



# 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, October 20, 2022

5:00 PM

Virtual

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### CALL TO ORDER / ROLL CALL

Ostlind called the meeting to order at 5:07 pm.

Staff Present: Matt Tucker, Katie Bannon, Nancy Kelso, and Cary Olson

Board Members Present: 3 - Peter Ostlind, Allie Berenyi, David Waugh

Board Members Excused: 2 - Angela Jenkins, Craig Brown

### APPROVAL OF MINUTES

A motion was made by Waugh to approve the September 15, 2022 minutes, seconded by Berenyi. The motion passed 2-0 by unanimous vote.

### PUBLIC COMMENT

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

There were no public comments.

### DISCLOSURES AND RECUSALS

Ostlind disclosed that he has had past professional contact with Knothe & Bruce Architects, however that would not impact his decision.

### PETITION FOR VARIANCE, AREA EXCEPTIONS OR APPEALS

**2. [74186](#)**

Lisa Andrews and Eric Gaumnitz, owners of the property at 5122 Spring Court, request a lakefront yard setback variance to construct a one-story addition onto an existing one-story single family house. Alder District #19.

**Bannon explained the property does not have frontage along Spring Court. Access is by way of an ingress/egress easement. Noting the frontage along Spring Harbor and Lake Mendota, Bannon explained that lakefront setbacks differ on either side of the property. Utilizing the submitted site plan, Bannon further explained the zoning code applicable to the lakefront yard and detailed the placement of the setbacks on the lot. Bannon provided plans to show the alignment of the property with adjacent properties along both Lake Mendota and Spring Harbor, along with elevations and floor plans of the proposed addition. Bannon stated the code requires a 46.35 foot setback, the proposed one-story addition provides a 33.5 foot setback, resulting in the request for a 12.85 foot variance.**

**Lisa Andrews, owner of the property at 5122 Spring Ct., stated the proposed addition would provide for more living space, add a second single car garage and would relocate the mechanicals (furnace, water heater, etc.) from within the existing garage to an enclosed space within the home. Andrews noted that the proposed changes are modest in size, adding approximately 900 square feet to the existing structure.**

**Bannon clarified for the Board the alignment and setback requirements for lakefront properties, noting what is applicable to the subject property.**

**Andrews further explained how the submitted plan had been reduced in scope, and a one-story addition was preferred so as to maintain the aesthetics of the existing home and preserve the views for surrounding neighbors.**

**Richard Glad, owner of the property at 5128 Spring Ct., voiced support of the proposal.**

**Ostlind closed the public hearing.**

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

**Review of Standards:**

**Standard 1: The Board found that the two sides of lake frontage on the lot create unique conditions for the property.**

**Standard 2: The Board, having noted the intent of the zoning code is to have structures set back a specified distance from the lake, determined that while the proposed addition is placed partially in the setback, the progression towards the lakefront is minimal.**

**Standard 3: The Board determined that an addition to the existing structure could be built to meet code; however, the proposed variance request is not an unreasonable size and does not add more bulk to the property than a second-story addition would.**

**Standard 4: The Board found that with the uniqueness of the lot and the applicant's efforts to minimize adding bulk, hardship or difficulty would be**

created by strict adherence to the terms of the ordinance.

**Standard 5:** The Board was divided regarding the level of detriment to neighboring properties. While not having any input from the property owner at 5120 Spring Ct., the Board noted that that property would be most impacted by the proposed addition, with considerable obstruction of their lake view. However, the Board determined the proposal would not have substantial detriment to the neighboring properties fronting Lake Mendota.

**Standard 6:** The Board found that the single-story addition as proposed would be compatible with the character of the neighborhood.

The Board voted 2-1 by roll call vote to approve the requested variance.

**3. [74187](#)**

Kendall and Jessica Harrison, owners of the property at 5050 Lake Mendota Drive, request a variance to construct an uncovered deck elevated over three feet above adjacent ground level. Alder District #19.

**Bannon explained that permitted construction had begun on the deck when during an inspection it was determined that the structure was an elevated deck which did not meet the side setback requirements and a stop work order was issued. Bannon stated that the deck plans submitted for the building permit and initially included with the variance application had been revised, with construction occurring in accordance with the revised plan. Bannon explained the revised, updated plans were submitted to the department shortly before the scheduled meeting. Bannon displayed the updated proposal, noting the required side yard setback is 6 feet; the proposed deck provides 5 feet on the west side, resulting in a variance request of 1 foot. On the east side, a setback of 4.25 feet is provided, resulting in a 1.75 foot variance request.**

**Kendall Harrison, co-owner of the property at 5050 Lake Mendota Dr., stated that they've owned the property for approximately two and a half years, noting that when they took ownership their lakefront access was on a steep path and the retaining wall was crumbling. Kendall explained they have been working with Adam Graap, of Corning Graap & Associates LLC, to design for better lake access, re-build the retaining wall and add the deck on their property. Kendall stated they had first considered putting in a patio, which wouldn't require a permit or a variance, in the space where the deck is located. Kendall explained they consulted with two different tree experts, both of whom advised that due to the compacting of the ground required for a patio, there would be great risk to the health of the oak tree at that location. Kendall further detailed the permitting process, noting the changes they made for a smaller sized deck, and the footings and framing of the deck which were done when the stop work order was issued.**

**Jessica Harrison, co-owner of the property at 5050 Lake Mendota Dr., explained that the previous property owners sold a portion of their lot to the City of Madison to enable the expansion of Merrill Springs Park. Jessica stated that the lot remaining at 5050 Lake Mendota Dr. was then irregularly shaped with the rear portion being 25 feet wide. Additionally, Jessica noted at the time of that sale a view preservation easement for the property was established and recorded. Jessica gave further details of the findings of the arborists regarding the oak trees on their lot, noting two trees have been removed and the steps they are taking to preserve the oak tree at the deck location.**

**Bannon clarified for the Board the code differences between an at-grade deck versus an elevated deck, providing examples of how an elevated deck could be re-configured to be at grade.**

**The Board questioned if the amount of requested variance could be reduced with what has already been constructed on the site or if the deck could be built to be code compliant. Kendall Harrison explained that without the 1 foot variance on the west side there would be a 1 foot gap between the existing stairs and the deck, which could create safety issues. Kendall stated that cutting back the variance on the eastern side could result in having to start over to remove and relocate the footings and to remove and re-frame what has been constructed. Kendall explained it would be quite difficult to lower the deck as it's not possible to get the heavy machinery needed to do that in this**

place on the site.

The Board asked for clarification on the building permit application and the timeline from submittal of the permit application to the submittal for variance. Kendall Harrison stated they contracted with John Kohl Builders for construction of the plans developed by Adam Graap. Kendall explained the contractor submitted the building permit application and after Graap provided updated site plans along with communications with zoning inspector Trent Schultz, the building permit was approved and issued by the City. Kendall further stated that after the footings were poured, inspected and approved, and the framing was constructed, the City received a complaint about the project. Kendall noted it was at this point, when addressing the complaint, the City determined the deck to be elevated rather than at grade.

Kendall explained that Graap and Schultz had discussed the grade below the deck. What was missed was the 3' skirt rule for grade around the deck. Kendall stated that Tucker shared that this was not a written policy which is why they and Graap didn't know about it. Kendall further explained that the policy is more complex to apply to sites with slope.

Adam Graap spoke in support of the proposal and further explained his involvement in the project.

Members of the public in attendance who spoke in opposition to the proposal were Jeff Bauer of 1137 Minocqua Crescent, Candy Schrank and Chuck Gates of 5042 Lake Mendota Dr., Alice Erickson of 5109 Spring Ct., and Marie and Eric Infield of 5101 Lake Mendota Dr. Concerns were expressed about the impact of the deck on the adjacent park and its use.

Ostlind noted the written comments submitted and those who were registered in support and opposition to the proposal who wished not to speak.

The Board questioned the state of the vegetation in Merrill Springs Park along the property line with 5050 Lake Mendota Dr. prior to any plants having been removed. Tucker explained that it was scrub plants and the removal was approved and done in accordance with the City of Madison Parks Department.

Kendall Harrison gave rebuttal remarks in response to the statements made in opposition.

Ostlind closed the public hearing.

Waugh moved to approve the requested variance; Berenyi seconded.

Review of Standards:

Standard 1: The Board found that the subdivided lot resulted in a narrow corridor to access the lake creating conditions unique to this property.

Standard 2: The Board was divided on this standard. Finding that while a deck is often a standard amenity for lakefront property and the amount of variance requested to be somewhat minimal, the intent of the code for side yard setback is to provide buffering between properties and the submitted proposal does not meet that requirement.

**Standard 3:** The Board did not think that this standard was met because the deck could be smaller or in a different location and meet the setbacks. The deck has already been partially built but the variance request has to be viewed as though it has not been built.

