

Variance Appeal Procedure

Application:

- **Building Permit Application Deadline:** Ten (10) Calendar Days prior to the first Monday of every month for Building and Inspections to provide review. Any building permit submitted after this deadline must wait until the following month's Board of Zoning Appeals meeting.
- **Variance Application and Fee Deadline:** 4:00 p.m. the first Monday of every month.
- City Hall lobby public services hours are Monday through Thursday 8:00 a.m. to 4:00 p.m. The lobby is closed outside of the public service hours; however, departments may be reached by telephone during their regular business hours.
- At the time of application for variance, you will be asked to:
 - **Complete this variance application** form and timely submit it with a non-refundable fee of \$400.00 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 (Part B. Three Legal Standards starting on page 4); 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.

Submit original application for review to:

Building and Inspections
400 La Crosse St., Lobby Workstation #4
La Crosse, Wisconsin 54601

After Building & Inspections review, submit original application and fee to:

City Clerk's Office
400 La Crosse St., Lobby Workstation #5
La Crosse, Wisconsin 54601

Review:

Following submission of the application and documents, Building and Inspections will review and must approve the application as to form and completeness. Once approved, Building and Inspections will notify you and you will then submit the application and fee to the City Clerk. Upon receiving a completed application and supporting documents, the City Clerk will:

- schedule a meeting/public hearing of the Board of Zoning Appeals (3rd Monday of the month).
- provide notice of the request for a variance to the owner/agent, the City of La Crosse's official newspaper, any affected state agency, and property owners within 100 feet of the property where the variance is sought; such notice will include the location and time of the required public hearing before the Board of Zoning Appeals.
- supply the variance application and all other documents that are submitted with said application to the Board of Zoning Appeals members prior to the public hearing.

Action:

At the public hearing, the Board may grant (in full or a lesser variance), grant with conditions, grant with time restrictions, or deny variance applications. If a variance is granted, construction must commence within 180 days after the date the Board's Decision is filed. If aggrieved by the Board's decision, the decision may be appealed to the La Crosse County Circuit Court; however, pursuant to Section 62.23 (7)(e)(10) of the Wisconsin Statutes, the appeal must be filed with said courts within thirty (30) days from the date of the filing of the Board's decision.

Important Notes: The burden falls on the applicant 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 the requirements for a variance are not met or if you or your agent do not appear at the public hearing, the Board **must** deny your request for a variance and your fee will be forfeited.

City of La Crosse Board of Zoning Appeals Variance Application

(To be completed by the applicant)

	<i>Name</i>	<i>Address</i>	<i>Phone #</i>	<i>Email</i>
Applicant/Agent				
Property owner, if different				
Contractor				

Tax Parcel Number: _____ Property Address: _____

Legal Description: _____, City of La Crosse

Lot Dimensions and Area: _____ x _____ feet. = _____ sq. ft. Zoning District: _____

A variance is a relaxation of a dimensional or use standard specified in the zoning ordinance. The Board of Zoning Appeals reviews and decides cases where there is an alleged error in a zoning decision or where a relaxation of the ordinance is sought. The Board is a quasi-judicial body (meaning it functions like a court) and is not a policy making body and therefore does not have discretionary authority. 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 factual situation. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden.

The Board may only grant a variance, special exception, or administrative appeal if the applicant provides evidence showing that they meet **all** the legal standards for that decision. **The burden of proof falls on the applicant, not the Board of Zoning Appeals or the Zoning Administrator.** The legal standards the Board will use to decide on each application are shown below.

STANDARDS FOR USE or AREA VARIANCE

- 1. The property has a special or unique condition that does not apply to other properties in the area.**
- 2. The proposed variance is not contrary to the public interest and not contrary to the purpose and intent of the zoning regulation.**
- 3. The special or unique condition of the property creates an unnecessary hardship. If it is a use variance, then the property must have no reasonable use. If it is an area variance, then the ordinance either unreasonably prevents the use of the property for a permitted purpose or makes conformity with restrictions unreasonably burdensome.**

By signing below, I certify that the information I have provided in this application is true and accurate. I understand that evidence must be provided showing that the three standards listed above are met. I understand that if one or more of the standards cannot be met, my appeal for variance must be denied by the Board of Zoning Appeals.

Signed: (Applicant or Agent): _____ Date: _____

Signed: (Owner, if different from applicant): _____ Date: _____

(To be completed by Building Inspector and City Clerk Staff)

Application Complete: Yes _____ No _____ Reviewed by: _____

Application #: _____ Date Filed: _____ Filing Fee: _____ Date Paid: _____

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f. Describe the variance that is being requested:

g. Specify the reason for the variance request:

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

2. **Alternatives.** Describe alternatives to your proposal such as other locations, designs, and construction techniques.

a. **Alternatives 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 alternative(s) and reasons why you rejected them.

b. **Alternatives that require a lesser variance.** If you reject such alternatives, provide the alternative(s) and reasons why you rejected them.

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Part B: Three Legal Standards. *(To be completed by the applicant)*

To qualify for a variance, applicants **must** demonstrate that their property meets the three standards.

1. Unique Property Limitation.

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.

No. A variance cannot be granted.

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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.

b. Purpose(s) of Standard from which Variance is Requested.

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c. Analysis of Impacts.

Describe impacts (e.g., increased runoff, eroding shoreline, etc.) that would result if the variance were granted. For the impact(s), 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):

a. Impact:

i. Mitigation measure(s):

ii. Extent to which mitigation reduces project impact:

b. Impact:

i. Mitigation measure(s):

ii. Extent to which mitigation reduces project impact:

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

a. Impact:

iii. Mitigation measure(s):

iv. Extent to which mitigation reduces project impact:

b. Impact:

v. Mitigation measure(s):

vi. Extent to which mitigation reduces project impact:

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

c. Impact(s):

vii. Mitigation measure(s):

viii. 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.

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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. The property owner bears the burden of proving unnecessary hardship.

An area variance is a relaxation of lot area, density, height, frontage, setback, or other dimensional criterion. **Unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (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 (use additional pages if necessary):

No. A variance cannot be granted.

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Part C: Construction Plans.

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 Building and Inspections to examine the property of the variance request.

I hereby authorize the City of La Crosse Board of Zoning and Appeals and Building and Inspections to inspect premises.

at: _____
(Address where variance is sought)

Signature of Owner: _____ Date: _____

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Part E: Certification.

The applicant (and owner, if different from applicant) must sign this section in front of a notary and certify that the application and any additional materials are accurate and do not contain any misrepresentations or omissions. An unsigned variance application will not be considered.

By signing below, I certify that I have received, reviewed, and completed all the application materials. I further certify that all 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: _____

State of Wisconsin)
County of La Crosse)^{ss}

Personally came before me this _____ day of _____,

the above named _____
to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Printed Name:
My Commission Expires:

Signed: (Owner, if different from applicant): _____ Date: _____

State of Wisconsin)
County of La Crosse)^{ss}

Personally came before me this _____ day of _____,

the above named _____
to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Printed Name:
My Commission Expires: