



# City of Madison

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

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Thursday, April 13, 2017

5:00 PM

210 Martin Luther King, Jr. Blvd.  
Room 357 (City County Building)

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### CALL TO ORDER / ROLL CALL

Corigliano, chair, called the meeting to order at 5:03 pm and explained the appeals process.

**Staff Present:** Matt Tucker and Gretel Irving

**Present:** 4 - Peter A. Ostlind; Susan M. Bulgrin; Dina M. Corigliano and Winn S. Collins

**Excused:** 2 - Agnes (Allie) B. Berenyi and Frederick E. Zimmermann

### APPROVAL OF MINUTES

A motion was made by Bulgrin to approve the Mar 23, 2017 minutes, seconded by Ostlind. The motion passed (4-0) by voice vote/other.

### DISCLOSURES AND RECUSALS

There were no recusals or disclosures.

### PETITION FOR VARIANCE OR APPEALS

1. [46723](#) Neil Robinson & Tanya Cunningham, 5646 Lake Mendota Dr, request a side yard variance for additions and a potential wall reconstruction on a two-story single-family house.

Tucker introduced the project as a three-story single-family home originally built in 1925 with an existing foundation and wall encroaching into the side-yard setback. The applicants are undertaking a major remodel resulting in the request for a side-yard variance.

Mark Collin represented the applicants. He stated a 1956 addition to the house uses slab on grade construction. The proposed remodel would remove the third floor, inset the second floor on the side requiring the variance and replace the existing flat roof with a '6-12' roof. They would also remediate water and insect damage. The net effect would be to reduce the third-story bulk and reduce the amount of encroachment on the second story while preserving the foundation and first-story wall and accommodating the owner's desired use of the property.

In response to questions from the Board, Collin stated that moving the second

story to full compliance would require pushing the building into the lakeside setback. Since the extent of rot is unknown, the amount of demolition of exterior walls is subject to change. The applicants will be applying for a Demolition Permit but stressed that, if additional demolition of walls is required, they will be “rebuilding” and not “removing”. Tucker noted that if the first-story wall were to be removed, the project would exceed the requested variance and would need to be returned to the Board.

Corigliano questioned, due to the extent of the interior remodel, why the project couldn't be brought into full compliance? Collin stated the intent was to reduce waste by reusing the existing foundation. Full compliance would require propping up the upper stories to rebuild the foundation and support structure which would be much more costly but he did concede that it would be possible to move the second floor inside the setback. Ostlind questioned a statement in the Staff Report that the project “extends the existing side wall and foundation”. Tucker revised the report to “extends the existing side wall”.

In public comments, Steve Holtzman testified that, if allowed, the variance would impede public access to Laurel Crest. He stated that neighbors find the presence of the house in the setback intimidating and that it encourages encroachment into the public right-of-way. Donald Sanford testified that the placement of the house impedes access to the right-of-way and deters public use of the lakefront. Collin responded that the remodel would actually reduce the presence of the building and increase light and air access to Laurel Crest. Tucker shared correspondence from Marsha Alderman in support. Corigliano noted correspondence from David Marks and Lesa Reisdorf in support and from Herman Festehausen in opposition.

Ostlind moved to approve the variance; Collins seconded the motion.

Board Comments on Standard 1: The location of the existing foundation and the location along an unimproved public right-of-way are both unique conditions.

2: The intent of this project is to decrease an existing variance. In this unique instance, a variance is required to reduce the impact on the public interest.

3 & 4. The Board debated whether bringing either the second story alone or the building as a whole into full compliance was truly ‘burdensome’ or would prevent reasonable use. Board members emphasized that they must consider future use, not only the current owner’s desired use. Ostlind noted that in previous cases, the Board has found movement of an existing foundation and first story to be burdensome. Collins noted that if the project were not done, it would effectively increase the encroachment into the setback.

5. The burden was created by the original location of the house relative to the lot lines.

6 & 7. The design is consistent with the neighborhood and the owners are voluntarily reducing the existing encroachment.

Collins offered a friendly amendment to the original motion that “the existing foundation and first-floor wall would be maintained” as a condition of the variance. Ostlind agreed. Ostlind noted that a large portion of the wall may be

replaced with windows and doors while still being considered “maintained”. Corigliano asked about the responsibility of the applicants in regard to maintenance of the right-of-way on Laurel Crest. Tucker responded that encroachment into a public right-of-way is not included in the variance and is handled through a complaint/inspection process .

The amended motion to approve the variance request passed (4-0) by voice vote/other with the condition that the existing foundation and first-story wall in the side-yard area be maintained.

Ostlind moved that the Board adjourn briefly. Collins seconded. The hearing resumed at 6:54pm.

2. [46724](#)

Susan A Landsverk, 3614 Atwood Ave, requests an appeal to the Zoning Administrator’s determination as it pertains to a use/activity at Olbrich Park, 3527 Atwood Ave. Ald. District 15

Susan Landsverk appealed the Zoning Administrator’s interpretation that the proposed biergarten at Olbrich Park is not Outdoor Recreation and accordingly does not require a Conditional Use permit from the Parks Commission. She characterized the proposal as a Tavern, requiring a Class B liquor license, unique to Madison parks and accordingly needing the additional review provided by the Conditional Use permitting process. Her concerns included the additional parking, noise, disruption of wildlife and use of alcohol that would result and questioned how the proposed activities could not be considered Outdoor Recreational use.

