

ZONING ADMINISTRATOR'S REPORT
VARIANCE APPLICATION
1405 Emil Street

Zoning: IL

Owner: Lawrence Schmidt

Technical Information:

Applicant Lot Size: 100' w x 200.5' d	Minimum Lot Width: 75'
Applicant Lot Area: 20,050 sq. ft.	Minimum Lot Area: 20,000 sq. ft.

Madison General Ordinance Section Requiring Variance: 28.088

Project Description: Construct patio area at front of restaurant-tavern for outdoor seating. Lot coverage variance.

Zoning Ordinance Requirement:	75% maximum required*
Provided Lot Coverage:	95.6%
Requested Variance:	20.6% lot coverage increase

*Existing development provides 89% lot coverage

Comments Relative to Standards:

1. Conditions unique to the property: The subject property is an existing development, originally built and expanded over the years under a zoning code that did not include any lot coverage regulations, but with landscaping requirements that resulted in pervious areas on the property. The existing building and site improvements exceed the zoning code maximum lot coverage, and any change to the site would likely result in an increase to lot coverage, which would require a zoning variance. This condition is not unique to this property; there are several similar properties in the general area that appear to similarly exceed the lot coverage maximum, at varying levels. Thus the property happens to have (had) a landscaped area at the front which counts against lot coverage limitations, which would be significantly reduced with approval of the variance request.
2. Zoning district's purpose and intent: The regulation being requested to be varied is the *maximum lot coverage limitation*. In consideration of this request, the intent of the *maximum lot coverage limitation* is to ensure sites are not over-developed in regard to impervious surfaces, primarily to address stormwater runoff and also allow for unimproved recreational or landscaped areas on-site and to potentially limit the heat island effect of sites with a high percentage of pervious developed area. This proposed project also offers competing interests in the zoning code: the provision of desired outdoor recreation amenities vs. lot coverage

limitations. The zoning code does, however, allow paving/recreation amenities to be constricted that also are pervious.

The petitioner desires to obtain a variance for a new impervious patio, and offset the lot coverage increase through addressing stormwater runoff, by creating infiltration areas along the front and sides of the new patio. The system is designed to adequately handle the new impervious surface created by the impervious patio and also handle some amount of water coming off the existing building roof (unclear how much). This system apparently will improve the stormwater quality condition above what exists today. The zoning code does not require the improvement to stormwater quality, this is an apparent byproduct of the system being proposed, which may have been required with the project anyway. Stormwater requirements are regulated under a different section of Madison General Ordinance than the zoning code.

3. Aspects of the request making compliance with the zoning code burdensome: The project could be designed with pervious paving, decking, or a green roof, which would comply with the zoning code requirements and not necessitate a zoning variance.
4. Difficulty/hardship: The site exists with a lot coverage condition that exceeds the maximum requirement. Almost any construction project would require addressing the lot coverage condition. As noted above, the patio could be constructed as a wood deck, with pervious pavers and associated sub-base that provides infiltration, or incorporate a green roof. Other parts of the site could also be modified to offset the increase in lot coverage. This case is primarily based upon the fact the owner built the patio before the necessary approvals were completed and in direct conflict with a condition of approval on the Conditional Use, which results in a self-created hardship.
5. The proposed variance shall not create substantial detriment to adjacent property: The proposed modifications, generally designed at-grade, part of a one-story building, does not appear to have any discernible adverse impact on the subject property or adjacent properties.
6. Characteristics of the neighborhood: The general area is characterized by a mix of different uses, including commercial/retail uses and industrial/employment uses. The proposed patio area creates a useable and functional outdoor eating space, accessible and accessory to users of the facility, which is permissible as a Conditional Use and common for similar uses in the City.

Other Comments: At its August 5th 2014 meeting, the Madison Plan Commission approved a Conditional Use for the outdoor eating/drinking area at the subject property. At this meeting, the following condition was applied to the approval:

12. Provide lot coverage calculations for existing development and proposed expansion. NOTE: if existing development exceeds 75% lot coverage, pervious paving or wood decking must be used for new outdoor seating area, as this does not count toward an increase in lot coverage.

This condition was affirmed by a letter to the applicant immediately after the Plan Commission approval, and had also been discussed with the applicant in advance of the hearing. The letter

also includes clear instructions as to the next steps to complete the Conditional Use approval process. On October 28th 2014 the required final Conditional Use plans and additional information was submitted for final staff sign-off and/or permits issuance. On a recent site visit to the property, it was noted the patio has been installed in advance of the required Conditional Use plan submission sign-off and/or building permits. The patio as installed currently is not pervious; it appears to be a single sheet of concrete.

This request basically involves the desire of the applicant to obtain a zoning variance to allow for legality of construction which should not have been undertaken, had they followed the City's laws and process. Staff believes this was made clear to the applicant, and it is the property owner's responsibility to take responsibility for the illegal construction and correct the problem in compliance with code.

It appears as though there are opportunities to create area on site that would deduct from the lot coverage calculation. There appears to be several areas where paving could be replaced with landscaping, green roofs could be introduced, or impervious paving could be replaced with pervious paving.

As the variance proposed by the applicant involves an alternative water drainage and filtration method, any potential approval of this variance should include the follow condition:

1. The drainage plan, including infiltration plan and associated conditions, covenant and restrictions for maintenance of stormwater measures shall be reviewed and approved by the City Engineering Department.

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. Staff recommends that the Zoning Board find that the variance standards are not met and **refer** the request for more study and information relative to the standards of approval, or **deny** the requested variance as submitted, subject to further testimony and new information provided during the public hearing.