

**FILED**  
**11-29-2018**  
**Clerk of Circuit Court**  
**La Crosse County WI**  
**2018CV000476**

**STATE OF WISCONSIN**

**CIRCUIT COURT**

**LA CROSSE COUNTY**

**MAYOR TIM KABAT**  
400 La Crosse Street  
La Crosse, WI 54601,

Petitioner,

Case No.: 18-CV-476  
Case Code: 30607

v.

**CITY OF LA CROSSE**  
**BOARD OF ZONING APPEALS**  
400 La Crosse Street  
La Crosse, WI 54601,

Respondent.

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**JOINT MOTION TO VACATE VARIANCES**

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The above-stated parties hereby move the Court for an order vacating the variances which are the subject of this case. The basis for this motion is based on the following, as stipulated by the parties:

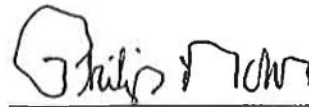
1. Respondent, City of La Crosse Board of Zoning Appeals, granted two (2) separate variances to Eugene and Betty Linse ("Applicants") for property located at 712 Cliffwood Lane, La Crosse, Wisconsin (the "Property"), effective as of July 18, 2018. See Exhibit 1.
2. The variances authorized Mr. and Mrs. Linse to construct an addition to the Property.
3. Petitioner, Mayor Tim Kabat, commenced this action challenging the variances by filing a Petition for Writ of Certiorari on August 16, 2018 (the "Petition").

4. On October 25, 2018, the Applicants requested that the building permit application for the proposed addition be withdrawn. A copy of the correspondence to the City of La Crosse withdrawing the building permit application is attached hereto as Exhibit 2.
5. The Applicants have no current plans to construct an addition and therefore no need for a variance at this time. The Applicants, by their own request, have requested this variance be rescinded thus mooted this current Petition. Accordingly, the parties desire that this Court grant the proposed order vacating the variances so that this matter may be resolved.

Dated: 11/21/2018

**CITY OF LA CROSSE BOARD OF  
ZONING APPEALS**

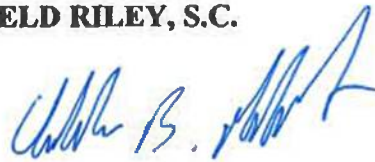
By:



Philip Nohr, Chairman, City of La Crosse  
Board of Zoning Appeals

**WELD RILEY, S.C.**

By:



Christopher B. Gierhart  
State Bar No. 1089117  
Attorneys for Respondent,  
City of La Crosse Board of Zoning Appeals

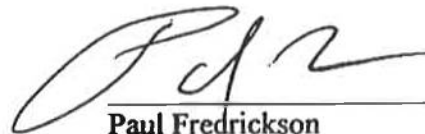
**MAYOR TIM KABAT**



Mayor Tim Kabat, City of La Crosse

Dated: 11/27/2018

Dated: 11/28/18



Paul Fredrickson  
State Bar No. 1089115  
Attorneys for Petitioner, Mayor Tim Kabat,  
City of La Crosse

File No. 2611

**BOARD OF ZONING APPEALS****La Crosse, WI  
DECISION UPON APPEAL**

Eugene & Betty Linse having appealed from an order of the Building Inspector denying a permit with regard to the requirement to provide 15 feet of perimeter fill around an addition and an appeal to exceed 50 percent of the assessed value of a nonconforming structure for an addition and remodel

at a property known as 712 Cliffwood Ln., La Crosse, Wisconsin  
and described as:

HOESCHLER CLIFFWOOD TERRACE LOT 8 BLOCK 2 LOT SZ: 100 X 100

and due notice having been given by mail to all City of La Crosse property owners and lessees within 100 feet of the property which is the subject of this appeal, and similar notice having been published in the La Crosse Tribune more than five (5) days prior to the time of the hearing hereon, and testimony having been received and heard by said Board in respect thereto, and having been duly considered, and being fully advised in the premises,

WHEREFORE, IT IS ORDERED: That the decision of the Building Inspector be: Affirmed ☐ Reversed ☒  
(See attached)

Dated this 7/18/2018

Date Filed: 7/20/2018

ATTEST John M. Elson, deputy city clerk  
(For: Lebrato, Secretary)

Phil Nohr  
Phil Nohr, Chairman

Concurring:

Cheryl Clemence  
Phil Nohr  
Carol Hays

Thomas J. Senter  
Douglas L. Tamm

Dissenting:

The decision of the Board may be appealed to circuit court within 30 days of the decision being filed pursuant to Wisconsin Statute sec. 62.23(7)(e)10.

NOTE: WORK SHALL BEGIN WITHIN 180 DAYS AFTER THE DATE OF THIS DETERMINATION

You are hereby notified that when a variance is granted from the provisions of the flood plain regulations, increased flood insurance premiums may result.

