STATE OF MINNESOTA
IN COURT OF APPEALS
A08-829

Oronoco Township,
Respondent,

vs.

Duane Overby, et al.,
Appellants.

Filed July 7, 2009
Affirmed
Ross, Judge

Olmsted County District Court
File No. 55-CV-06-8833

Frederick S. Suhler, Jr., 1530 Southwest Greenview Drive, Suite 210, Rochester, MN 55902 (for respondent)

William L. French, 400 South Broadway Street, Suite 103, Rochester, MN 55904 (for appellants)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Willis, Judge.*

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

ROSS, Judge

The dispute in this appeal arose when Matthew Overby built a shed on his father's lot in Oronoco Township, violating the township's setback requirement on two of the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

property's borders. Duane and Matthew Overby appeal from a district court judgment affirming the Oronoco Township Board of Adjustments' decision to deny the Overbys' request for a zoning variance. They maintain that they are entitled to a judgment recognizing the approval of their variance request because the township took more than 90 days to decide their request and the automatic approval statute requires a decision within 60 days. Alternatively, the Overbys maintain that they are entitled to a new trial because of irregularities in the proceedings and arbitrariness in the township's decision denying their request. The district court's findings regarding the Overbys' complaint about the township's procedure are supported by evidence in the record, and its findings support its legal conclusion that the township complied with the automatic approval statute. Our independent review satisfies us that the board acted reasonably when it denied the variance request, and the Overbys' claimed irregularity in the district court's proceeding falls far short of supporting their claim to the district court or to this court that a new trial is necessary. We therefore affirm.

FACTS

The Overbys constructed a shed on an otherwise undeveloped long, narrow, rural parcel in Oronoco Township. The parcel is on the west side of Cedar Beach Drive in a rural part of Oronoco zoned as agricultural. The parcel's dimensions are disputed, but an exhibit in the record indicates that the parcel is approximately 50 feet wide and 300 feet long. The 14-by-44-foot shed sits near the parcel's southwest corner, approximately 10 feet from both the southern and western boundary lines.

The Overbys constructed their shed in violation of five township zoning ordinances. First, they did not apply for a building permit. Second, the shed's 10-foot distance to the western boundary violates a 25-foot side-boundary setback requirement. Third, the shed's 10-foot distance to the southern border of the property violates a 25-foot rear-boundary setback requirement. Fourth, because the shed is the only structure on the lot, it violates an ordinance directing that "[n]o accessory building shall be constructed or developed on a lot prior to the construction of the principal building." And fifth, no driveway connects the shed to the road, violating the ordinance that prohibits construction of buildings on parcels when the building lacks access to a public road.

Oronoco first unsuccessfully directed the Overbys to remove the shed. Then the township sued them to enjoin further construction of the shed and to require removal. The Overbys eventually applied for a variance to allow the shed to remain on the parcel despite the noncompliance with township ordinances. The board of adjustments denied the variance request. The district court affirmed the board's decision, concluding that the board "properly denied the variance application and provided reasons that were legally sufficient based on the statute, ordinance, and factual [bases]." The Overbys moved for amended findings or a new trial. The district court denied the Overbys' motions. This appeal follows.

D E C I S I O N

The Overbys offer three bases allegedly requiring relief: (1) the district court's findings and conclusion that Oronoco complied with the requirements of Minnesota Statutes section 15.99 (2008) are unreasonable and not supported by the record; (2) the

zoning board's decision to deny the variance request was arbitrary and capricious; and (3) the Overbys were denied a fair trial because of "irregularities" in the district court proceedings. None of these arguments persuades us to reverse.

I

The Overbys argue that Oronoco's failure to comply with Minnesota Statutes section 15.99 entitles them to automatic approval of their variance request. Specifically, they contend that "the weight of the evidence" shows that Oronoco did not comply with the statute's requirements because, according to Matthew and Duane Overby's testimony, they never received a "60-day extension letter" that the township sent to toll the time period required to decide the request because the letter was sent to the wrong address. But the district court found otherwise. It concluded that Oronoco sent the 60-day extension letter and that "[t]he Overbys' claim that they never received [it] is incredible in light of the evidence." The district court therefore held that Oronoco complied with the section 15.99 requirements and that the Overbys' variance request was not entitled to automatic approval.

