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Board of Zoning Appeals Variance Application

(To be completed by City Clerk or Zoning Staff)

City of La Crosse, Wisconsin

Application No.: 2593

Date Filed: 9/6/17

Application Complete: Yes X No

Filing Fee: 250.00

Date Paid: 9/6/17

Reviewed By [Signature] (Initial)

(To be completed by the applicant)

Application Deadline: By 5:00 PM the first Wednesday of every month.

Building Permit Application Deadline: 10 Calendar Days prior to first Wednesday of every month for the Inspection Department to provide review. Any building permit submitted after deadline must wait until the following Board of Zoning Appeals meeting.

	Owner / Agent	Contractor
Name	<u>Michael Peterson</u>	<u>GORDON WEBB</u>
Address	<u>324 South 10th St.</u>	<u>1902 S. 21st St.</u>
Phone	<u>608-782-2845</u>	<u>608-799-5559</u>

Legal Description: RESIDENCE, City of La Crosse, Wis.

Tax Parcel Number: 30048-50

Lot Dimensions and Area: 137 x 144 feet. = 19,728 sq. ft.

Zoning District: Z-WR WASHBURN

A variance is a relaxation of a standard in a land use ordinance. The Board of Zoning Appeals decides variances. The Board is a quasi-judicial body because it functions like a court. The Board's job is not to compromise ordinance provisions for a property owner's convenience but to apply legal criteria provided in state laws and the local ordinance to a specific fact situation. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden. The burden of proof falls on the variance applicant.

Process:

At the time of application, you will be asked to:

- **Complete an application** form and timely submit it with a non-refundable fee as required in La Crosse Municipal Code § 115-60; Failure to complete any section of the application form will result in rejection of the application. If additional space is needed, please attach additional pages.
- **Provide detailed plans** describing your lot and project (location, dimensions, and materials);
- **Provide a written statement** of verifiable facts showing that your project meets the legal criteria for a variance (Three-Step Test below); and
- **Stake out lot corners or lines**, the proposed building footprint and all other features of your property related to your request so that the Zoning Board and/or City staff may inspect the site.

Following these steps, the Inspection Department must approve the application as to form and completeness and then the application and fee must be submitted to the City Clerk. The zoning agency will then provide notice of your request for a variance to the City of La Crosse's official newspaper noting the location and time of the required public hearing before the Zoning Board. Your neighbors and any affected state agency will also be notified. The burden will be on you as a property owner to provide information upon which the Board may base its decision. At the hearing, any party may appear in person or may be represented by an agent or attorney. If any of these requirements are not met or if you or your agent does not appear at the public hearing, the Board **must** deny your request for a variance and your fee will be forfeited.

Part A: General Information and Alternatives Analysis.

(To be completed by the applicant).

1. General Information.

Complete the questions in the general information section of the application to provide the necessary background information needed for the property at issue.

(a) Current use and improvements.

PRIVATE RESIDENCE, INSTALLING DECORATIVE/
SECURITY FENCE: 5' TALL DECORATIVE ALUMINUM
ALTERNATE SPEAR TOP WROUGHT-IRON LOOK-ALIKE,
STONE CLAD PILLARS, ARCH TOP GATE
85% SEE-THROUGH

(b) Proposed Use.

ENHANCE HISTORIC APPEARANCE OF HOUSE,
CONTAIN DOG, PROVIDE SECURITY

(c) Description and date of any prior petition for variance, appeal, or special exception.

NO PRIOR PETITION

- (d) Description and location of all nonconforming structures and uses on the property.

PROPOSED FENCE IN "FRONT YARD" IF BUILT AT 5' WOULD BE NON-CONFORMING. "FRONT YARD" CONSIDERED SOUTH SIDE OF PROPERTY, ON CAMERON AVE.

- (e) Ordinance standard from which variance is being sought (include code citation).

115-398 (c) (1)

- (f) Describe the variance requested.

WE WOULD LIKE TO EXTEND THE "FRONT YARD" PORTION TO 5' HEIGHT TO PROVIDE MORE SECURITY, ENHANCE THE LOOK OF THE PROPERTY, AND CONTAIN LARGE DOG

- (g) Specify the reason for the request.

