



# City of Madison

City of Madison  
Madison, WI 53703  
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## Meeting Minutes - Approved ZONING BOARD OF APPEALS

*Consider: Who benefits? Who is burdened?  
Who does not have a voice at the table?  
How can policymakers mitigate unintended consequences?*

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Thursday, April 20, 2023

5:00 PM

Virtual

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### CALL TO ORDER / ROLL CALL

Ostlind called the meeting to order at 5:08 pm.

Staff Present: Matt Tucker, Nancy Kelso

Board Members Present: 4 - Peter Ostlind, Allie Berenyi, David Waugh, Craig Brown

Board Members Excused: 1 - Angela Jenkins

### APPROVAL OF MINUTES

A motion was made by Waugh to approve the March 16, 2023 minutes with modifications, seconded by Brown. The motion passed 3-0 by unanimous vote.

### PUBLIC COMMENT

1. [61712](#) Zoning Board of Appeals Public Comment Period

There were no public comments.

### DISCLOSURES AND RECUSALS

Waugh disclosed the applicant at 2122 Kendal Ave. was a former colleague, however this would not affect his participation.

### PETITION FOR VARIANCE, AREA EXCEPTIONS OR APPEALS

**2. [77100](#)**

Timothy J Schmit and Mary Ellen Schmit, owners of the property at 1724 Madison St, request rear and side yard setback variances for a detached garage for a single family house. Alder District #13.

Tucker noted the property is zoned TR-C4, located in the Vilas neighborhood on the near-west side of Madison. Tucker stated the proposal is to replace the old, existing detached garage with a new detached garage to be situated in the same area on the property. Tucker explained the submitted proposal requests variances for the distance from the principal structure, a side yard setback, and rear yard setback. Tucker further explained that zoning code requires an accessory building be placed a minimum of 3 feet from the principal structure, the proposal provides a distance of 1.25 feet resulting in a request for a 1.75 foot variance; the side yard setback requirement for a small portion of the proposed garage that projects forward of the rear wall is 6 feet, the proposal provides 1 foot, resulting in a request for a 5 foot variance; the side yard setback for the remainder of the garage is 3 feet, the proposal provides 1 foot, resulting in a request for a 2 foot variance ; the rear yard setback requirement is 3 feet, the proposal provides 1 foot, resulting in a request for a 2 foot variance. Utilizing the submitted plans and photos Tucker gave additional details of the proposal and noted a correction to the staff report, that the length of the existing structure is 17'-4".

Timothy J. Schmit, owner of the property at 1724 Madison St., stated the garage is no longer functional, it cannot accommodate a standard size vehicle and is quite dilapidated. Schmit noted that other shapes, dimensions, and locations were considered in the planning, however these options proved to be more problematic than the submitted plan. Schmit further explained that constructing a new garage of the same size would not improve on the space required for a vehicle and necessary storage area.

Schmit clarified for the Board the submitted plans are a rough draft of the proposed garage, noting they have met with the builder but have not yet signed a contract, therefore the submitted plans may be lacking some detail.

The Board questioned the management of water runoff. Schmit stated they plan to include gutters on the proposed structure and runoff will drain on to the property. Tucker further clarified the typical structural dimensions for a one car garage and how that may apply to the proposal. Additionally, Tucker explained that overhangs, eaves and gutter systems cannot extend across the lot line, therefore the gutter system will need to fit the space to properly channel the water on to the property.

The Board questioned if the applicants had considered a shed roof for the garage as a means to better manage water runoff. Schmit stated that option was considered but is not preferred. Tucker noted that the height limit for a shed roof is the same as for a gable roof, however a shed roof could add extra bulk in the side yard setback.

Ostlind closed the public hearing.

Berenyi moved to approve the requested variance with the conditions that the garage is a typical one-car residential garage with a maximum 9' side wall

height, a maximum 4/12 roof pitch, a gable roof, gutters must discharge onto the applicant's property; Brown seconded.

**Review of Standards:**

**Standard 1:** The Board determined that the odd sized lot, nearly square in shape and about half the size of an average city lot presents a condition unique to this property.

**Standard 2:** The Board found the proposal meets the intent of the ordinance, noting that the bulk of the structure is placed near to surface parking area on the adjacent property, therefore buffering between properties is maintained.

**Standard 3:** The Board determined that a code compliant garage could not be built on this lot and any attempt to comply with setback ordinances would be unnecessarily burdensome.

**Standard 4:** The Board noted that the size of the lot from when it was subdivided, along with the age of the structures creates code compliance hardship for this proposal.

**Standard 5:** The Board found the proposed garage would not present substantial detriment to the neighboring properties, noting the applicant's effort to obtain maintenance agreements with the adjacent property owners.

**Standard 6:** The Board determined the proposal to be in keeping with the character of the neighborhood

The Board voted 3-0 by unanimous to conditionally approve the requested variance.

**3. [77101](#)**

Beth Whitaker, owner of the property at 2434 Vondron Rd, requests a variance for the location of outdoor storage on an industrial property. Alder District #16.

