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**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A08-1066**

Richard Eitel, et al.,
Appellants,

vs.

City of White Bear Lake, a Home Rule Charter City,
Respondent.

**Filed April 7, 2009**
**Affirmed**
**Connolly, Judge**

Ramsey County District Court
File No. 62-CV-07-168

Scott J. Strouts, 12 South Sixth Street, 721 Plymouth Building, Minneapolis, MN 55402 (for appellants)

Paul A. Merwin, League of Minnesota Cities, 145 University Avenue West, St. Paul, MN 55103-2044 (for respondent)

Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Connolly, Judge.

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

**CONNOLLY**, Judge

Appellants Richard Eitel and Lakeside Shops, L.L.C. challenge respondent city's decision to grant a landowner's application for a zoning variance and modification to a

pre-existing conditional-use permit. The district court granted summary judgment in respondent's favor. Because the city council's decision to approve the application was not arbitrary or capricious, we affirm.

## FACTS

Keith Dehnert owns a piece of property located in respondent City of White Bear Lake. The property is located on Lake Avenue South, and is divided by a city street right of way. On the west side of the street, there is a parcel of Dehnert's land with the address of 4441 Lake Avenue South. This parcel contains restaurant space. On the east side of the street, there is a parcel of land with the address of 4440 Lake Avenue South. This parcel contains a marina.

On February 5, 2007, respondent received two applications from Dehnert concerning his property. One of these applications requested several zoning variances; the other requested an amendment to a conditional-use permit (CUP) that was issued in 1999.

The 1999 CUP required Dehnert to provide or arrange for 15 total parking spaces on his property. When the 1999 CUP was granted, the area in which the property was located was zoned B-6 Commercial Residential. In 2003, as part of a planning effort for a waterfront area referred to as the marina triangle, the zoning classification was changed to Lake Village Mixed Use (LVMU). White Bear, Minn., Zoning Ordinances § 1303.227, subd. 1(a) (2003). The LVMU zoning classification increased a five-foot setback requirement contained in the 1999 CUP to the ten-foot setback requirement currently in place. Additionally, the LVMU zoning classification allows for a 20%

reduction of parking requirements at the "sole discretion" of the city council, and an additional 30% reduction at the "sole discretion" of the city council if the property is located within 1,500 feet of an offsite park and ride. White Bear Lake Ordinance § 1303.227, subd. 7.

Dehnert's February 5, 2007 application for an amendment to the 1999 CUP requested that the required number of parking spaces on his property be reduced from 15 to 11. Dehnert's February 5, 2007 variance application sought to alter the configuration of the restaurant space's parking lot. Doing so would require three variances from the ten-foot surface setback requirement created by the LVMU.[1]

After receiving Dehnert's applications, associate city planner Samantha Crosby prepared an analysis of the applications for respondent's planning commission and city council. She noted that the additional 30% reduction provision was applicable because Dehnert's property is located within 1,500 feet of an offsite park and ride. Thus, if the 20% and 30% reductions were applied cumulatively, as the city ordinance permits them to be, the required number of parking spaces for Dehnert's property would be reduced from 15 to 8. Crosby noted that Dehnert's application for a variance provided for at least

[1] Arguably, Dehnert did not need to apply for a variance to make these changes because his property was "grandfathered" in and, therefore, not subject to the LVMU's requirements. In support of this, White Bear, Minn., Zoning Ordinances 1303.227, subd. 8 (2003) provides:

> [a]ny preexisting conforming use, which would become a nonconforming use by change of zoning classification to Lake Village Mixed Use district may be expanded, intensified or rebuilt provided such expansion, intensification or rebuilding would have been permitted under th[e] previous zoning classification.

ten spaces. Crosby went on to note that the requested setback variances would "not be out of character with the area." Thus, she concluded that Dehnert's proposed reconfiguration would meet the LVMU's requirements because there are going to be at least 11 spaces.

The city planning commission considered and approved both applications on March 26, 2007. The city council first considered the applications on April 10, 2007, but did not vote on them until April 24, 2007. When the applications were voted on, they passed the city council by a three-to-two vote. Following the vote, appellants commenced a declaratory judgment action in district court seeking to invalidate the city council's decision to approve Dehnert's applications. After receiving cross-motions for summary judgment, the district court granted summary judgment in favor of respondent and dismissed appellants' complaint. This appeal follows.

## D E C I S I O N

### I. The city council's decision to approve Dehnert's application was not arbitrary, capricious, or unreasonable.

"On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). "On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). No genuine issue of material fact exists "[w]here the record taken as a

whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

When municipal zoning decisions are disputed, this court does not review a district court's resolution of that dispute for an abuse of discretion. Rather, this court reviews the municipality's decision directly. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 19 (Minn. App. 2003) ("When reviewing a zoning determination, appellate courts review directly the municipality's determination without any regard for the district court's conclusions.").