CURRENT CODE (ORIGINALLY WRITTEN TO PREVENT TALL, SOLID FENCING FROM OBSCURING OVERALL VIEW OF FRONT OF HOUSE) PREVENTS A CONTINUOUS FENCE HEIGHT. PROPOSED FENCE IS 85% SEE-THROUGH, AND WILL NOT INTERFERE WITH THE VIEW OF THIS HISTORIC, BEAUTIFUL PROPERTY

- (h) Describe the effects on the property if the variance is not granted.

MR. PETERSON HAS HAD TROUBLE WITH SECURITY (TRESPASSING, THEFT) WHICH NECESSITATE THE NEED FOR A FENCE. 4' MAY NOT DETER SUCH PROBLEMS, WHEREAS 5' HEIGHT WOULD GIVE MR. PETERSON A GREATER SENSE OF SECURITY; AS WELL AS CONTAIN HIS DOG BETTER IN WINTER WHEN SNOW BANKS NEAR FENCE WOULD IN EFFECT MAKE THE FENCE SHORTER. THE OVERALL LOOK OF THE FENCE BEING AT THE SAME HEIGHT WOULD BE MORE AESTHETICALLY PLEASING

2. Alternatives.

Describe alternatives to your proposal such as other locations, designs, and construction techniques. Attach a site map showing alternatives you considered in each category below.

- **Alternatives you considered that comply with existing standards.** If you find such an alternative, you can move forward with this option with a regular permit. If you reject compliant alternatives, provide the reasons why you rejected them.

NO ALTERNATIVES HAVE BEEN FOUND,
THE EXTRA 12" ON FENCE PANELS
WOULD BE THE ONLY WAY TO MAKE
A 4' FENCE A 5' FENCE

- **Alternatives you considered that require a lesser variance.** If you reject such alternatives, provide the reasons why you rejected them.

COMPLYING WITH 4' CODE WOULD
CREATE "ESCAPE SPOTS" IN SEVERAL
PLACES WHERE MR. PETERSON'S DOG MAY
GET OUT. MR. PETERSON IS VERY EXCITED TO
LET HIS DOG OUT TO BE A DOG ALL DAY,
AND NOT BE TIED UP

Part B: Three-Step Test.

To qualify for a variance, applicants must demonstrate that their property meets the following three requirements:

1. Unique Property Limitation. *(To be completed by the applicant).*

Unique physical characteristics of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with ordinance requirements. The circumstances or desires of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances. Nearby ordinance violations, prior variances, or lack of objections from neighbors do not provide a basis for granting a variance. Property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amending the ordinance.

You will be asked whether there exist any unique physical characteristics to your property that prevent compliance with the ordinance. You will be asked to show where these unique physical characteristics are located on your property by showing the boundaries of these features on a site map. If there is not a unique property limitation, a variance cannot be granted.

Do unique physical characteristics of your property prevent compliance with the ordinance?

- ☒ Yes. Where are they located on your property? In addition, please show the boundaries of these features on the site map that you used to describe alternatives you considered.

THE "FRONT YARD" DUE TO SETBACKS, IS NOT THE PERCEIVED FRONT OF HOUSE; THOUGH IF "FRONT YARD" WAS CONSIDERED 10TH ST. A VARIANCE WOULD ~~STILL~~ BE NECESSARY, AS THE YARD ELEVATION WOULD MAKE IT EASY FOR DOG TO JUMP FENCE

- ☐ No. A variance cannot be granted.

2. No Harm to Public Interest.

A variance may not be granted which results in harm to public interests or undermines the purpose(s) of the ordinance. In applying this test, the Zoning Board must consider the impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the entire community, and the general public. These interests may be listed as objectives in the purpose statement of an ordinance and may include:

- Public health, safety, and welfare
- Water quality
- Fish and wildlife habitat
- Natural scenic beauty
- Minimization of property damages
- Provision of efficient public facilities and utilities
- Achievement of eventual compliance for nonconforming uses, structures, and lots
- Any other public interest issue

(a) **Ordinance Purpose.** (To be completed by zoning staff).

The Zoning Board must consider the purpose and intent of zoning codes when considering a variance request. As promulgated by the City of La Crosse Common Council, the purpose and intent of the La Crosse Zoning Code include, but is not limited to, the following:

§ 8-86	§ 101-58	§ 109-6
§ 115-3	§ 115-140	§ 115-141
§ 115-148	§ 115-156	§ 115-158
§ 115-211	§ 115-319	§ 115-437
§ 115-510	§ 115-548	§ 115-594

The failure of any particular city official to identify additional purpose and intent information on the application does not preclude the city official from raising the issue at the public hearing on the requested variance.

