

Board of Zoning Appeals Variance Application

(To be completed by City Clerk or Zoning Staff)

City of La Crosse, Wisconsin

Application No.: 2568
 Date Filed: 09/07/2016
 Application Complete: Yes No Reviewed By J.C. (Initial)
 Filing Fee: \$250
 Date Paid: 9/7/16

(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 Division of Fire and Building Safety to provide review. Any building permit submitted after deadline must wait until the following Board of Zoning Appeals meeting.

	Owner / Agent	Contractor
Name	Water Place One, LLC	Wieser Brothers
Address	c/o 504 Main St. La Crosse, WI 54601	200 Twilite St. La Crescent, MN
Phone	(608)(784-1355)	(507)(895-8903)

Legal Description: See Attached, City of La Crosse, Wis.
 Tax Parcel Number: See Attached
 Lot Dimensions and Area: _____ x _____ feet. = _____ sq. ft.
 Zoning District: Planned Development District

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 Division of Fire Prevention and Building Safety 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 property is currently occupied by a marina and is in the process of being filled to a level above the flood plain for construction purposes

(b) Proposed Use.

Please see attached narrative.

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

No prior petition has been filed.

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

Please see the attached map.

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

Municipal Code - 115-60(d)

(f) Describe the variance requested.

The requested variance is from the ordinary high water mark setback of 75 feet to reduce the same at certain points.

A variance of (50.94 feet for building A) (28.24 feet for building B)
(42.18 feet for building C) (47.78 feet for building D) & (47.55 feet for building E) to the
required seventy five foot setback from the ordinary high water mark.

(g) Specify the reason for the request.

See attached narrative.

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

See attached narrative.

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.

The Developer has attempted numerous redesigns of the project over the last 2- 3 years, but there is no design, that would prove marketable and create the necessary projected increase in taxable value to generate the needed increment.

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

The Developer has negotiated a reduction in the DOT setback in order to lessen the requested variance.

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 property is bordered by the highway easement and the river, there is no other way to expand the footprint of the property. The attached map shows the boundary.

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):
Extent to which mitigation reduces project impact:

- Impact: There are no impacts.
Mitigation measure(s):
Extent to which mitigation reduces project impact:

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

- Impact: None
Mitigation measure(s):
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: Not applicable
Mitigation measure(s):
Extent to which mitigation reduces project impact:
The property restrictions caused by the highway setback and the adjacent river, are unique to this parcel. It would not be applicable to numerous properties.

- 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.**

Please see the attached narrative.

 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: 529, 601, 621 Park Plaza Drive, La Crosse, WI 54601

(Address where variance is sought)

Date: 09-07-2016 Signature of Owner: *Priscilla Jones*

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.
Clerk's Office- 2nd Floor
La Crosse, Wisconsin 54601

Submit complete copy to: Chief Inspector
400 La Crosse St.
Division of Fire Prevention and Building Safety
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) Phillip James Addis for Water Place One

Date: 7 Sept. 2016

Signed: (Owner, if different from applicant) _____

Date: _____

THE APPLICANT OR AGENT

THE OWNER

By: *Phillip James Addis agent*

STATE OF WISCONSIN)

STATE OF WISCONSIN)

COUNTY OF LA CROSSE)

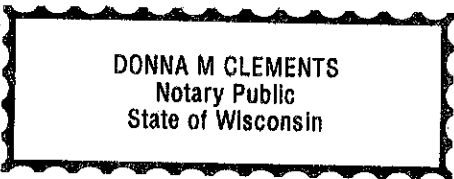
COUNTY OF LA CROSSE)

Personally came before me this 7th day of September, 2016, the above named Phillip James Addis to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Personally came before me this _____ day of _____, 2016, the above named _____ to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Donna M. Clements
Donna M. Clements
Notary Public, La Crosse County, WI
My commission expires: 03-22-2019

Notary Public, La Crosse County, WI
My commission expires: _____



Part 1: General Information

Question 1(b) – Proposed Use

Residential Phase I. The developer is proposing to build twenty – five (25) units, which will contain a total of sixty-one bedrooms. The development will provide for covered parking, but there will also be surface parking for residents and their guests. As detailed below, there will be a mix of two, three and four unit residential buildings, focused on accentuating the proximity of the development to the river. The South Bay marina which currently operates as a public marina, will be converted to public-private marina. The exact size of the marina and the number of slips will be finalized in the Condo Plat or in Phase II, after working with the Wisconsin Department of Natural Resources and the City of La Crosse on the amendment to the marina permits. It remains Water Place One's intent to create a Condominium Plat, allowing the units to be sold individually. The Units will be both owner occupied and non-owner occupied, subject to any restrictions created in the condo plat.

Question 1(g) – Reason for Request

The City, County and Developer have been negotiating the purchase and development of the Barron Island site for numerous years. In all of the negotiations Park Plaza Drive has been listed and identified as a City road. When determining the setbacks for the development the statutory setback of 150 feet from the highway was measured from the highway. After the County sold the property to the developer and the development went through assorted design reviews, the City and Developer were informed by the DOT that Park Plaza Drive was built illegally and without State approval. The State has now required that Park Plaza Drive be eliminated and that the setbacks now be measured from the edge of what was previously the City property. This moved the setback 75 to 100 feet closer to the development. This is a substantial

loss of buildable land. The variance request is to make up a portion of that loss of square footage.

*Question 1(h) - Describe the effects on the **property** if the variance is not granted.*

The project will not be built, if the setback variance is not granted. The County issued the funds for the payment of the principal amount of back taxes and incurred the costs for the demolition of the old hotel properties and environmental remediation. The City also incurred expenses for clean-up and development of the site. There is a mutual development and repayment agreement between the City and the County for repayment of the funds. The projected development creates a method to repay this debt over the remaining life of the Tax Incremental Financing District (TIF) that funded the improvements. The failure to obtain the variance will reduce both the density and taxable value, which means the developer cannot meet the requests of the City and County for the necessary increased tax increment to payback the County and the City.

Part 3 – Basis for Hardship Claim

The hardship was created because the City failed to obtain a deed from the State of Wisconsin for Park Plaza Drive. The State has now ordered the removal of Park Plaza Drive as a condition of approving construction by a state highway. Since the property was never deeded to the City, the State claims ownership of that land and is stating the setback must be from the edge of the right-of-way of Park Plaza Drive. This has resulted in a decrease of the buildable site by 75 to 100 feet in width.

The City, County and Developer have been negotiating the purchase and development of the Barron Island site for numerous years. In all of the negotiations and based upon documents held by the City and the County, Park Plaza Drive has been listed and identified as a dedicated City street, owned by the City. When determining the setbacks for the development the statutory

setback of 150 feet from the highway was measured from the state highway right of way. After the County sold the property to the developer and the development went through assorted design reviews, the City and Developer were informed by the DOT that Park Plaza Drive, though a City street, was built on land owned by the State and was never deeded to the City.

The former City Planner Larry Kirch argued the issue with the DOT, since the planning for a Barron Island development and discussion with the DOT over a potential development has been ongoing for over 10 years. The DOT asserted that the City was always aware that the road had been built illegally and should have been removed many years ago. There are no written records to support the City's position or the DOT's position, but the State of Wisconsin does own the land under Park Plaza Drive. At no point in the process of sale and development of this site, did anyone consider investigating if the City had proper deeds for its roads.

Nevertheless, the State has now required that Park Plaza Drive be removed, which the developer will pay for and in addition, the City will vacate any potential ownership interest. The State has determined, however, that the setbacks will now be measured from the edge of the right of way of Park Plaza Drive. This moved the setback 75 to 100 feet closer in to the development. The Developer is working with the DOT to reduce their requirement from 150 feet to 100 feet. This will grant the Developer 50 additional feet, which lessens the variance request, but is still not sufficient to build the approved development. The Developer also needs to reduce the setback from the water in order to build the project.

PARCEL A:

That part of Government Lots 5 and 6 of Section 13, Township 104 North, Range 4 West. City of La Crosse, La Crosse County, Wisconsin, located in the NE 1/4 of the NW 1/4, the NW 1/4 of the NW 1/4 and the SE 1/4 of the NW 1/4 lying Southwesterly of the Southwesterly right-of-way of US Hwy. 14-16, Southeasterly of the Southeasterly end of the West channel bridge and Westerly of a line described as follows: Commencing at the Northeast corner of Lot 1 of Hoeschler's Park Plaza Addition; thence South 72' 52' 00" West 476.60 feet; thence South 04' 13' 00" East 112.55 feet to a point 14 feet from the water's edge and point of beginning of this line: Thence North 4' 13' 00" West 112.55 feet; thence continuing North 4' 13' 00" West 371.3 feet; thence North 17' 43' West 350 feet; thence North 04' 13' 00" West 179.5 feet; thence North 28' 17' 00" East 140 feet; thence North 72' 07' 40" East 102.58 feet to the intersection with the Southerly right-of-way of the access road; thence Northwesterly to the bulkhead/line and point of termination of this line.

Tax Parcel No. 17-20273-060

PARCEL B:

Part of Lot 4 of Hoeschler's Park Plaza Addition to the City of La Crosse, La Crosse County, Wisconsin, EXCEPT the following described parcel: Beginning at the Southeast corner of the said Lot 4; thence along the arc of a 1,163.24 foot radius curve, concave to the West, the chord of said curve bears North 27' 27' 36" West and measures 80.52 feet; thence South 72' 52' West 293.40 feet; thence North 5' 18' West 96.83 feet; thence North 86' 18' West 91.08 feet; thence South 4' 13' East 52.54 feet; thence South 17' 43' East, 155.43 feet; thence North 72' East 383.28 feet to the point of beginning.

Also EXCEPTING the following described parcel: Beginning at the Southwest corner of Lot 5 of Hoeschler's Park Plaza Addition to the City of La Crosse; thence North 17' 08' West 70 feet; thence North 59' 39' West 81.4 feet; thence South 17' 8' East 128 feet, more or less; thence North 72' 52' East 57 feet, more or less, to the point of beginning.

Tax Parcel No. 17-20246-050

Parcel C:

All of Lot 5 and part of Lot 4 of Hoeschler's Park Plaza Addition to the City of La Crosse, La Crosse County, Wisconsin, described as follows: Beginning at the Southwest corner of said Lot 5; thence North 17' 8' West 70 feet; thence North 59' 39' West 81.4 feet; thence South 17' 8' East 128 feet, more or less; thence North 72' 52' East 57 feet, more or less, to the point of beginning.

Tax Parcel No. 17-20246-051

PARCEL D:

Part of Hoeschler's Park Plaza Addition to the City of La Crosse, La Crosse County, Wisconsin, described as follows: All of Lot 2, all of Lot 3 and that part of Lot 4 described as follows: Beginning at the Southeast corner of said Lot 4; thence along the arc of a 1,163.24 foot radius curve, concave to the West, the chord of which bears North 27' 27' 36" West and measures 80.52 feet; thence South 72' 52' 00" West 293.40 feet; thence North 05' 18' 00" West 41.78 feet; thence North 87' 43' 55" West 90.68 feet; thence South 17' 42' 52" East 150.49 feet; thence North 72' 52' 00" East 383.28 feet to the point of beginning.

Tax Parcel No. 17-20246-030

PARCEL E:

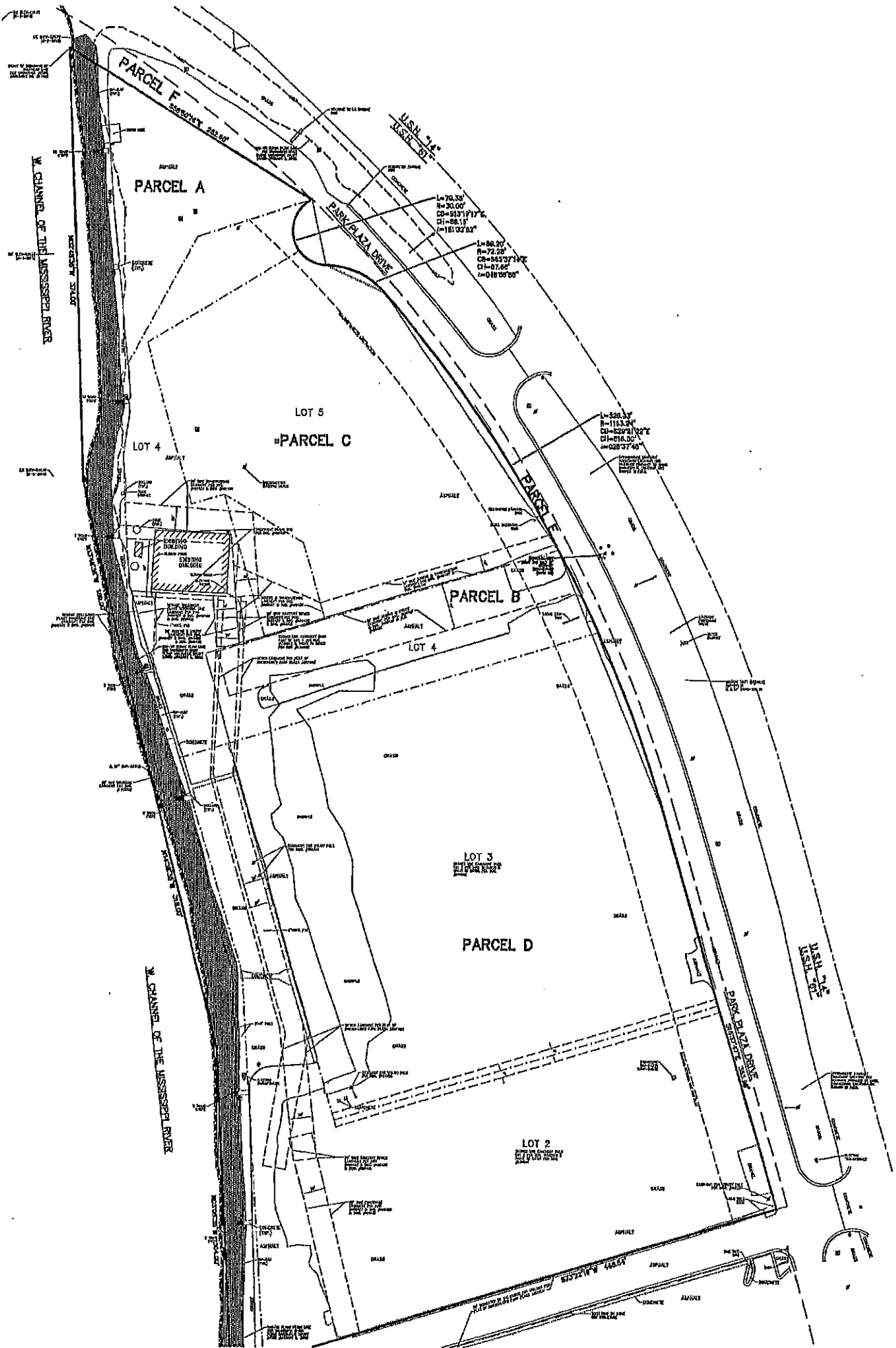
A Part of an Area Dedicated as a Service Road per the Plat of Hoeschler's Park Plaza Addition being more particularly described as follows:

Beginning at the Southeast corner of Lot 2 of said Plat of Hoeschler's Park Plaza Addition; thence North $16^{\circ}-37'-47''$ West along the East line of Lot 2 and Lot 3 of said Plat of Hoeschler's Park Plaza Addition, a distance of 353.96 feet; thence Northwesterly 520.33 feet on a curve to the left along the East line of Lot 3, Lot 4, and Lot 5 of said Plat of Hoeschler's Park Plaza Addition, having a radius of 1163.24 feet, the chord of said curve bears North $29^{\circ}-21'-22''$ West, a chord distance of 516.00 feet; thence Northwesterly 59.20 feet on a curve to the left along the East line of Lot 5 of said Plat of Hoeschler's Park Plaza Addition, having a radius of 72.25 feet, the chord of said curve bears North $65^{\circ}-37'-14''$ West, a chord distance of 57.56 feet; thence Northwesterly 79.61 feet on a curve to the right along the East line of Lot 4 and Lot 5 of said Plat of Hoeschler's Park Plaza Addition, having a radius of 30.00 feet, the chord of said curve bears North $13^{\circ}-04'-16''$ West, a chord distance of 58.22 feet to a point on the East line of said Dedicated Service Road; thence Southeasterly 628.62 feet on a curve to the right along said East line, having a radius of 1173.24 feet, the chord of said curve bears South $31^{\circ}-53'-27''$ East, a chord distance of 621.13 feet; thence South $16^{\circ}-37'-47''$ East along said East line, a distance of 353.95 feet; thence South $73^{\circ}-22'-13''$ West, a distance of 10.00 feet to the point of beginning.

PARCEL F:

A Part of the Northeast $1/4$ of the Northwest $1/4$, Section 13, Township 104 North, Range 4 West, City of La Crosse, La Crosse County, Wisconsin and being more particularly described as follows:

Beginning at the Northeasterly most corner of Lot 4 of the Plat of Hoeschler's Park Plaza Addition; thence North $58^{\circ}-50'-26''$ West, a distance of 252.60 feet; thence North $02^{\circ}-48'-36''$ West, a distance of 28.61 feet to the Southwesterly Right-of-Way line of U.S.H. 14/61 and S.T.H. 16; thence Southeasterly 270.35 feet on a curve to the right along said Right-of-Way line, having a radius of 1173.24 feet, the chord of said curve bears South $53^{\circ}-50'-30''$ East, a chord distance of 269.75 feet; thence Southwesterly 0.26 feet on a curve to the left having a radius of 30.00 feet, the chord of said curve bears South $62^{\circ}-42'-10''$ West, a chord distance of 0.26 feet to the point of beginning.



VARIANCE INFORMATION
 SETTINGS TO BARRIAGE JAW ON WEST CHANNEL OF
 W. CHANNEL LOCATION: ALL ORGANIC DEBRIS ALONG THE BARRIAGE AREA
 VEGETATION REMOVAL: ALL ORGANIC DEBRIS ALONG THE BARRIAGE AREA &
 UNDER PAVED AREAS AND AT SITE THE AREAS &
 TREES WITH DISTURBED AREAS SHALL BE REMOVED.
 ANTICIPATED START DATE: SEPTEMBER 1, 2018
 AREA OF SITE DISTURBANCE: 5.89 AC. (266,444 S.F.)