"Interpretations of state statutes and existing local zoning ordinances are questions of law that this court reviews de novo" while "[z]oning decisions of a municipal body that require judgment and discretion are reviewed to determine whether the municipal body acted arbitrarily, capriciously, or unreasonably, and whether the evidence reasonably supports the decision made." *Clear Channel Outdoor Adver., Inc. v. City of St. Paul*, 675 N.W.2d 343, 346 (Minn. App. 2004) (citation omitted), *review denied* (Minn. May 18, 2004). Although rebuttable, there is a strong presumption favoring the decision reached by the municipality. *Arcadia Dev. Corp. v. City of Bloomington*, 267 Minn. 221, 226, 125 N.W.2d 846, 850 (1964). If the reasonableness of the city's actions is "doubtful[ ] or fairly debatable, a court will not interject its own conclusions as to more preferable actions." *Id.* That a court may have reached a different decision does not invalidate the municipality's judgment if it was made in good faith and within the discretion afforded to it. *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 508 (Minn. 1983). Because zoning laws are a restriction on private property, the burden

of proof for those challenging approval of an application is higher than the burden of proof for those challenging the denial of one. *Sagstetter v. City of Saint Paul*, 529 N.W.2d 488, 492 (Minn. App. 1994). Additionally, decisions to approve an application receive greater deference than those to deny one. *Schwardt v. County of Watonwan*, 656 N.W.2d 383, 389 n.4 (Minn. 2003).

*A. The variance.*

The Minnesota legislature has delegated to municipalities the power to determine and plan the use of land within their boundaries. Minn. Stat. § 462.351 (2008). Included in this authority is the power to promulgate zoning ordinances. Minn. Stat. § 462.357 (2008). Also included in this power is the authority to authorize variances from zoning ordinances when "strict enforcement" of a zoning ordinances' "literal provisions" would result in "undue hardship because of circumstances unique to the individual property under consideration." *Id.*, subd. 6(2). However, variances may be granted "only when it is demonstrated that such actions will be in keeping with the spirit and intent of the ordinance." *Id.* An "undue hardship" means that

> 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.

*Id.* Thus, the three requirements for granting a variance under the undue hardship standard are: (1) reasonableness; (2) unique circumstances; and (3) the essential character of the locality. *Mohler v. City of St. Louis Park*, 643 N.W.2d 623, 631 (Minn. App. 2002), *review denied* (Minn. July 16, 2002).

First, concerning reasonableness, the statutory undue-hardship requirement "does not mean that a property owner must show the land cannot be put to reasonable use without a variance." *Rowell v. Bd. of Adjustment of Moorhead*, 446 N.W.2d 917, 922 (Minn. App. 1989). Instead, it means that the property owner must show that he "would like to use the property in a reasonable manner that is prohibited by the ordinance." *Id.* Here, respondent's staff prepared two reports on Dehnert's application. The city council then engaged in a debate that spanned two city council meetings before they approved Dehnert's application for a variance. The city council's approval is a clear indication that they deemed Dehnert's proposed use for the property a reasonable one that was prohibited by ordinance. *See Haen v. Renville County Bd. of Comm'r*, 495 N.W.2d 466, 471 (Minn. App. 1993) ("When an application for a special use permit is approved, the decision making body has implicitly determined that all requirements for the issuance of the permit have been met. Therefore, express written finding are unnecessary.")(citation omitted). Appellants have not directed this court to evidence presented to the city council contradicting the conclusion that Dehnert's proposed use is a reasonable one that is sufficient to meet their burden of proof.

Second, the unique circumstance in the present case is the combination of the lot's size and the zoning ordinance. This is a circumstance explicitly anticipated by respondent's zoning ordinance, which provides that variances may be granted to alleviate "hardships such as problems caused by public actions, unusual topography, lot shapes, wetlands, or other exceptional physical conditions." White Bear Lake, Minn., Zoning Ordinances § 1301.060, subd. 1(c) (1986). While appellants take issue with the city

council's previous approval of zoning variances for the property, those previous approvals do not bar the city council from approving future zoning variances. *See Appeal of Kenney*, 374 N.W.2d 271, 275 (Minn. 1985) (stating that a county board of adjustments has authority to grant variances to an already nonconforming land use).

Third, in regard to the essential-character-of-the-locality element, appellants do not argue that the variance would alter the essential character of the locality.

For the reasons stated above, the LVMU's setback requirement constituted an undue hardship. As a result, the city council's decision to grant the requested variances is not arbitrary or capricious because it alleviates an undue hardship.

*B. The modification to the CUP.*

The 11 stalls contained on Dehnert's application would surpass the 8 required by the LVMU.[2] There is nothing in the record to suggest that the reconfigured parking lot would provide fewer than the eight stalls required by the LVMU. Given this, the city council did not act in an arbitrary or capricious manner when it approved Dehnert's

[2] Even if, as appellants contend, the LVMU ordinance did not apply to Dehnert's property, the city council still had the authority to approve the proposed modification. As respondent states:

> Prior to the LVMU ordinance, there was no controlling ordinance that required a specific number of parking spaces. The number of parking spaces in the CUP was developed solely during the CUP process. In other words, the entire authority for the parking requirement provision was the City Council's permitting authority. In amending the CUP, then, the City Council had exactly the same authority to amend the number of parking stalls required in the first place.

application for a modification to the 1999 CUP because the proposed modifications satisfied the LVMU's requirements.

**Affirmed.**