Tucker stated the subject property is located in the southeast industrial employment area, south of E. Buckeye Road and west of Interstate 39/90. Tucker explained the proposal was initiated as a result of a zoning code enforcement case. Noting that outdoor storage is common in an IL zoned district, Tucker explained that changes to the zoning code in 2013 established outdoor storage areas cannot be located between a building and the street. Utilizing the submitted site plan, Tucker explained that due to the location of the building on the northwest corner of the lot, the only area available for outside storage is between the building and the streets. Tucker further explained that the outdoor storage area has existed in this location for many years, however the site plan was never approved nor was a zoning certificate of approval been granted. Tucker stated that prior to 2013 the location of the storage area would have been legal, the only requirement was to have the area screened so that what is being stored would not be visible from the street. Providing photos of the property both in its current state and in prior years, Tucker explained that the outdoor storage area was expanded eastward toward Vondron Rd. by approximately twenty feet sometime between 2005 and 2007. Tucker stated that although there is no legal space on the property for outdoor storage area, the purpose and intent of the ordinance is to minimize the visual impact of the storage area. Therefore zoning staff recommends the storage area be reverted to the location prior to the expansion along with an approved commercial grade screening fence up to eight feet in height to be put in place.

Beth Whitaker, owner of the property at 2434 Vondron Rd., stated she does not run a business from this location, it is an investment property with three tenants; two lease indoor space, one leases the outdoor storage space. Whitaker explained the variance proposal is submitted to establish the legality of the use of the property as it has existed for many years. Whitaker stated that with resolving the code enforcement case by installing a quality code compliant fence and maintain the storage area should minimize the negative aesthetic impact. Whitaker noted that reducing the size of the outdoor storage area would negatively impact the ability to lease that space.

The Board asked the applicant to further explain the need to keep the size of the outdoor storage area in its current state. Whitaker stated that the location of the loading dock and the space needed to access it, reduces the area available for outdoor storage and aligning the fence to the neighboring property would further reduce that space.

Just prior to the start of the meeting Whitaker had submitted a power point presentation to address the six standards, in order to share the information with the Board members this presentation was displayed in full.

The Board questioned if there are restrictions as to what can be stored on this site. Tucker stated that storage is an accessory to the uses of the property, the limitation is that the materials to be stored cannot exceed the height of the fence. It was noted there were some items in Whitaker's presentation that may be relevant to landscaping plans and property maintenance, however that does not fall under the Zoning Board of Appeals purview and is not relevant to the variance request.

Ostlind read in to the record the persons registered in support and opposition of the proposal along with written communications that were sent in.

Matt Wingrove, current tenant renting the storage space from Whitaker, explained his position in support of the variance request.

President of the Madison Common Council and District 16 Alder Jael Currie asked Tucker for clarification on the enforcement case. Tucker stated the department had received a complaint regarding the stored items and condition of the fence on the property. Tucker explained that in the course of addressing the complaints it was discovered that the use for storage space had never been approved. Tucker noted that the outdoor storage space had been in place for many years prior to Whitaker taking ownership of the property. Additionally, Tucker explained that meetings were held with Whitaker to discuss how the use may be approved and the violations corrected, and how that led to the submitted variance request.

Currie questioned Whitaker if there was a timeline in place for installing a new fence and if the tenant would be able to meet zoning code requirements. Whitaker stated plans for a new fence are in progress and depending on the outcome of the hearing, they're ready to move forward with replacement as soon as possible. Whitaker explained the issues with the tenant's ability to bring the stored items into code-compliance.

Ostlind closed the public hearing.

Waugh moved to approve the requested variance with the conditions that eastern side of the outdoor storage area must be aligned with the building located to the north of this property, and the screening fence must be approved by the Zoning Administrator; Brown seconded.

**Review of Standards:**

**Standard 1:** The Board stated that the placement of the building on the lot prevented any code compliant area available for outdoor storage space, which is a condition unique to this property.

**Standard 2:** The Board determined that moving the eastern edge of the storage area into alignment with the building to the north would improve on and lessen the non-compliant aspect of the storage area and would move the proposal closer to meeting the intent and purpose of the ordinance.

**Standard 3:** The Board found that in order to be strictly code compliant the existing building would need to be torn down and rebuilt elsewhere on the lot, which would be unnecessarily burdensome.

**Standard 4:** The Board noted that the existing structures were in place prior to the zoning code changes in 2013 and it was those changes that resulted in a non-compliant lot, subsequently the ordinance has created the hardship.

**Standard 5:** The Board determined the proposal would not add any substantial detriment to neighboring properties and would improve the existing conditions.

**Standard 6: The Board found that the elements of the proposal are common to the zoning district and are not out of character within the surrounding neighborhood.**

**The Board voted 3-0 by unanimous to conditionally approve the requested variance.**

**4. [77102](#)**

Christensen Construction, representative of the owner of the property at 2122 Kendall Ave, requests a rear yard setback variance for a second story addition on a two-family house. Alder District #5.

