

## Board of Zoning Appeals Variance Application

(To be completed by City Clerk or Zoning Staff)

City of La Crosse, Wisconsin

Application No.: 2623

Date Filed: 5/30/19

Application Complete: Yes ☒ No ☐

Filing Fee: \$250.00

Date Paid: 5/30/19

Reviewed By: MR (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	Patrick G. Blees, Architect, PLLC	TBD
Address	800 Washington Ave N, Suite 208 Minneapolis, MN 55401	
Phone	(612) 547-1300	

Legal Description: 710 George St., City of La Crosse, Wis.

Tax Parcel Number: 17-10289-70

Lot Dimensions and Area: 248.17 x 133.74 feet = 31,002 sq. ft.

Zoning District: C-2 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.

**RECEIVED**  
MAY 28 2019  
BUILDING & INSPECTIONS  
DEPT

CITY OF LA CROSSE, WI  
General Billing - 165826 - 2019  
006622-0040 Dave Harm 05/30/2019 12:48PM  
192888 - C.M. ARCHITECTURE, P.A.

Payment Amount:

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.**

Currently, the site has an existing O'Reilly Auto Parts store that will be demolished and a new O'Reilly Auto Parts store will be developed along with the entire site.

**(b) Proposed Use.**

Retail store for the sale of auto parts and auto accessories.

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

An appeal regarding the requirement that fill around the perimeter of a building shall be not less than one foot below the flood protection elevation and shall extend at least 15 feet beyond the limits of any structures at 710 George Street, La Crosse, Wisconsin. Variance was approved previously on February 22, 2018 by Board of Zoning Appeals as File 2601.

The same variance was resubmitted due to no construction starting before the 180 day deadline. No major changes had occurred with the construction drawings. Delay was partly due to waiting for approval and comments from City Design Review Committee. The same variance was updated and then submitted for review on October 12, 2018 and approved previously on November 21, 2018 by the Board of Zoning Appeals as File No. 2616.

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

New building will not have 15'-0" between the property line and building due to the limiting size of the site.

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

Chapter 115, Article 5, Division 2, Subdivision 3, Section 281 (3)(a)(1)/(3)(c)

(f) Describe the variance requested:

We request that we not be held to the code section stating that: "The elevation of the lowest floor shall be at or above the flood protection elevation on fill unless the requirements of section 115-281(3)(a)(2) can be met. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure." This variance is requested specifically for nine (9) feet on the North side and for four (4) feet on the West side of the building, where there is not enough room for the 15'-0" between the property line and building.

(g) Specify the reason for the request.

We cannot meet the setbacks due to the narrowness of the site and we would not be able to have an appropriate size building on the site if we were required to conform to this standard. The only other option would be to remove the northern driveway, which will cause issues for the fire department and their ability to access the site.

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

If the variance was not granted, then we would need to have a much smaller building, which O'Reilly cannot accept due to market necessities. A new building would not be built, thus leaving the old building with no site improvements.

## 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.

One alternative would be to have a significantly smaller building than the existing building, which O'Reilly does not want to pursue. This also leads to not making any overall improvements to the site. The ability to redevelop the site as presented would be mutually beneficial to both the city and O'Reilly.

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

N/A

## 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.

Our entire property is in a flood plain and we are required to raise our property several feet to get out of it. There is also a sidewalk along George St. that limits our proximity to that side of the property, thus making the grading quite steep at the property bounds.

- ☐ **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: If granted, the site will be redeveloped and therefore improved, beautifying the surrounding area.  
Mitigation measure(s): Construction will take place only during business hours.  
Extent to which mitigation reduces project impact:

Once redeveloped, the site will look exceedingly better and shouldn't need to be developed again for quite some time. It will also raise the property out of the flood plain, which it currently is in. Since the construction will only take place during business hours, noise and traffic impacts will be reduced to only that time.

- Impact:  
Mitigation measure(s):  
Extent to which mitigation reduces project impact:

Nothing else will impact the site through construction if this variance is granted.  
Either the site is redeveloped or O'Reilly will most likely leave the site as is.

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

- Impact: Less impervious surface  
Mitigation measure(s): N/A  
Extent to which mitigation reduces project impact:

If the site is redeveloped, it will have less overall impervious surface than the existing site, thus reducing surface runoff. Adding more landscaping will assist with this process.

- Impact: Flood Plain Elevation  
Mitigation measure(s): Site will no longer be in the flood plain  
Extent to which mitigation reduces project impact:

If the site is redeveloped, the site will be at the level of the adjacent property, which will help the city with runoff volume and will assist in the effort to raise more of the city out of the flood plain. A Letter of Map Revision was requested and provided by FEMA on March 16, 2016. The document indicates that, "The minimum NFIP criteria for removal of the subject area based on fill have been met for this request and the community in which the property is located has certified that the area and any subsequent structures built on the filled area are reasonably safe from flooding."

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

- Impact: More buildings closer to the street  
Mitigation measure(s): N/A  
Extent to which mitigation reduces project impact:

The purpose of the variance is to allow the building to fit on site. The worst thing that would happen would be other buildings having a similar building setback, which is short of the site fill requirement we are already meeting.

- Impact: N/A  
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.

Due to being in a flood plain and with the site needing to be raised, there is less area on each side of the property that can be used due to grading. The property is also narrow, which would limit the access to the property as only one driveway would be possible.

☐ 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"

We can have this done, we just need to know when someone will be out to inspect this if it's before construction.

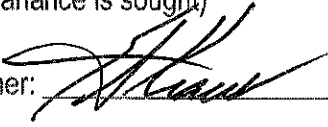


**Part D: Authorization to Examine**

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: 710 George Street La Crosse, WI 54603  
(Address where variance is sought)

Date: 5-23-19 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.  
Planning & Development Dept.- Division of Inspections- 3<sup>rd</sup> Floor  
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) \_\_\_\_\_

Date: 5-23-2019

Signed: (Owner, if different from applicant) \_\_\_\_\_

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

THE APPLICANT OR AGENT

THE OWNER

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

STATE OF ~~WISCONSIN~~ MISSOURI )

COUNTY OF ~~LA CROSSE~~ ~~HOWELL~~ )  
GREENE

Personally came before me this 23 day of May, ~~2014~~, the above named Scott Kraus ~~2019~~ to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Christina Cheek

Notary Public, ~~La Crosse County, WI~~ HOWELL, CO, MO  
 My commission expires: 4-29-2021

STATE OF WISCONSIN )

COUNTY OF LA CROSSE )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, the above named \_\_\_\_\_ to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Notary Public, La Crosse County, WI

My commission expires: \_\_\_\_\_

