STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0344

Haven Chemical Health Systems, L. L. C.,
Appellant,

vs.

Castle Rock Township,
Respondent.

Filed January 13, 2009
Affirmed
Halbrooks, Judge
Concurring in part, dissenting in part, Stoneburner, Judge

Dakota County District Court
File No. 19-C2-07-7939

Michael C. Flom, Prairie A. Bly, Peter K. Beck, Gray, Plant, Mooty, Mooty & Bennett, P.A., 500 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402-3796 (for appellant)

Robert A. Alsop, Kennedy & Graven, Chtd., 470 U.S. Bank Plaza, 200 South Sixth Street, Minneapolis, MN 55402 (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Halbrooks, Judge; and Stoneburner, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

On appeal in this zoning dispute from denial of its motion for summary judgment and dismissal of its claims, appellant Haven Chemical Health Systems, L.L.C., argues

that (1) it is entitled to a reasonable accommodation under the federal Fair Housing Amendments Act (FHAA) because its request was reasonable and respondent Castle Rock Township did not show unreasonableness or undue hardship arising from the accommodation; (2) the denial of the variance violated Minn. Stat. § 462.357 (2008); and (3) the denial of the variance violated appellant's right to substantive due process of law. Because we conclude that appellant did not establish that the variance was reasonable and necessary for purposes of the FHAA and because denial of the variance did not violate state law or appellant's rights to substantive due process, we affirm.

FACTS

On June 22, 2006, appellant purchased a six-bedroom, four-bath house in Castle Rock Township (the township) to use as a residential treatment facility for chemically dependent individuals. The house is located in a RR-I Rural Residential District; under the township's zoning ordinances, one of the permitted uses in the RR-I District is a state-licensed residential facility serving six or fewer individuals. Appellant applied to the township for a variance and a conditional use permit (CUP) to allow for ten residents instead of the six for which the RR-I District was zoned. After consulting with an independent city planner and holding several open meetings, the township board denied both applications.

In denying the variance application, the township board adopted the conclusions of the city planner, finding that (1) there is no existing hardship that would prevent reasonable use of the property as is; (2) appellant did not identify any "unique or unusual circumstances affecting [the] property . . . that constitute[d] a hardship or warrant[ed]

consideration of a variance"; (3) "[g]ranting the proposed variance would intensify the proposed residential facility in an existing single family residential zoning district to a multiple family residential level"; (4) the RR-I District has no provisions for multiple-family residences so "[g]ranting the proposed variance would result in allowing a use that is otherwise not permitted in [that] District"; and (5) "[m]ultiple family residential uses are currently inconsistent with the Comprehensive Plan."

In denying the CUP application, the township board again adopted the city planner's conclusions, finding that (1) "Conditional Uses specified in the RR-I District do not include any residential land uses"; (2) a "10-person residential facility is a State identified multiple family-level facility," and the "RR-I District has no provisions for multiple family residences"; (3) "[t]here are currently no provisions for multiple family residences in any of the zoning districts in Castle Rock Township"; (4) "[m]ultiple family residential uses are currently inconsistent with the Comprehensive Plan"; and (5) the township board had already denied the variance petition.

Appellant filed a complaint against the township, seeking an injunction from the district court to require the township board to issue a variance or a CUP based on alleged violations of the Fair Housing Act, the Minnesota Human Rights Act, state municipal-planning law, and 42 U.S.C. § 1983 (2000). Appellant subsequently moved for summary judgment. In its response to the motion, the township sought dismissal of all appellant's claims. The district court denied appellant's motion and dismissed all of its claims. This appeal follows.

D E C I S I O N

Although appellant characterized its motion as one seeking summary judgment, neither party asserted that there were any genuine issues of material fact. The township did not bring a cross-motion for summary judgment. Both parties sought a summary disposition from the district court on the legal issue of whether the township improperly denied appellant's request for a variance and a CUP. "When reviewing a zoning determination, appellate courts review directly the municipality's determination without any regard for the district court's conclusions." *Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 19 (Minn. App. 2003).

"The standard of review in all zoning matters is whether the local authority's action was reasonable." *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 397 (Minn. App. 1989), *review denied* (Minn. Dec. 1, 1989). A municipality's determination is reasonable when the stated reasons for its decision are legally sufficient and have a factual basis. *Nw. Coll. v. City of Arden Hills*, 281 N.W.2d 865, 868 (Minn. 1979). Although rebuttable, there is a strong presumption that a city's actions are proper. *Arcadia Dev. Corp. v. City of Bloomington*, 267 Minn. 221, 226, 125 N.W.2d 846, 850 (1964). A municipality has broad discretion in denying variances. *Kismet Investors, Inc., v. County of Benton*, 617 N.W.2d 85, 90 (Minn. App. 2000), *review denied* (Minn. Nov. 15, 2000).

I.

Appellant asserts that, under the FHAA, it is entitled to a reasonable accommodation and that the township did not show unreasonableness or undue hardship

arising from the accommodation. Under the FHAA, it is unlawful to discriminate in the sale or rental of a dwelling on the basis of a person's handicap by refusing to make reasonable accommodations in rules, policies or practices, or services when the accommodations may be necessary to afford the person equal opportunity to use the dwelling. 42 U.S.C. § 3604(f)(3)(B) (2000). It is undisputed that the term "handicap" under the FHAA includes drug addiction and alcoholism. 42 U.S.C. § 3602(h) (2000); 24 C.F.R § 100.201(a)(1),(2) (2008). But appellant does not claim discrimination by the township when it denied the variance and CUP. The township did not conclude that a treatment facility was not allowed in that location—it concluded that there was no basis to expand the permitted use from six to ten persons.

The FHAA requires accommodation if such accommodation (1) is reasonable, and (2) necessary (3) to afford a handicapped person the equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B). This court looks at whether appellant made a prima facie showing that the accommodation it seeks is reasonable and necessary on its face. *Hinneberg v. Big Stone County Hous. & Redevelopment Auth.*, 706 N.W.2d 220, 226 (Minn. 2005). Once appellant demonstrates the accommodation is necessary and reasonable, the burden then shifts to respondent to demonstrate undue hardship in the particular circumstances. *Id*.

Determining reasonableness is a "highly fact-specific inquiry" that requires balancing of the parties' needs. *Citizens*, 672 N.W.2d at 20. "To find an accommodation reasonable it must be capable of producing desirable results and must not impose undue financial or administrative burdens. . . . When considering a waiver to zoning

ordinances, the accommodation must not be so at odds with the purposes behind the rule that it would be a fundamental and unreasonable change." *Id*. (quotation omitted). Necessity "requires 'a showing that the desired accommodation will affirmatively enhance a disabled [person's] quality of life by ameliorating the effects of the disability.'" *Id.* (quoting *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d 775, 784 (7th Cir. 2002)).

Appellant argues that allowing four more people is necessary to afford disabled persons an equal opportunity to use and enjoy a dwelling because group therapy is more effective when the number of participants is more than six. While Robert Haven, appellant's president, made a general statement to that effect at the October 18, 2006 town board meeting, he did not provide any authority to support the supposed therapeutic advantage inherent in working with ten individuals rather than six. Haven stated:

> There's an advantage to having ten over six. There's a therapeutic advantage. Group therapy is the most successful tool in working with chemically dependent individuals because when we sit in a group, they're less defensive. When you're one to one, in the family conferences and things like that, they have their guard up. It's just natural. It's natural, human behavior. When they're sitting in a group, they're more relaxed and then when they're hearing about somebody over there, "oh, that fits for me, too". That's the main reason we're going for ten instead of six.

Haven's objective to work therapeutically with people in a group, as opposed to one-on-one, is met with a group of six. Without support in the record to distinguish a group of six people from a group of ten, we conclude that appellant has failed to establish the necessity prong under the FHAA.

Appellant also relies heavily on *Citizens*. But in *Citizens*, a variance was granted to serve 40 people rather than the standard 32 because the city found that the vast majority of housing in that zone were multiple-family rental units and allowing 40 units in the treatment facility was compatible with the surrounding residential uses. 672 N.W.2d at 21. Unlike *Citizens*, the township does not have any similarly situated housing in the zone where the property is located nor in any of its other districts. In *Citizens*, this court found that the FHAA requires a waiver of a zoning ordinance if "the waiver is capable of producing desirable results while not imposing undue financial or administrative burdens on the municipality and is needed to allow disabled people the same opportunity to live in a certain neighborhood as people without disabilities." *Id.* Here, allowing the waiver of the ordinance by granting the variance and CUP applications could impose undue administrative burdens on the township. Additionally, the township has not denied disabled individuals the same opportunity to live in a neighborhood alongside people without disabilities, but rather has limited the size of the household. This case is clearly distinguishable from the holding in *Citizens*.

Appellant's rationale that a ten-person facility provides more effective group therapy than a six-person facility does not fulfill the statutory requirement that an accommodation be *reasonable and necessary* to afford a handicapped person the equal opportunity to use and enjoy a dwelling. A handicapped person in a permitted six-person facility has an equal opportunity to use and enjoy that dwelling. Appellant's requested accommodation is not necessary for purposes of the FHAA because appellant has not shown how adding four more people will affirmatively enhance a disabled person's

quality of life by ameliorating the effects of the disability. Group therapy is an effective means of treatment for chemically dependent people. But appellant has failed to show that increasing the size of the residential treatment facility by four people serves a substantially different therapeutic purpose necessary to ameliorate the effects of the disability. Based on our review of the record, other six-person residential treatment facilities exist in the metro area; so, presumably, group therapy of six individuals is effective.

Third, even if appellant had met the initial burden of showing reasonableness and necessity, the township has made a showing that such an accommodation would pose undue hardship. By making such an accommodation, the township would be making a substantial and fundamental modification to its land-use and zoning scheme. No district in the township is zoned for multifamily housing. Allowing a variance in this case would unreasonably violate the express provisions and intent of the township's well-established zoning ordinances and comprehensive plan.

Because appellant has not established the reasonableness and necessity of increasing the size of the facility, we conclude that it is not entitled under the FHAA to the requested accommodation.

II.

Appellant contends that in denying the variance, the township violated state law. Minn. Stat. § 462.357, subd. 6(2), provides that a zoning authority may grant a variance from the literal provisions of the ordinance when

> strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of the ordinance. "Undue hardship" as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under conditions allowed by the official controls, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.

Here, the property in question can be put to a reasonable use without the requested variance or CUP. Appellant is not claiming that, as a six-person facility, the treatment program would offer no benefit to participants, because to do so would undermine the necessary application requirements for operation of a six-person facility on the property.

The variance application requested a change in density—the number of residents—and was not a proposal to alter the character of the zoned district; thus, it follows that it was a nonuse variance. *In re Stadsvold*, 754 N.W.2d 323, 329 (Minn. 2008) (distinguishing between use and nonuse variances). Nonuse variances can be granted as long as the action is "in keeping with the spirit and intent of the ordinance." *Merriam Park Cmty. Council, Inc. v. McDonough*, 297 Minn. 285, 291, 210 N.W.2d 416, 420 (1973), *overruled on other grounds by Nw. Coll.*, 281 N.W.2d at 868 n.4; *see also* Minn. Stat. § 462.357, subd. 6(2). Under state law, the township board could have granted the variance if it had found that allowing an additional four residents at the

treatment facility was consistent with the spirit and intent of the ordinance for the RR-I District. Per the township's zoning ordinances, the intent of the RR-I District is

> for application in those areas of the Township where untillable, vacant land has become subject to increased amounts of single family residential development. However, because the Township wishes to limit residential development in this area, because urban services such as central sewer and water are not immediately available, and because significant amounts of residential development will adversely affect surrounding agricultural operations, residential development in this district must be kept to a reasonable density.

Castle Rock Township, Zoning Ordinance § 6.05(A) (2002). Given that the "spirit and intent" of the ordinance is to keep development in that district to a reasonable density, the township board had a supportable basis to deny appellant's request to expand the facility to add four residents.

