

ZONING ADMINISTRATOR'S REPORT
VARIANCE APPLICATION
202 - 204 N Brearly St.

Zoning: TR-V1

Owner: Cindy Sullivan and Alan Mross

Technical Information:

Lot Size/shape: 33' x 66'

Minimum Lot Width: 50'

Lot Area: 2,178 sq. ft.

Minimum Lot Area: 6,000 sq. ft.

Madison General Ordinance Section Requiring Variance: 28.147(2) ; 28.132(1)

Project Description: Setback variances for additions/alterations to a three-story three-family dwelling, as follows:

Front yard, elevated deck at third-level

Zoning Ordinance Requirement: 20.0'

Provided Setback: 4.8'

Requested Variance: 16.2'

Rear yard, 2-story enclosed porch addition (replace/expand at second-level)*

Zoning Ordinance Requirement: 16.5'

Provided Setback: 7.2'

Requested Variance: 9.3'

Rear yard, third-level elevated deck (replace/expand)**

Zoning Ordinance Requirement*: 10.5'

Provided Setback: 5.2'±'

Requested Variance: 5.3'

Rear yard, first-level elevated deck

Zoning Ordinance Requirement***: 10.5'

Provided Setback: 3.8'

Requested Variance: 6.7'

* Per the petitioner, the rear porches has been converted into conditioned living space at some point in time, and the requested project desires to re-establish these porches as unheated amenity spaces.

** With reconstruction, the elevated deck has been expanded toward E. Dayton Street and also expanded (cantilevered) a few more feet into the rear yard setback area.

***Sec 28.132(1) allows for a 6' projection into the rear yard setback for an elevated deck that is open to the sky.

Comments Relative to Standards:

1. Conditions unique to the property: The lot and building exist on a substandard lot, about $\frac{2}{3}$ the minimum lot width and about $\frac{1}{3}$ the minimum lot area. The subject property is one of four development sites that were split from a single original 66'w x 132'd platted lot at some point in time in the past. The existing structure is located in front and rear setback areas. The pre-existing rear porch and third-level deck was most likely in need of replacement/reconstruction, and could not be reconstructed without a zoning variance.
2. Zoning district's purpose and intent: The requested regulation to be varied is the *encroachment into setbacks, front and rear*.

Regarding impacts on the public interest, any addition into a setback that also brings bulk, mass and use towards the street could potentially negatively impact the public interest, particularly for users of the street and sidewalk, which will have separation reduced between the features and the street/sidewalk by approval of a zoning variance.

Front yard, elevated deck at third-level

In consideration of this request, the prohibition on encroachment into front setbacks for elevated decks is intended to keep these types of open recreation space placed above-grade out of the setback, to minimize use and bulk conflicts on adjacent property. This request would allow for a front encroachment that is not common in the immediate area and would benefit the property owner and occupants of the property exclusively. Elevated decks are not permitted encroachments into front yards. This does appear to be in conflict with the regulations of the district.

Rear yard two-story enclosed porch replacement/expansion.

In consideration of this request, the prohibition on encroachment into rear setbacks for building additions is intended to minimize use and bulk conflicts on adjacent property. This request would allow for a rear encroachment, which is fairly common as rear porches often project into setbacks on corner lots and need replacement because they tend to deteriorate more quickly than the heated portion of a structure. Replacing an existing porch that appears to be original to the property maintains an existing condition, and there is no practical way to have the porches without a variance. Note: the second-level of the porch includes and expansion of the space toward E. Dayton Street.

Rear elevated deck at third-level

In consideration of this request, the prohibition on encroachment into rear setbacks for elevated decks is intended to minimize use and bulk conflicts on adjacent property. This

request would allow for a rear encroachment which is fairly common, as rear elevated decks often project into setbacks and need replacement because they tend to deteriorate more quickly than the heated portion of a structure. Replacing an existing elevated deck that appears to be original to the property maintains an existing condition, and there is no practical way to have the porches without a variance. Note: the third-level of the deck replacement includes an expansion of the deck area toward E. Dayton Street and also expands (cantilevers) the deck into the rear setback a few feet more than what pre-existed.

Rear elevated deck at first-level

In consideration of this request, the prohibition on encroachment into rear setbacks for elevated decks is intended to minimize use and bulk conflicts on adjacent property. This request involves a new rear door at the rear of the first-level porch, which will require an entrance platform and steps to grade. This feature basically functions as an entrance platform, but is larger than what code would allow or is necessary. This does appear in conflict with the regulations of the district.