**Standard 4:** The Board found that any hardship and difficulty is caused not by the ordinance but rather that an approved building permit was issued by the City and construction proceeded prior to the property owners and contractors being made aware of the zoning determination of an elevated deck. The Board noted that the owners would likely have planned for a code compliant deck had the zoning determination been confirmed before the permitting was approved.

**Standard 5:** The Board stated opposition from the public was about the deck itself, not about its setback. Parks has been closely involved in what's happening in the adjacent park and makes decisions working with adjacent property owners. The Board found no substantial detriment.

**Standard 6:** The Board determined that the proposal is in keeping with the character of the neighborhood, noting that decks are a common amenity for many properties.

After further discussion and prior to voting, Berenyi moved to re-open the public hearing; Waugh seconded. The Board approved the motion by unanimous vote. After further discussion between the Board and applicant Kendall Harrison, the applicant agreed to revise the proposal and work with City staff to reduce the variance request. The Board determined that it was feasible to bump in the deck on the west side and that reducing the size to the footings would make a difference for their decision.

Ostlind closed the public hearing.

Waugh moved to amend the motion from approving the initial requested variance to approve a reduced the variance request of the minimum possible on the east side using existing footings and to 0' on the west side next to the stairs; Berenyi seconded.

The Board voted 2-0 by roll call vote to approve the amended variance.

4. [74188](#) Kevin Burow, representative of the owner of the property at 668 State Street, requests a variance to the setback requirement to construct a four-story residential addition atop an existing two-story commercial building. Alder District #2.

Upon introducing this agenda item, Ostlind noted that the proposal was submitted and approved by the Zoning Board of Appeals in 2017; however, construction had not been done and that variance approval had expired.

Tucker stated the property is an existing two-story building, remodeled in 2006 to add stairs and an elevator shaft. Tucker noted the building code has since changed to require that elevator sizing must accommodate a stretcher. Tucker explained that for the proposed four-story addition, the elevator space needs to be made deeper, and the only viable direction for expanding the elevator shaft is forward towards State St. Tucker further explained the code allows for four stories to be built up to the lot line, any construction above that requires a 30 foot setback. Utilizing the submitted plan diagrams, Tucker provided details for the location of the elevator shaft within the setback area, noting the remainder of the addition would be code compliant to the setback requirement. Tucker stated that code compliance requires a 30 foot setback, and the proposal provides a 29 foot setback, resulting in the request for a 1 foot variance.

Kevin Burow of Knothe & Bruce Architects, representative for the owner of 668 State St., provided further information on the vertical expansion, sharing the floor plans of the existing space alongside the proposed residential addition to clarify the placement of the elevator. Burow stated the change in code for elevator standards has created the need to increase the area of the elevator shaft.

Burow clarified for the Board that at the time of the 2006 renovations, the building was engineered to accommodate the additional four floors now proposed. Burow explained the infrastructure for the stairwell and elevator was put in place and built in compliance to the existing code during that renovation. Burow further stated that if the stairwell and elevator were to be reconstructed with the addition to comply with the current building code, the current tenants of the existing building would be significantly impacted.

Ostlind closed the public hearing.

Waugh moved to approve the requested variance; Berenyi seconded.

**Review of Standards:**

**Standard 1:** The Board stated the change to the building code in the time between the 2006 remodel and the presently proposed addition presented a condition unique to the property.

**Standard 2:** Noting the intent of the setback rule is to maintain a visual corridor, the Board found the proposal to have minimal impact to the views along State St.

**Standard 3:** The Board determined that strict compliance to the ordinance would cause major re-structuring of the entire existing building which would

be unnecessarily burdensome

**Standard 4:** The Board found that the change in building code has created the difficulty for code compliance.

**Standard 5:** The Board determined there would be no substantial detriment to adjacent properties as there are other buildings in close proximity that are similarly situated.

**Standard 6:** The Board stated there is some difficulty with compatibility in regard to the historic nature of State St. However with the eclectic variety in the architecture of the area and with the minimal amount of variance requested, the proposed addition would fit into the character of the neighborhood.

The Board voted 2-0 by unanimous vote to approve the requested variance.

#### **DISCUSSION ITEMS**

5. [08598](#) Communications and Announcements

**Kelso noted there is no meeting scheduled in November; the deadline for case submittal is November 17th for the December 15th meeting.**

#### **ADJOURNMENT**

The Board adjourned at 8:30pm.