The township properly followed state law and its own ordinance in denying appellant a variance or CUP. There are no unique or unusual circumstances with regard to the property that constitute a hardship or warrant a variance. The essential character of the area would be altered if the variance were granted, as that would establish a precedent for multifamily dwellings to obtain variances and be constructed. The township's comprehensive plan currently limits the maximum density in designated residential areas, and multiple-family residential uses are currently inconsistent with that plan.

As a result, we conclude that the township did not violate state law in denying appellant's applications for a variance and CUP.

III.

Appellant contends that the proceedings before the township board denied appellant its substantive due-process rights. To show a substantive due-process violation, appellant must establish that it suffered a "deprivation of a protectible property interest" attributable to "an abuse of governmental power sufficient to state a constitutional violation." *Northpointe Plaza v. City of Rochester*, 465 N.W.2d 686, 689 (Minn. 1991). Appellant claims that it has a protectable property interest in the CUP and variance applications that it was deprived of when the township denied the applications. According to appellant, the township intentionally discriminated against the disabled residents the facility would serve. Appellant points to two other CUPs that were granted in the RR-I District around the same time that appellant's CUP was denied. But both of the other CUP applications were permitted uses under the township's zoning ordinances. While the township agrees that there was much public opposition to appellant's applications, nothing in the township's decision indicates that appellant was denied due process.

We therefore conclude that the township did not violate appellant's substantive due-process rights.

Affirmed.

STONEBURNER, Judge, concurring in part and dissenting in part.

I concur with the majority opinion holding that respondent did not violate Minn. Stat. § 462.357, subd. 6(2) (2006), or appellant's due-process rights. I part company, however, regarding the application of the FHAA to this case.

Respondent failed entirely to consider whether the requested accommodation was necessary and reasonable under the FHAA when it denied the variance and CUP. Denial was based on respondent's erroneous conclusion that a ten-person residential-treatment facility is multifamily housing, which is not permitted in the RR-I Residential District.

Although Minn. Stat. § 462.357, subd. 8, and Minn. Stat. § 245A.11, subd. 3 (2006), require that a state-licensed residential facility serving from seven through 16 persons shall be considered a permitted multifamily residential use of property for purposes of zoning, neither those statutes nor any other statute explicitly defines such a facility as a multifamily residential use. In fact, Minn. Stat. § 245A.11, subd. 3, specifically provides that "[n]othing in this chapter shall be construed to exclude or prohibit residential programs from single-family zones if otherwise permitted by local zoning regulations." There is no evidence supporting respondent's conclusion that allowing ten residents will change the use of the facility. And counsel for respondent conceded at oral argument on appeal that the considerations required by FHAA, rather than traditional factors for evaluating variance and CUP petitions, apply to this case and that even a use variance should be granted if the accommodation is necessary and reasonable.

In *Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 21 (Minn. App. 2003), this court concluded that "the [FHAA] requires a waiver of a zoning ordinance if the waiver is capable of producing desirable results while not imposing undue financial or administrative burdens on the municipality and is needed to allow disabled people the same opportunity to live in a certain neighborhood as people without disabilities." Here, there is uncontroverted evidence in the record that there is a therapeutic advantage to having ten rather than six people for group therapy, the most successful tool for working with chemically dependent people. Providing the optimal setting for effective chemical-dependency treatment clearly enhances the desirable result of sobriety necessary to enhance a chemically dependent person's quality of life. What facility operator or community would want a treatment program that does not provide the optimal conditions for successful treatment? The fact that other six-person treatment facilities exist in the metro area is irrelevant. There is no evidence in the record that those facilities offer the same programming offered by appellant or that those programs provide the optimal conditions for effective treatment.

Additionally, the record demonstrates that the home, without any alterations, can easily accommodate more than ten people whether they are members of a single family or people needing treatment. Because respondent did not identify any undue administrative or financial burden that would result from granting the density variance and CUP applications, I conclude that respondent's stated reasons for its decision are legally insufficient and would reverse.