Because the Overbys challenge the factual findings that support Oronoco's compliance with section 15.99, our review of whether Oronoco complied with the requirements of section 15.99 is a mixed question of law and fact. *Cf. Concept Properties, LLP v. City of Minnetrista*, 694 N.W.2d 804, 825 (Minn. App. 2005) (reviewing a city's compliance with section 15.99 as a question of law when the facts were undisputed), *review denied* (Minn. July 19, 2005). When reviewing mixed questions of law and fact, this court gives deference to a district court's factual

determinations and does not reconcile conflicting evidence. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). Factual findings of a district court "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. But "we are not bound by and need not give deference to the district court's decision on a purely legal issue." *Porch*, 642 N.W.2d at 477.

A township must "approve or deny within 60 days a written request relating to zoning." Minn. Stat. § 15.99, subd. 2(a). If the township fails to deny the request within 60 days, the request is automatically approved. *Id*. But a township may extend the 60-day limit to up to 120 days if it does so in writing "before the end of the initial 60-day period" and if it states "the reasons for the extension and its anticipated length." Minn. Stat. § 15.99, subd. 3(f). The record shows that the Overbys applied for a variance on December 27, 2006. Oronoco denied the application on April 2, 2007, approximately 96 days after the request. But the district court found that township planner Logan Tjossem sent a 60-day extension letter to the Overbys on February 7, 2007.

The record supports the district court's findings. Tjossem testified that he sent the Overbys a letter on February 7, 2007, notifying the Overbys that their variance application would not be decided within the initial 60-day period. Tjossem produced a copy of the letter that he sent to the Overbys, and the district court admitted it into evidence. Tjossem testified that he sent the letter to 2105 43rd Street N.W., in Rochester. He chose this address because the Overbys provided it on their variance application.

Although the Overbys testified that they never received the letter, the district court found their testimony to be "incredible." We are in no position on appeal to rejudge the district court's credibility determinations.

On its face, the letter shows that Oronoco successfully extended the initial 60-day limit because it complies with the three requirements of section 15.99, subdivision 3(f). First, Oronoco sent the letter on February 7, 2007, well before the end of the statutory 60-day period. Next, the letter gave the reason for the extension, because the request was "of a type, which under normal practices and policies, may take more than 60 days for review and action." And finally, the letter designates the anticipated length of the extension by indicating that the request "will be determined within 120 days." The township then determined the request well within the 120 days indicated.

Because the district court's factual findings are not clearly erroneous and because those findings support the conclusion that Oronoco complied with the requirements of section 15.99, the statute does not require an automatic approval of the Overbys' variance request.

II

The Overbys next argue that the district court should have granted them a new trial because the board of adjustments' decision to deny their variance request was improper. This court undertakes an independent review of a board of adjustment's decision and gives no deference to the district court's findings and conclusions. *Rowell v. Bd. of Adjustment of Moorhead*, 446 N.W.2d 917, 919 (Minn. App. 1989), *review denied* (Minn. Dec. 15, 1989). "A board of adjustment has broad discretion to grant or deny variances,"

Kismet Investors, Inc. v. County of Benton, 617 N.W.2d 85, 90 (Minn. App. 2000), *review denied* (Minn. Nov. 15, 2000), and although this court is reluctant to interfere with zoning decisions, we will reverse a decision that is "unreasonable." *Rowell*, 446 N.W.2d at 919, 921. A zoning decision is unreasonable if it is arbitrary or capricious, if the reasons for the decision do not have the "slightest validity" or bearing on the general welfare of the immediate area, or if the reasons are legally insufficient and without a factual basis. *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 508 (Minn. 1983) (quotation marks omitted). To determine if a zoning decision was reasonable, we look to the ordinances because "'reasonableness' is measured by the standards set out in the local ordinance[s]." *Id*. at 508 n.6.

Oronoco Township zoning ordinance provides that the board of adjustment may grant a variance in cases in which an ordinance "is found to impose unnecessary hardship to a property owner." Oronoco Township, Minn., Zoning Ordinance § 4.08 (2007). The ordinance lists five conditions that must exist in order for the board to grant a variance:

> 1. That there are exceptional and extraordinary circumstances or conditions applying to the property in question as to the intended use of the property that do not apply generally to other properties in the same zoning district.
>
> 2. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same district and in the same vicinity. The possibility of increased financial return shall not in itself be deemed sufficient to warrant a variance.
>
> 3. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this zoning ordinance or the public interest.

> 4. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.
>
> 5. That the variance requested is the minimum variance which would alleviate the hardship.

Id. The board's findings of fact, conclusions of law, and order denying the variance mentioned each of these factors, and the record indicates that the Overbys failed to satisfy their "heavy burden" to show that approval of the variance is appropriate. *Tuckner v. Twp. of May*, 419 N.W.2d 836, 838 (Minn. App. 1988).