3. Aspects of the request making compliance with the zoning code burdensome: About the only challenge for this project would be the reconstruction of the rear porches and elevated deck at the third level, in their pre-existing location, without any expansion. The balance of the project appears to be either simply not permissible (front elevated deck and rear porch expansion and deck) or there are alternatives available that would require less variance (e.g. replace as was pre-existing rear porch and elevated deck, construct a smaller rear 4'd x 6'w landing with stair to grade, or at-grade deck, or move entrance to face E. Dayton Street, which would relocate landing and stair).
4. Difficulty/hardship: The home was constructed in 1900 and purchased by the current owner in December 2010. The current owner applied for zoning variances to create the third-level unit, and presumably understood that open space on the lot was limited, because they did not apply for the decks at that time. The modifications to the structure were performed by the owner without the benefit of obtaining the required building permits. Had permits been applied for, the zoning violations would have been identified before construction could commence.
5. The proposed variance shall not create substantial detriment to adjacent property: The projects do expand the use/bulk of the property into setbacks, which can further adversely impact adjacent property, given the small lot and close proximity of the structure to the lot lines and adjacent property.
6. Characteristics of the neighborhood: The general area is characterized by smaller structures on lots of similar size. Third-level elevated decks are not commonly found in the immediate area, but there are some other properties with decks of this type in the neighborhood. It is not clear what these properties are zoned, or how these decks relate to the zoning ordinance requirements for such decks, or if these decks are pre-existing non-conforming or zoning code-compliant decks. The two-story rear porch appears to be common for the area, but the expansion does introduce some irregularity, which is not common.

Other Comments: At its April 14, 2011 meeting, the Madison Zoning Board of Appeals approved lot area and usable open space variances to allow for the existing structure to be remodeled to add a dwelling unit at the third-level. This project was conditioned on requiring the pre-existing enclosed front porches be repaired as “open.”

In addition to reconstructing the rear porch and third-level deck, the north-side walls have been expanded to the side walls of the principal structure; the second-level of the porch was expanded to the side walls of the structure facing E. Dayton Street (cantilevered); and the third-level deck atop the second level porch has also been expanded atop the second-level porch reconstruction area. The third-level rear deck has also been cantilevered a few feet further into the rear setback area.

With this application the petitioner intends to pull-in the sides of the third-level decks (front and rear) from the edges of the overhangs (current), to match the side walls beneath. The rear cantilever expansion is to remain.

The petitioner appears to be using the rear first-level elevated deck that also serves as an entrance platform to function as a covering for new air conditioning equipment. No information has been presented to support that the equipment must be covered, and staff believes the equipment is designed to be weatherproof, and need not be covered. The zoning ordinance note exceptions for a typical a 4'd x 6'w entrance platform to be constructed in a setback area, which would require a zoning variance for rear setback, but would be a smaller structure than the proposed elevated deck. Also, the rear door, steps, and landing could be installed at the side wall of the porch facing E. Dayton Street, which likely would not require any zoning variances.

Staff Recommendation: The burden of meeting the standards is placed upon the petitioner, who needs to demonstrate satisfaction of all the standards for variance approval. It is not clear that this burden has been met. With the exception of some minimal concessions by the petitioner, these requests primarily involves obtaining permission for already-constructed work that should have been reviewed by City Plan Review, Zoning and Building Inspection, and likely the Zoning Board of Appeals before the construction commenced. This work should have been identified when the previous variance request was submitted to add the third unit, which involved an architect preparing plans for the petitioner.

Front elevated deck: This request adds the deck to the property solely for owner and occupant benefit, and increases bulk impacts on neighboring property and the streets. 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.

Rear Porch and third-level elevated deck: The reconstruction/reestablishment of a pre-existing dilapidated two-story porch and third-level deck could be seen as a reasonable variance request, however, in its entirety, this case also involves reconstruction *and* expansion of the second-level porch and deck to the property owners and occupants' benefit, and increases bulk impacts on neighboring property and the streets. Staff recommends that the Zoning Board find that the

variance standards are not met and **refer** the case for more information relative to the standards of approval or **deny** the requested variances as submitted, subject to further testimony and new information provided during the public hearing.

Rear first-level elevated deck: this request adds the deck to the property solely for owner and occupant benefit, and increases bulk impacts on neighboring property. Alternatives exist that would require less variance or potentially no variance being necessary, as noted above. 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.