**Tucker noted the property is a two-family dwelling, zoned TR-C4, located in the University Heights neighborhood, and Kendall Ave. runs east/west one block south of Old University Avenue. Tucker explained the proposal is to construct a second story porch addition atop the first story at the rear of the building. Tucker stated the rear setback requirement is 30 feet, the existing building provides 29 feet, resulting in a request for a 1 foot variance. Tucker shared photos and the submitted plans to further define the variance request.**

**Tracey Powers of Christenson Construction, representative for property owner Debra Shapiro, stated the second story screen porch addition is proposed to be constructed utilizing the framework of the first story. Noting the existing structure is situated one foot into the rear yard setback, Powers explained that if the addition were to be built within the required 30 foot setback it would considerably complicate the load for the roof, walls and floor, and would noticeably differ from the existing architecture. Additionally Powers stated that the addition would improve upon the livable outdoor space.**

**The Board questioned if this proposal has been presented to the City of Madison Landmarks Commission. Powers stated that they have submitted an application to Landmarks which will be reviewed upon the outcome of the variance request.**

**The Board asked if there was consideration of adding a beam to span to the outside walls to carry the floor load of the addition in order to be code compliant. Powers stated that option had been considered and may be their only option to construct the screen porch if the variance request was denied. Powers further explained that adding a beam would require point loads in the first floor or foundation, and it's preferred not to incur additional interior construction or disruption to the first floor unit.**

**Ostlind closed the public hearing.**

**Waugh moved to approve the variance as requested; Berenyi seconded.**

**Review of Standards:**

**Standard 1: The Board determined that the placement of the existing house in the setback presented a unique condition to this property.**

**Standard 2: The Board found that with using the existing structural footprint and with minimal added bulk, the proposed addition is not contrary to the intent of the zoning regulations nor contrary to the public interest.**

**Standards 3 & 4: Noting that the existing structure is non-compliant, the Board stated that forcing the addition to be offset to meet the setback requirement would not be structurally, aesthetically, or financially advantageous. Therefore the Board found compliance would be unnecessarily burdensome and it is the ordinance that creates the difficulty and hardship.**

**Standard 5: The Board found no substantial detriment to neighboring**

properties as the addition is centered on the lot with a minimal amount of added bulk.

**Standard 6:** The Board stated the proposed addition fits in nicely with the immediate neighborhood and that obtaining approval from the Landmarks commission would be beneficial as well.

The Board voted 3-0 by unanimous to approve the requested variance.



5. [76607](#) 1010 Ann Street LLC requests an appeal of the Zoning Administrator's determination as it pertains to the use of a property at 1010 Ann St. Alder District #14.

Ostlind outlined the appeal process, noting the differences from a variance request hearing.

Attorney Robert W. Kuehling of the law firm Kuehling & Kuehling LLC, representing 1010 Ann Street LLC, appeals the Zoning Administrator's determination as it pertains to the use of a property at 1010 Ann St. Kuehling stated the subject property sits adjacent to the Kunes Mitsubishi (formerly Mad City Mitsubishi) dealership and both properties are in a Commercial Center zoned district where auto sales and service is a permitted use. Kuehling noted that his client has rented surface lot space to the dealership for the past five years without objection from the City of Madison. Kuehling described the zoning code definition of auto sales and listing the permitted uses emphasizing the permitted use for incidental storage of vehicles. Kuehling explained his client's position that the space rented to the dealer ship is not a private parking facility but rather is a permitted use for auto sales and service.

Tucker stated the rental of space for vehicle storage at the 1010 Ann St. property needs a zoning approval certificate issued for either a permitted use or a conditional use. Noting the last approved use was in 2010 for a sports event management company, Tucker explained that during a site inspection the zoning inspector identified the private parking facility use and issued a notice of violation for operating without approval and included information on how to obtain zoning approval to come into compliance. Stating that the two properties have no connection to each other in any form, Tucker further explained the zoning code definitions of a private parking facility, auto sales, zoning lot, planned multi-use site and how they apply in this instance. Tucker mentioned some of the options available to resolve the violation. Referencing zoning code subsections 28.186 and 28.202 Tucker explained how applications for change of use for a property and zoning approval certificates are processed, however there has not been any application submitted from 1010 Ann St. LLC.

Attorney Kuehling stated his client thought that it was the tenant's responsibility to obtain the necessary approvals and certificates. Kuehling expressed frustration at the processes involved when trying to address the violation and find resolution with the zoning department. Tucker replied that the discussion appeared to be more about process than appealing an interpretation, stating that the City has been waiting to move forward in process at the property owner's choice.

After further discussion and clarification of what constitutes the approval process for permitted or conditional use and what is applicable to appealing the Zoning Administrator's determination, Attorney Kuehling, on behalf of 1010 Ann St. LLC, withdrew the appeal.

## DISCUSSION ITEMS

6. [77103](#) Common Council resolution re: elected and appointed official code of ethical conduct.

**Kelso stated the Mayor's office had sent out an email regarding the Common Council resolution for the elected and appointed official code of ethical conduct, with a directive that this be placed on the agenda annually as an item of discussion. A copy of that resolution was forwarded to each board member.**

7. [08598](#) Communications and Announcements

**Kelso noted cases have been submitted for the May18, 2023 meeting.**

#### **ADJOURNMENT**

**The Board adjourned at 8:03pm.**