The board found that no "exceptional or extraordinary circumstances . . . apply to this parcel of property that would not apply generally to other property in the A–2 Zoning District." This conclusion is supported by the fact that all parcels in the A–2 zoning district are subject to these setback and accessory building provisions. The board noted that any hardship "was created by the [Overbys] building the gardening shed too close to the property boundary lines without first seeking review and approval . . . for a zoning certificate and building permit." The board's decision is reasonable and supported by the record.

The board also concluded that granting the variance was not "necessary to preserve the [Overbys'] property rights" because the Overbys can "revise the site plan and structure to better fit the site and to accommodate the setback requirements." The Overbys attack this conclusion because they contend that the property is only 50 feet wide and they cannot construct any building that satisfies the 25-foot setback

requirements on each side. The point is well taken. But the restriction not to build on a strip of land that is too narrow to accommodate a structure as the lot is currently zoned is no greater than the restriction on all agricultural lots. The Overbys clearly failed to meet all five standards set out in Oronoco's zoning ordinance, establishing that the board reasonably denied the variance.

The Overbys also argue that the board's actions were "arbitrary and capricious as a matter of law" because "the governmental official charged with evaluating the application . . . repeatedly told [them] that it would be denied before they even submitted it" and because the board endorsed the planning commission's report and recommendation without contention between board members. There are facts that would allow the district court to deem this allegation incredible, even if it had legal significance. Tjossem, who reviewed the application, denied that he told the Overbys that their application would be denied before they submitted it. And a municipality's adoption of the findings of its city staff regarding a zoning decision does not make the consequent decision unreasonable. *See*, *e.g.*, *Mohler v. City of St. Louis Park*, 643 N.W.2d 623, 630–34 (Minn. App. 2002) (noting that "the city council adopted the analysis of a city staff report" but analyzing to determine if city's action was reasonable), *review denied* (Minn. July 16, 2002). There is no support for the Overbys' argument that it is "arbitrary and capricious as a matter of law" for a board of adjustment to adopt the recommendations of planning commissioner, because those recommendations are based on a reasonable application of township ordinances.

The Overbys contend that "the reasons assigned for the denial of the variance do not have the slightest bearing on the general welfare of the immediate area, which is undeveloped." They argue that "it is very difficult to imagine how the shed could actually bother anyone, given the undeveloped character of the area." This argument misses the mark. This court has held that a violation of a zoning ordinance itself is detrimental to the governing authority and the inhabitants of the jurisdiction. *Rockville Twp. v. Lang*, 387 N.W.2d 200, 205 (Minn. App. 1986). The forum for the Overbys to challenge the wisdom of the ordinance is with the board, not the court. It is sufficient for us to recognize that setback requirements are generally reasonable. And the question is not whether the shed bothers neighbors, but whether the Overbys have complied with the zoning ordinances applicable to all parcels in Oronoco that are zoned agricultural. That the Overbys built a shed in a generally undeveloped area does not alone render the construction consistent with the general welfare or excuse the Overbys from complying with the zoning ordinances.

The board of adjustments' decision to deny the variance was not arbitrary and capricious. It was objectively reasonable, and the reasons for denying the variance request were legally sufficient.

III

The Overbys also contend that the district court erred by denying their request for a new trial because of alleged "irregularities" that denied them a fair trial. A district court has discretion to grant a new trial and its decision will be reversed only if the court clearly abused its discretion. *Boschee v. Duevel*, 530 N.W.2d 834, 840 (Minn. App.

1995), *review denied* (Minn. June 14, 1995). We conclude that the district court did not abuse its discretion by denying the Overbys' request for a new trial.

A district court may grant a new trial because of "irregularit[ies] in the proceedings of the court . . . whereby the moving party was deprived of a fair trial." Minn. R. Civ. P. 59.01(a). This court has noted that to establish a claim under Minn. R. Civ. P. 59.01(a) "appellants must prove (1) an irregularity occurred and (2) they were deprived of a fair trial." *Boschee*, 530 N.W.2d at 840. The Overbys proved neither.

The Overbys contend that the irregularity at the district court was that the district court "imposed a deadline of 3:00 p.m. on the first and only day of trial . . . [and] also stated [that] it had no other time available to hear the case." But nowhere in the trial transcript did the district court state that it had no other time to hear the case. The record shows that the Overbys called all the witnesses on their witness list and presented their case fully before the trial day ended. After the Overbys' attorney examined the last witness, he rested his case, without complaining that he needed more time. Because the Overbys have not proved that any "irregularities" occurred at trial, or that the alleged irregularity had any bearing on fairness, the district court did not abuse its discretion by denying their request for a new trial.

Affirmed.