Tucker defined the appeal as to whether the activity of ‘biergarten’ has been classified correctly; Zoning staff have classified the use as ‘Parks and Playgrounds’ (which is not defined in the Ordinance) and not Outdoor Recreation (which is defined in Sec 28.211). Tucker also clarified that the Parks and Recreation District is not limited to public parks but also includes private golf clubs, swimming pools etc. Stadiums are separated out in the Ordinance because of the impact they have outside of the park boundaries into the surrounding neighborhoods. Since Parks and Playgrounds are not defined in the Ordinance, staff looked at how similar projects have been treated historically in Madison. Tucker compared the Olbrich proposal to Brittingham Park where a private entity operates retail and concessions in a public space without Plan Commission oversight. He also referenced city golf course clubhouses which have liquor licenses without Plan Commission oversight. While acknowledging the applicant’s concerns about the effect of the use, Tucker did not believe those concerns affected the classification of the use.

Collins asked both parties whether it would be accurate to describe the question as whether the activity should be classified as Outdoor Recreation or Parks and Playgrounds. Both parties agreed. Corigliano asked Tucker to clarify what sort of activity would be classified as Outdoor Recreation. Tucker mentioned the Vitense mini-golf course. He stated that staff considered the Olbrich proposal an existing concession stand with a long history of accepted operation without Conditional Use.

Landsverk quoted from an email exchange between Tucker and Alder Marsha Rummel (submitted to the Board as part of the application) in which Tucker describes the Olbrich proposal as an “accessory use”. Tucker stated that he was writing for his intended audience (Rummel), using “accessory use” in its casual sense and not as an official classification.

Ostlind asked Tucker why the use was not classified as Accessory Retail Alcohol Sales. Tucker explained that this classification is for Class A liquor licenses, which are used for liquor stores, and was included by the Common Council as a way to limit and/or prohibit this use in certain zoning districts such as the Downtown Core. Tucker added that the Outdoor Recreation classification was amended to require Conditional Use when a local bar applied to add outdoor sand volleyball courts and was intended by the Council to cover such instances. If interpreted as broadly as the applicant requests, Tucker suggested, it would include every basketball and tennis court in the City and become unreasonably burdensome.

Ostlind requested that the Board hear from those in attendance who had registered to speak.

Jeanne Kaether testified that the proposal is not a concession stand but rather a tavern. She stated the vetting process afforded by a Conditional Use requirement would address the safety, traffic, architectural design and city service plans necessary to a proposal of this scope. She emphasized the size and density of the proposal went beyond typical park activity and so required additional oversight. Bulgrin questioned whether the ALRC wasn't the correct party to vet these concerns. Kaether stated that the ALRC assumed the issues would be addressed by the Plan Commission and did not fully consider them. She asserted the project was not an existing space but would require pouring a concrete pad, installing planters and other long-term structures.

Landsverk questioned how the project fit in the 'playground' part of the classification Parks and Playgrounds since the space would be off-limits to minors.

Ostlind noted that the Outdoor Recreation definition focuses on active, athletic uses and does not include less active uses such as picnicking and sunbathing. He asked the applicants to address how the proposed use differed. Landsverk replied that those activities are less intensive and require fewer City resources than an establishment devoted to the drinking of alcohol. Collins questioned whether the permanence of the structure was analogous to an athletic court or stage and whether this impacted the classification. Tucker stated he was unfamiliar with the details of this part of the proposal but that they would be classified as “improvements” which are under the authority of the Parks Department. Ostlind asked about park shelters which include a concrete pad, roof and tables. Tucker stated these are also under the authority of Parks and do not require Plan Commission approval. Design aspects may be reviewed by the Urban Design Commission but do not require Conditional Use permits.

Ostlind moved in support of the applicant's appeal of the Zoning Administrator's interpretation; Collins seconded.

Collins stated that while all parties agree that 'biertgartens' are not explicitly included in the zoning ordinance, the definition of Outdoor Recreation includes three types of activity- sports, amusements and music events- none of which are comparable to a biertgarten. Ostlind described the activity as similar to concessions and noted that no testimony had suggested an alternative to

either Outdoor Recreation or Parks and Playgrounds. Corigliano noted that where there is a lack of definition, the Board has shown regard for precedent. In this proposal, alcohol consumption appears to be the primary activity and concessions a secondary activity but the current code does not address that situation directly. In this instance, oversight is allocated to the Parks department and ALRC and the proposal has gone through the appropriate reviews by those parties.

The motion failed (0-4) by voice vote/other.

3. [08598](#) Communications and Announcements

Tucker announced the Board would next meet on April 27.

### ADJOURNMENT

The meeting adjourned at 8:25 pm.

Matt Tucker  
City of Madison  
Zoning Board of Appeals, (608) 266-4569