STATE OF MINNESOTA
IN COURT OF APPEALS
A10-843

Timothy F. Myslajek, et al.,
Appellants,

vs.

City of Maple Grove,
Respondent.

Filed December 21, 2010
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CV-09-18165

Jeffrey W. Lambert, Jeffrey W. Lambert, P.A., Wayzata, Minnesota (for appellants)

Paul D. Reuvers, Andrea B. Wing, Iverson Reuvers, Bloomington, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Bjorkman, Judge; and Harten, Judge.*

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

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

BJORKMAN, Judge

Appellants Timothy F. Myslajek and Janet C. Myslajek challenge respondent City of Maple Grove's denial of their request for a variance, contending that the city's decision was arbitrary and capricious. We affirm.

FACTS

Appellants reside on 78th Avenue North in Maple Grove (the property). In October 2003, appellants purchased the property, which is located on the west side of Fish Lake. The property is approximately 490 feet deep and gently slopes down from the house to the lake. Between the house and the lake, there is a curving lawn, trees, and several wetland areas. The property also has a wooden deck built by prior owners that is located approximately 17 feet from the ordinary high water elevation of Fish Lake. Appellants constructed a gazebo on top of the wooden deck to better view and access the lake.

The city has a 75-foot setback requirement for all water-oriented structures[1] and specifically prohibits gazebos within setback areas without a variance. Maple Grove, Minn., Code of Ordinances (MGCO) § 36-695(b)(1), (4)(j) (1984). In September 2005, the city learned of the gazebo and contacted appellants to inform them of the setback requirement and to schedule an inspection. The city also underwent a process for reevaluating its setback requirements. On May 16, 2007, the city notified appellants that

[1] The existing deck complies with city ordinance because of its low elevation.

the city decided to retain the setback requirements and that appellants needed to move the gazebo or seek a variance.

Appellants applied for a variance on July 2, 2007, citing the "unique shape, topography, and history of [the] property." After a public hearing, the city planning commission recommended that the city council deny the application. In a written report, city staff acknowledged that appellants had managed their shoreline well, but noted that there was another appropriate site for the gazebo on the property outside of the setback area. The city council twice postponed consideration of the variance request to further review the property's topography and obtain additional feedback from the lake quality commission. After receiving the lake quality commission's recommendation to retain the setback restrictions, the city council unanimously voted to deny the variance on January 5, 2009. On January 20, the city council, acting as the board of adjustment, adopted a resolution denying appellants' variance request, emphasizing that the purpose of the ordinance is to "keep the shoreland as natural as possible" and that appellants have a "reasonable use of the [p]roperty without the gazebo constructed within the 75-foot setback."

Appellants commenced this action arguing that the city's denial of the variance was arbitrary and capricious. Both parties moved for summary judgment. The district court granted the city's motion and ordered appellants to move the gazebo outside the setback area. This appeal follows.

D E C I S I O N

Municipalities have "broad discretionary power" in considering whether to grant or deny a variance. *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 508-09 (Minn. 1983). When reviewing a zoning determination, we independently examine the record to determine whether the municipality's decision was "unreasonable, arbitrary, or capricious." *Trisko v. City of Waite Park*, 566 N.W.2d 349, 352 (Minn. App. 1997), *review denied* (Minn. Sept. 25, 1997). A municipal body's action is not arbitrary "when it bears a reasonable relationship to the purpose of the ordinances." *Clear Channel Outdoor Adver., Inc. v. City of St. Paul*, 675 N.W.2d 343, 346 (Minn. App. 2004), *review denied* (Minn. May 18, 2004).

Minnesota law permits a municipality to grant a variance request when strict enforcement of an ordinance would cause a property owner to suffer an "undue hardship." Minn. Stat. § 462.357, subd. 6(2) (2010). An undue hardship exists when: (1) "the property in question cannot be put to a reasonable use if used under conditions allowed by the official controls"; (2) "the plight of the landowner is due to circumstances unique to the property not created by the landowner"; and (3) "the variance, if granted, will not alter the essential character of the locality." *Id.*

The Maple Grove city code likewise allows for a variance where an applicant demonstrates a "non-economic, unique hardship in the reasonable use of a specific parcel of property." MGCO § 36-121(c) (1984). The city code defines "unique hardship" as:

> [A] hardship which, for one of the following reasons, would make the strict application of the terms of this chapter result in exceptional difficulties when utilizing the parcel or lot in a

> manner customary and legally permissible within the district in which the lot or parcel is located, or would create undue hardship upon such lot or parcel that another lot or parcel within the same district would not have in a manner proposed by the appellant.

MGCO § 36-121(c)(1). Reasons to consider a hardship unique to a lot or parcel include (1) the "[n]arrowness, shallowness or shape of a specific parcel of property," (2) "[e]xceptional topographic or water conditions," or (3) "[a]n existing significant tree or tree stand which would be affected by a structure other than a building." *Id.*

Under the statute and the ordinance, the city must consider three factors: (1) lack of reasonable use of the property without the variance; (2) unique characteristics of the property—such as the shape of the property, topographic or water conditions, or an existing tree stand; and (3) maintenance of the essential character of the locality. *See* Minn. Stat. § 462.357, subd. 6(2); MGCO § 36-121(c). Appellants have the burden of demonstrating that all three factors are met. *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 727-28 (Minn. 2010).

The Minnesota Supreme Court recently addressed the first factor in *Krummenacher*. Construing the plain meaning of the statute, the supreme court held that "a municipality does not have the authority to grant a variance unless the applicant can show that her property cannot be put to a reasonable use without the variance." *Id.* at 732. The supreme court expressly rejected the more flexible "reasonable manner" analysis this court articulated in *Rowell v. Bd. of Adjustment of Moorhead*, 446 N.W.2d

917 (Minn. App. 1989), *review denied* (Minn. Dec. 15, 1989),[2] recognizing that the plain-meaning interpretation "will result in a restriction on a municipality's authority to grant variances." *Id.*

Appellants argue that they met their burden of showing that the property cannot be put to reasonable use without the variance because "the only reasonable placement for the gazebo is in the area in which it has been constructed." They assert that the gazebo is necessary for "the reasonable use of and access to the lake," and that placing the gazebo elsewhere, as suggested by the city, "completely deprives [them] of the reasonable use" of the lakeshore and "would render the gazebo useless for its intended purpose." We disagree.

The record demonstrates that the property, including the gazebo, can be put to a reasonable use without a variance. Appellants' property includes their home, yard, shoreline, and many other amenities that comply with the city code. Moving the gazebo out of the setback area does not deprive appellants of access to and enjoyment of the lake. They may still swim, boat, and use the wooden deck, which their predecessors-in-interest used for years. And appellants may use the gazebo near the fire pit or in another, code-compliant location. In short, while appellants will not have a lakeside enclosed shelter, this loss does not deprive them of a reasonable use of their property for purposes of the statute. Moreover, the city's actions furthered the purpose of the ordinance, which is to ensure the natural condition of the lakeshore. Under *Krummenacher*, appellants cannot

[2] In *Rowell*, we concluded that the undue-hardship provision "does not mean that a property owner must show the land cannot be put to any reasonable use without the variance." 446 N.W.2d at 922.

demonstrate an "undue hardship," and the city's denial of appellants' variance request was proper.

Because a variance is permitted only if an applicant demonstrates that all three factors are met, an analysis of the other two factors is unnecessary. *See id.* at 727-28. On this record, we conclude that the city's decision to deny appellants' variance request was not arbitrary or capricious.

Affirmed.