requiring more efficient development that would leverage the site's superior transit access and minimize impacts on automobile traffic. Plan Commission and Common Council specifically decided that a second story would be required for buildings within the TOD Overlay, not a mezzanine or a tall first story. A tall first story or mezzanine do not meet the intent of the TOD Overlay, which is to have more efficient use of land by requiring more building stories when a new principal building is built or when there is a major expansion of a building (50% or more in building floor area). The variances for a building of less than two stories and a drive-through window not under an occupiable conditioned second are contrary to the purpose and intent.

- 3. Aspects of the request making compliance with the zoning code burdensome:** There does not appear to be a difficulty or hardship created by the terms of the ordinance for the site to be further developed. Rather, the request appears to be driven by the applicants' personal preference to build one-story building with drive-through in this location and in this way, regardless of the requirements in the TOD Overlay.
- 4. Difficulty/hardship:** The alleged difficulty or hardship appears to be created by a person who has a present interest in the property, rather than by the ordinance. There appears to be no evidence that constructing a new building on this site which complies with the ordinance would render the existing drive-through on the building to the north unusable. When a new principal building is proposed, meeting zoning code requirements is

typically more of a design challenge than a hardship, and that appears to be the case with this proposal.

- 5. The proposed variance shall not create substantial detriment to adjacent property:**
The variance could potentially create some detriment. As adjacent properties are developed in compliance with the TOD Overlay, creating more housing and employment opportunities, this new development prioritizes vehicles, making it more difficult for transit riders and pedestrians to access services at these spaces. However, it does not appear that there will be substantial impacts to access to light and air on adjacent properties if this variance is granted.

- 6. Characteristics of the neighborhood:** The surrounding area was mostly developed in an auto-centric way under the pre-2013 zoning code. However, more recently some sites are being developed with more transit-friendly design and in keeping with the 2021 Odana Area Plan, including apartment buildings and mixed-use buildings. The TOD Overlay anticipates that over time these areas near high frequency transit will redevelop in a transit-supportive way, but those changes will take time. The variance appears to be compatible with the characteristic of how most of the immediately surrounding area was developed. However, it would not be compatible with more recent developments occurring outside of the immediately adjacent area but also within the boundaries of the Odana Area Plan.

Staff Recommendation: The burden of meeting the standards is placed upon the applicant, who needs to demonstrate satisfaction of all the standards for variance approval. It is not clear that this burden has been met. The variance requests appear to be driven by the applicant's desire as reflected in the proposed design, rather than a 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.