(b) Purpose(s) of Standard from which Variance is Requested. *(To be completed by zoning staff).*

The City of La Crosse Building Inspector, Code Enforcement Officer and any other officials may be aware of other reasons a particular ordinance standard is required. The city official(s) may list those reasons on this application. The failure of any particular city official to identify additional purpose information on this application does not preclude the city official from raising the issue at the public hearing on the requested variance.

(c) Analysis of Impacts. *(To be completed by applicant).*

Discuss impacts (e.g. increased runoff, eroding shoreline, etc.) that would result if the variance were granted. For each impact, describe potential mitigation measures and the extent to which they reduce the impacts (i.e. completely, somewhat, or marginally). Mitigation measures must address each impact with reasonable assurance that it will be reduced to an insignificant level in the short term, long term, and cumulatively.

Short-term impacts are those that occur through the completion of construction. Long-term impacts are those that occur after construction is completed. Cumulative impacts are those that would occur if a similar variance requested were granted for many properties. After completing the impact analysis, you will be asked to give your opinion whether granting the variance will harm the public interest.

(1) Short-term Impacts (through the completion of construction):

- Impact: **NONE**
 Mitigation measure(s): **N/A**
 Extent to which mitigation reduces project impact:
I BELIEVE THERE WOULD BE NO LONG OR SHORT TERM IMPACTS. THE VIEW OF HOUSE FROM STREET AND SURROUNDING PROPERTIES WOULD BE AFFECTED. NO EROSION CONCERNS
- Impact: **NO IMPACT**
 Mitigation measure(s): **N/A**
 Extent to which mitigation reduces project impact:
THE PROJECT WOULD PROCEED JUST THE SAME AS A 48" FENCE, JUST 12" TALLER

(2) **Long-term Impacts** (after construction is completed):

- Impact: NO LONG TERM IMPACTS

Mitigation measure(s): N/A

Extent to which mitigation reduces project impact:

- Impact:

Mitigation measure(s):

Extent to which mitigation reduces project impact:

(3) **Cumulative Impacts** (what would happen if a similar variance request was granted for many properties?):

- Impact: POSSIBLE CODE CHANGE

Mitigation measure(s): CHANGE CODE TO EXCLUDE DECORATIVE,

Extent to which mitigation reduces project impact: OPEN FENCE

AS IT HAS BEEN EXPLAINED; THIS CODE ORIGINATED TO PREVENT TALL, SOLID FENCES FROM OBSCURING VIEW OF PROPERTIES, FOR OBVIOUS AESTHETIC REASONS. THIS DECORATIVE FENCE WILL ENHANCE THE HISTORIC AESTHETIC OF THE PROPERTY

- Impact:

Mitigation measure(s):

Extent to which mitigation reduces project impact:

Will granting the variance harm the public interest?

☐ **Yes.** A variance cannot be granted.

☒ **No.** Mitigation measures described above will be implemented to protect the public interest.

3. Unnecessary Hardship. (To be completed by the applicant).

The unique property limitation must create the unnecessary hardship. An applicant may not claim unnecessary hardship because of conditions that are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home). Courts have determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel.

You will be asked whether you are requesting an area variance or a use variance and to detail whether there exists an unnecessary hardship.

An **area variance** is a relaxation of lot area, density, height, frontage, setback, or other dimensional criterion. Unnecessary hardship exists when compliance with the strict letter of the area restrictions would unreasonably prevent the owner from using the property for a permitted purpose (i.e. leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The Zoning Board must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term, and cumulative effects of the variance on the neighborhood, the community, and on the public interests. This standard reflects the Wisconsin Supreme Court decisions in *State v. Waushara County Bd. Of Adjustment*, 2004 WI 56; and *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23.

A **use variance** is a relaxation of the zoning regulation on how the property is fundamentally used. A use variance allows property to be utilized in a manner not permitted by zoning regulations (i.e. an appropriate adaptive re-use of a school or church in a residential district). Unnecessary hardship exists only if the property owners show that they would have no reasonable or viable use of the property without the variance. Though not specifically restricted by statute or case law, a use variance is very rare because of the drastic effects it has on the neighborhood, the community, and the public interests. The Zoning Board must consider whether the owner has no reasonable return if the property is only used for the purpose allowed in zoning regulation, whether the plight of the owner is due to unique circumstances and not merely general conditions in the neighborhood, and whether the use sought to be authorized will alter the nature of the locality. See generally *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23.

