

Clerk

## Board of Zoning Appeals Variance Application

(To be completed by City Clerk or Zoning Staff)

City of La Crosse, Wisconsin

Application No.: 2019 Filing Fee: 250.00  
 Date Filed: 4/1/2019 Date Paid: 4/1/2019  
 Application Complete: Yes ☒ No ☐ Reviewed By MD (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	LaCrosse PR, Inc.	Maple Creek Construction, LLC
Address	2715 Schofield Ave Weston, WI 54476	402 Industrial Drive Columbus, WI 53925
Phone	715-298-5379	920-623-9330

Legal Description: Part of Government Lot 5, Section 15, T16N, R7W, City of La Crosse, Wis.

Tax Parcel Number: 17-10315-610

Lot Dimensions and Area: \_\_\_\_\_ x \_\_\_\_\_ feet. = 462,607.2 sq. ft.

Zoning District: Commercial

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.

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 MAR 28 2019  
 BUILDING & INSPECTION

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.**

The site is currently vacant and undeveloped with no improvements. The City's storm sewer and a high pressure gas main currently exist on-site. One wetland was delineated on-site, which totalled 1,371 SF

**(b) Proposed Use.**

The site will be developed as a Pizza Ranch Commercial Restaurant with associated drives, parking, building and landscaped areas.

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

A Request for Exception to Standards was submitted to the City of La Crosse on February 7, 2019 for a portion of the parking lot to be located between the proposed restaurant and the City Street. This special exception was due to the numerous constricting site constraints which are the existing City's Storm Sewer and Northern Natural Gas (NNG) high pressure gas main.

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

Due to site constraints from the City's existing storm sewer and the high pressure gas main, the associated buildings' parking and drive lane will be constructed within the 50 foot setback for the wetland. Per Sec 109.33 of the City ordinance, the shoreland-wetland zoning district includes all wetlands in the City which are five acres or more. The delineated wetland within the proposed site is not five acres (0.03 acres). No wetland disturbance is expected. The wetland along the northeastern portion of the site is located within Wisconsin Department of Transportation right-of-way property.

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

A variance is requested for Code 1980, § 15.36(C)(2); Ord. No. 4911 § II(attach.), 1-14-2016; Ord. No. 4955, § VI, 10-13-2016

Sec. 109-33. (a)(3)- District boundaries: The shoreland-wetland zoning district includes all wetland in the City which are five acres or more and are shown on the final wetland Inventory Map that has been adopted and made part of this chapter in Section 109-32. (3)Setbacks for building construction or land disturbances from all wetlands depicted on the Wetland Inventory Map shall be 50 feet.

(f) **Describe the variance requested.**

This variance request pertains to the wetland setback requirement. The client is requesting that the City of La Crosse allow the land to be disturbed up to and adjacent to the wetland, within the 50 FT setback requirement. This request is due to site constraints and that the wetland within the site are not greater than 5 acres (0.03 acres). Granting the variance will not result in wetland disturbance. Additionally, the off-site wetland (located near the northeast corner of the site) is not within the property boundary; however the parking lot affects the 50 FT wetland setback from this wetland. The variance request is so the parking lot and associated drives can be constructed for the proposed building. The proposed plans meet the WDNR wetland set back standard requirements.

(g) **Specify the reason for the request.**

The building and associated parking lot and drive are situated in the only way possible to accommodate the existing City's storm sewer and high pressure gas main.

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

If the variance is not granted, this commercial development will not be constructed.

## 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.

See attached Alternative Analysis

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

See attached Alternative Analysis

## 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 unique site features are labeled on the Exhibits within the Alternative Analysis in addition to the proposed building and associated parking and drive lane. The unique site features are depicted as the City's Storm Sewer and the NNG high pressure gas line.

- ☐ **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:** No short-term impacts expected  
**Mitigation measure(s):** Silt fence and a tracking pad will be utilized during construction and site will be stabilized according to WDNR standards.  
**Extent to which mitigation reduces project impact:** Mitigation measures will reduce erosion during construction. No wetlands will be impacted as a result of this project.
  
- **Impact:** N/A  
**Mitigation measure(s):** N/A  
**Extent to which mitigation reduces project impact:** N/A

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

- Impact:** No long-term impact is expected for the on-site wetland

**Mitigation measure(s):** No mitigation is necessary, since the site was designed to treat the storm water runoff with the on-site basins, prior to discharging to wetland.

**Extent to which mitigation reduces project impact:** N/A

In general, storm water runoff is directed to the proposed wet detention basin to reduce pollutants prior to discharging to wetlands and surface waters.
- Impact:** N/A

**Mitigation measure(s):** N/A

**Extent to which mitigation reduces project impact:** N/A

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

- Impact:** This site was designed to not directly impact wetland; however a variance is requested for the wetland buffer. All state requirements have been met.

**Mitigation measure(s):** No mitigation measures are necessary

**Extent to which mitigation reduces project impact:** N/A

The runoff draining to the wetland will be treated through storm water best management practices; therefore no cumulative impact is anticipated.
- Impact:** N/A

**Mitigation measure(s):** N/A

**Extent to which mitigation reduces project impact:** N/A

**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.**

Unnecessary hardships are due to the existing City's Storm Sewer utility easement and the NNG high pressure gas main easement. The utility easements limit the location for the proposed building, which then limits the parking stalls and associated drive.

☐ **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.

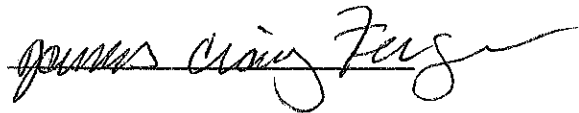
I hereby authorize the City of La Crosse Board of Zoning and Appeals and the Planning and Development Department to inspect premises

At: 3119 State Rd 16 parcel# 17-10315-610

(Address where variance is sought)

Date: 3/27/17

Signature of Owner:

**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- 2<sup>nd</sup> 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

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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) James Craig Fergus

Date: 03-23-2019

Signed: (Owner, if different from applicant) Ebner Joint Revocable Trust  
CAROL EBNER, Trustee

Date: \_\_\_\_\_

THE APPLICANT OR AGENT

By: \_\_\_\_\_

THE OWNER

Carol Ebner  
CAROL Ebner, Trustee

STATE OF WISCONSIN )

COUNTY OF LA CROSSE )

Personally came before me this 23rd day of March 2019, the above named James Craig Fergus to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

London S. Wandler  
Notary Public, La Crosse County, WI  
My commission expires: Dec 13, 2022

STATE OF WISCONSIN )

COUNTY OF LA CROSSE )

Personally came before me this 27th day of March, 2019, the above named Carol Ebner to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Margaret P. Ebner  
Notary Public, La Crosse County, WI  
My commission expires: permanent