EXHIBIT

1

## ***DECISION UPON APPEAL***

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**2611 – Eugene & Betty Linse** - An appeal regarding the requirement to provide 15 feet of perimeter fill around an addition and an appeal to exceed 50 percent of the assessed value of a nonconforming structure for an addition and remodel at 712 Cliffwood Ln., La Crosse, Wisconsin.

Farmer: the unique property limitation is obvious even by the flood maps that the house is possibly partially in the floodplain or maybe not. It is possibly in the floodplain by a small amount of water or maybe as much as a foot, proceeding on a request for a variance of 15 feet to the 15 feet of perimeter fill requirement and to allow the owner to exceed the 50 percent threshold by \$100,000 or 64.5 percent of the structure for file 2611. There is an awful lot of confusion, and we have not been arbitrary; we have worked hard trying to figure this out, only to resolve that it is not easily figured out. It is either in or out by a little bit or not at all and it is quite confusing. If ever there is a property that was close to being not in, this could be it. The addition no harm to the public interest is, I think, is probably not in the floodplain so no water would be displaced and harming any members of the public. That is a key thing; someday someone is going to figure out that all of those islands on the north side that are four feet high are just displacing water and raising the water level for everyone else. This would not do that and in that respect it is somewhat better than some of the other solutions we have approved. The reason for the variance is, I believe, that in our attempt to be reasonable should not result in...although I do anticipate that while the DNR and FEMA may not be happy because the line it has been crossed, it has been crossed reasonably. The unnecessary hardship is that the property is severely compromised if the floodplain restrictions are fully enforced. I don't think the 50 percent rule applies; we had conflicting testimony on that too where the inspection department said it did and the DNR said it didn't. With conflicting testimony, that too would be a difficulty. The petitioner indicated, and I believe that the \$100,000 represents the top side of this and he is smart enough to ask for the top side rather than have to come back later on. Ideally, it is going to be \$45,000 or 50,000; it is hard to believe you spend that on a kitchen, but we finally redid our kitchen and I spent \$30,000 and I didn't put on an addition. As Charles said earlier, people should be able to use their house like other people.

Nohr makes a friendly suggestion for an amendment. Nohr states that he believes the testimony from the DNR was that they didn't know if the additions for the property were made prior to this being in the floodplain. Farmer said they didn't know, but from his testimony they were done prior to 1980 and the program didn't exist in 1980. Farmer adds that the DNR said they didn't know if it was in the floodplain at that time.

Haefs seconded.

**CONCURRING:**

Anastasia Gentry  
Carol Haefs  
Phil Nohr  
Charles Clemence  
Douglas Farmer

**DISSENTING:**

None

Date Filed:

July 20, 2018

**Christopher Gierhart**

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**From:** Fredrickson, Paul <fredricksonp@cityoflacrosse.org>  
**Sent:** Wednesday, October 31, 2018 9:11 AM  
**To:** Christopher Gierhart  
**Subject:** FW: Building Permit

Below, please see Mr. Linse's e-mail to the Building Inspector.

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**From:** Reinhart, David  
**Sent:** Thursday, October 25, 2018 7:42 AM  
**To:** Fredrickson, Paul <fredricksonp@cityoflacrosse.org>  
**Subject:** FW: Building Permit

FYI

Thanks.

David Reinhart  
Chief Building Inspector  
City of La Crosse  
Fire Prevention & Building Safety  
Phone: 608-789-7564  
Fax: 608-789-7589

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**From:** Young, Eddie  
**Sent:** Thursday, October 25, 2018 7:39 AM  
**To:** 'gene linse'  
**Cc:** Reinhart, David  
**Subject:** RE: Building Permit

Gene,

I have received your email. Your application has been withdrawn.

Thanks, Eddie

*Eddie Young*

**Division of Fire Prevention & Building Safety**  
**City of La Crosse**  
**400 La Crosse St.**  
**La Crosse, WI 54601**  
**(608)789-7582**

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**From:** gene linse [mailto:genelinse@yahoo.com]  
**Sent:** Thursday, October 25, 2018 7:36 AM



**To:** Young, Eddie; [reinhardt@cityoflacrosse.org](mailto:reinhardt@cityoflacrosse.org)

**Subject:** Building Permit

\*\*\* CAUTION: This email originated from an external sender. DO NOT click links or open attachments unless you recognize the sender and know the content is safe. \*\*\*

This is to confirm my 10/24 phone conversation with David Reinhart. This e-mail is my official request to withdraw my building permit application. I recognize that the variance approval will expire.

Please note that I will be reapplying in the spring and that we may be faced with the same issues at that time. I would like to schedule a meeting with one or both of you after the first of the year to discuss what options are available to me.

If you need any further documentation of my building permit withdrawal please let me know. Please confirm receipt of this e-mail.

Gene Linse  
712 Cliffwood Lane  
La Crosse, Wisconsin 54601