

ZONING ADMINISTRATOR'S REPORT
VARIANCE APPLICATION
1348-1350 Morrison Street

Zoning: TR-C4

Owner: Kyle Knox

Technical Information:

Applicant Lot Size: 33' x 95'

Minimum Lot Width: 40'

Applicant Lot Area: 3, 135 sq. ft.

Minimum Lot Area: 6,000 sq. ft. (3-unit)

Madison General Ordinance Section Requiring Variance: 28.045(2)

Project Description: Petitioner requests lot area, usable open space, lot width and setback variances to construct an attic-level third unit in the existing two-story, two family, two-unit dwelling.

Add a 3rd Unit in Attic-Level

Usable Open Space

2250 sq. ft. required

840± sq. ft. provided

1410 sq. ft. variance

Construct Roof Dormer

Side Yard Setback

3.3' required

2.2'± provided

1.1'± variance

Lot Area Per Dwelling Unit

6,000 sq. ft. required

3135 sq. ft. provided

2865 sq. ft. lot area variance

Lot Width, Three-Unit

40' required

33' provided

7' lot width variance

Comments Relative to Standards:

1. Conditions unique to the property: The lot and building exist on a substandard lot, less than minimum lot width and about half the minimum lot area for a 3-unit. The subject property is one of three 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 side setback areas. The lot size and setback encroachment is not uncommon for lots in the area.

2. Zoning district's purpose and intent:

Lot area, Lot Width, and Usable Open Space requirement, 3-Unit dwelling

In consideration of this request, these requirements have been set as the minimum requirements for the density associated with a Three-Unit Dwelling type, given the development characteristics and property use associated with this use. A three-unit use is allowed when the requirements are met. The proposed use/structure on this lot does not meet these requirements, so this request is clearly contrary to the spirit, purpose and intent of the ordinance requirements.

Side yard Setback Requirement, Dormer Addition

In consideration of this request, the side yard setback is intended to provide minimum buffering between buildings, generally resulting in space in between the building bulk constructed on lots, to mitigate potential adverse impact and to afford access to the backyard area around the side of a structure. The dormer expansion does not change the structure placement relative to the side lot line or the setback. The dormer expansion itself is not necessarily contrary to the ordinance. It is necessary to accommodate the second exit needed for the 3rd level attic unit. However, the dormer expansion is only necessary if a third-unit conversion is allowed in the attic area.

3. Aspects of the request making compliance with the zoning code burdensome: None. The property has existed for decades as a two-unit structure, and was upgraded and remodeled to include a habitable third level for the comfort and convenience of one of the units. The ordinance simply does not allow the third unit that the petitioner wishes to construct on this lot.
4. Difficulty/hardship: The home was constructed in 1910 and purchased by the current owner in July 2019. See comments #1, 2, and 3 above.
5. The proposed variance shall not create substantial detriment to adjacent property: The bulk changes associated with the dormer expansion will have a minimal impact on the adjacent home to the east. The increase of intensity of use could have an impact on a lot this size and neighboring property, being that theoretically more people will be living on the property, using what limited space is available.
6. Characteristics of the neighborhood: The general area is characterized by two-story principal structures, some with single, two unit, three unit and multiple-family (4+ unit) occupancy. The design of the proposed addition would appear common for the area.

Other Comments: Per the petitioner, the shed structure shown as “existing” on the survey and plans will be removed. This structure does not comply with code, is in very poor condition, and appears to have been placed many years ago by a previous owner without the benefit of any permits or approvals. The analysis in this report assumes this structure is to be removed.

The application refers to remodeling that occurred in 2017 by a previous owner, to repair fire damage. The permits issued at that time were for restoration of the existing structure and floor plan, no changes. The application indicates the bathroom was apparently expanded at this time.

Plumbing and heating permits were not secured. The changes identified in the application require plan review and revised building permits.

It is common to find habitable attic space in this neighborhood and similar structures of this age. The fact a third-level habitable space exists does not necessarily equate to a right to have the space be demised as an additional unit, inconsistent with bulk (and setback) requirements. This case appears to be primarily based upon a desire to increase the return on investment by the owner. This property is a market-rate income property. Adding a unit to the third floor increases the value of the property and the return on investment, by collecting increased rents or value for three units.

The existing use is nonconforming to some of the current Zoning Ordinance requirements for a two-unit, including those being requested for relief by Zoning Variance. However, some of these requirements increase in the bulk requirement between a two-unit and a three-unit.

At its August 29, 2002 meeting, the Madison Zoning Board of Appeals approved a side yard setback variance for a deck addition and a rear yard setback variance for a dormer addition. The dormer addition was associated with a remodel of the attic, to make it occupy-able as living space. This variance did not increase the intensity of land use on the property, it simply allowed for remodeling of the attic area, so it could be added to the living space of the second-floor unit.

The petitioner also argues in their application that a “need for community housing” is a reason in support of this request. The *need for community housing* is not a standard of approval for a zoning variance. Impacts of density are carefully considered when bulk and density requirements were written into the City’s Zoning Ordinance. If the code requirements are not adequate to solve a need, the requirements should change, rather than approving density changes by variance.

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. This request appears to be driven by the petitioner’s desire to add a third unit in conflict with Zoning Ordinance requirements, rather than a hardship. Staff recommends the Zoning Board find the standard of approval have not been met, and **denial** of the variance requests, subject to further testimony and new information provided during the public hearing.