Are you applying for an area variance or a use variance?

☒ Area variance

☐ Use variance

Is unnecessary hardship present?

☒ Yes. Describe.

THE PROPOSED FENCE IS TO BE FOR
BOTH SECURIT AND LARGE DOG CONTAINMENT.
48" FENCING WOULD NOT BE AS EFFECTIVE

☐ No. A variance cannot be granted.

Part C: Additional Materials / Exhibits.

In order for the zoning staff to conduct evaluations, the applicant's site map, with a scale of not less than 1"=50', and other exhibits must show the following:

- ☒ Location of requested variance
- ☒ Property lines
- ☐ Ordinary high-water mark
- ☒ Flood plain and wetland boundaries
- ☒ Dimensions, locations, and setbacks of existing and proposed structures
- ☒ Utilities, roadways, driveways, off-street parking areas, and easements
- ☐ Existing highway access restrictions and existing proposed street, side and rear yards
- ☒ Location and type of erosion control measures
- ☒ Vegetation removal proposed
- ☒ Contour lines (2 ft. interval)
- ☒ Well and sanitary system
- ☒ Location and extent of filling/grading
- ☒ Any other construction related to your request
- ☐ Anticipated project start date
- ☐ Sign locations, dimensions, and other specifications
- ☐ Alternatives considered
- ☐ Location of unique property limitation
- ☒ Lot corners, lines, and footprints have been staked out
- ☒ Abutting street names and alleys
- ☒ Abutting property and land within 20 feet
- ☒ Indication of the direction "North"

Part D: Authorization to Examine

You **must complete and sign** the authorization for the City of La Crosse Board of Zoning Appeals and the Planning and Development Department to examine the property of the variance request.

I hereby authorize the City of La Crosse Board of Zoning and Appeals and the Planning and Development Department to inspect premises

At: 324 So. 10th St.
(Address where variance is sought)

Date: 9-5-17 Signature of Owner: Michael A. Butner

Part E: Certification.

You **must sign your application**, certifying that it and any additional materials are accurate and do not contain any misrepresentations or omissions. An unsigned variance application will not be considered. You also must get the application notarized by a certified notary.

Submit completed application to: Board of Zoning Appeals
400 La Crosse St.
Clerks Office- 2nd Floor
La Crosse, Wisconsin 54601

Submit complete copy to: Chief Inspector
400 La Crosse St.
Building and Inspections Division, Fire Department
La Crosse, Wisconsin 54601

By signing below, I certify that I have received and reviewed all of the application materials. I further certify that all of my answers herein are true and accurate; I have not made any intentional misrepresentation or omission. I understand that if I intentionally misrepresented or omitted anything in this application that my application will be denied and any variance granted thereunder may be revoked.

Signed: (Applicant or Agent) *G. Webb*

Date: 9.5.17

Signed: (Owner, if different from applicant) *Michael A. Peterson*

Date: 9/5/17

THE APPLICANT OR AGENT

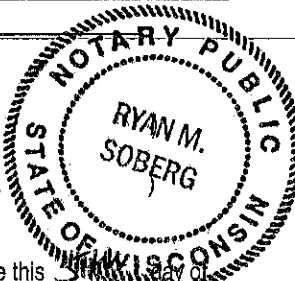
G. Webb
By: Applicant

STATE OF WISCONSIN

COUNTY OF LA CROSSE

Personally came before me this 5th day of September, 2015, the above named Gordon W. Webb to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Ryan M. Soberg
Notary Public, La Crosse County, WI
My commission expires: May 2, 2020



THE OWNER

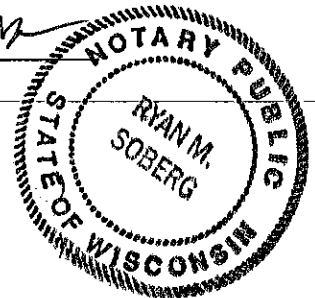
Michael A. Peterson

STATE OF WISCONSIN

COUNTY OF LA CROSSE

Personally came before me this 5th day of September, 2015, the above named Michael W. Peterson to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Ryan M. Soberg
Notary Public, La Crosse County, WI
My commission expires: May 2, 2020



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