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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1852**

In Re the Matter of the Decision of  
County of Murray Board of Adjustment  
to Deny a Variance to  
Jon Rongstad and Rosalie Rongstad.

**Filed May 25, 2010  
Affirmed  
Klaphake, Judge**

Murray County District Court  
File No. 51-CV-09-7

Pamela L. Vander Wiel, Daniel P. Kurtz, Eagan, Minnesota (for appellant Murray County Board of Adjustment)

William J. Wetering, Worthington, Minnesota (for respondents Jon and Rosalie Rongstad)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Wright, Judge.

**UNPUBLISHED OPINION**

**KLAPHAKE**, Judge

Appellant County of Murray Board of Adjustment (the board) challenges a district court order reversing the board's decision to deny an after-the-fact variance to respondents Jon and Rosalie Rongstad for a residential home they built on their lake property. Because the board's primary basis for its decision to deny the variance was to continue its policy of uniform denials of all variance requests and because other aspects

of the board decision do not show a rational connection between the underlying facts and its conclusions, the board's decision was arbitrary and unreasonable. We therefore affirm.

## **FACTS**

The subject property is Lots 8 and 9, Erickson Subdivision, Section 32, Shetek Township, Murray County. Together, the lots form a substandard kite-shaped isthmus between Lake Shetek and Armstrong Slough; a cabin has been in existence on the property since 1960. The cabin, originally owned by Rosalie Rongstad's parents, did not meet the setback requirements of the Murray County Zoning Ordinance (2004) (MCZO), but it was "grandfathered" in because it was built before the MCZO became effective. Respondents desired to raze their cabin and build a new home on the property. After twice seeking and twice being denied a variance to build a home that encroached into the shoreline setback requirements for the lake and the slough,<sup>1</sup> respondents sought and received a permit to build a home on the property that would honor the setback requirements. However, the newly constructed home encroached into the Armstrong Slough shore impact zone by 17.8 feet and the Lake Shetek shore impact zone by 2.7 feet, due to its placement on the property as well as due to minor changes in the footprint of the home. Respondents then sought an after-the-fact variance from the board, which

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<sup>1</sup> All new structures must be set back 150 feet from the ordinary high water mark for natural development lakes (Armstrong Slough) and 75 feet from the ordinary high water mark for general development lakes (Lake Shetek). MCZO § 16, Subd. 6(1)(A, B). A structure could not be built within the designated shore impact zone. MCZO § 16, Subd. 6(B)(2). The shore impact zone is defined as 50% of the required setback for structures. MCZO § 4, Subd. 2 (193).

the board denied following two hearings on the matter. On appeal, the district court ordered the board to grant the variance request. The court found that the board examined the proper factors in determining whether to grant the variance, but the court concluded that the facts did not support the board's conclusions.

## D E C I S I O N

In reviewing a decision of a county zoning authority, an appellate court must “determine whether the zoning authority was within its jurisdiction, was not mistaken as to the applicable law, and did not act arbitrarily, oppressively, or unreasonably, and to determine whether the evidence could reasonably support or justify the determination.” *In re Stadsvold*, 754 N.W.2d 323, 332 (Minn. 2008) (quotation omitted). This court must independently review the board's decision without giving deference to the findings and conclusions of the district court. *Town of Grant v. Washington County*, 319 N.W.2d 713, 717 (Minn. 1982); *Yeh v. County of Cass*, 696 N.W.2d 115, 125 (Minn. App. 2005), *review denied* (Minn. Aug. 16, 2005).

Under Minn. Stat. § 394.27, subd. 7 (2008), a local board of adjustment has authority to permit variances

[w]hen they are in harmony with the general purposes and intent of the official control in cases when there are practical difficulties or particular hardship in the way of carrying out the strict letter of any official control, and when the terms of the variance are consistent with the comprehensive plan.

The supreme court recently differentiated between use variances and area variances in addressing the standard a zoning authority should apply in considering whether to grant a variance. *Stadsvold*, 754 N.W.2d at 331. The court held that when considering requests

for area variances, a county zoning authority “shall” permit the variance “when the applicant makes a showing only of ‘practical difficulties’ under Minn. Stat. § 394.27, subd. 7[.]” *Id.* Under this test, the supreme court further held, the factors for consideration include:

- (1) how substantial the variation is in relation to the requirement;
- (2) the effect the variance would have on government services;
- (3) whether the variance will effect a substantial change in the character of the neighborhood or will be a substantial detriment to neighboring properties;
- (4) whether the practical difficulty can be alleviated by a feasible method other than a variance;
- (5) how the practical difficulty occurred, including whether the landowner created the need for the variance; and
- (6) whether, in light of all of the above factors, allowing the variance will serve the interests of justice.

*Id.* (footnote omitted). The court included “economic considerations” in consideration of the fourth factor (alleviation of the variation by a feasible method). *Id.* at n.5. The court also said that within the board’s broad discretion, it could consider, for an after-the-fact variance, the additional factors of the applicant’s good faith, the applicant’s attempt to comply with the ordinance, the applicant’s investment in the construction, whether the construction was completed, whether similar structures existed in the area, and whether the county’s benefits in denying the variance were outweighed by the applicant’s burden to comply with the zoning ordinance. *Id.* at 333.

In *Stadsvold*, the court considered the issue of whether a landowner whose home construction violated local ordinances on lot line setbacks and road right-of-way setbacks should be granted an after-the-fact variance. *Id.* at 326. Because, in reaching its decision to deny the variance, the local zoning board had applied a more restrictive “hardship”

standard set forth in the local ordinance than the more permissive “practical difficulties” standard set forth in Minn. Stat. § 394.27, subd. 7 (2006), the court remanded the case to allow the zoning board to “apply both the ‘practical difficulties’ standard, including the factors discussed above, and all of the other factors required by the ordinance.” *Id.* at 333.

In this case, the board’s meeting minutes and decisions show that in considering respondent’s first two variance requests, the board applied the ordinance in effect at the time, which required analysis of both “practical difficulties” and “particular hardship.”<sup>2</sup> In the consideration of the after-the-fact variance, the board applied the *Stadsvold* factors, including the factors appropriate for after-the-fact variances, in reaching its decision. As *Stadsvold* became effective law between respondents’ second and third variance requests, the board correctly applied the law in effect at the time of each hearing.

The board claims that it properly considered the *Stadsvold* factors and that its denial of the after-the-fact variance was therefore legally sufficient. The board’s December 1, 2008, hearing minutes confirm that it considered the after-the-fact variance factors. However, the board minutes also demonstrate that the board’s primary focus was on the detrimental effect of granting the first-ever variance to allow new construction on lakeshore property subject to shore impact zone setback requirements. The minutes also reveal that the board’s strict policy was to deny all such variance requests, and the board

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<sup>2</sup> The applicable MCZO provision states: “Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control in cases when there are practical difficulties or particular hardship in the way of carrying out the strict letter of any official control, and when the terms of the variance are consistent with the comprehensive plan.” MCZO, § 23, subd. 2(3).

members' statements during the hearing on the variance or in materials sent by the two board members not in attendance at the hearing note the paramount importance of this factor in their decision-making process. In the hearing minutes, board members made the following statements about the precedent of granting an after-the-fact variance:

“If this is approved the County will be dealing with this in similar situations for years to come. This will set a precedent that others will use to get what they want [without] following the rules defined by the County and DNR.”

“Approval of this variance would set a preceden[t] for future variance requests.”

Denying the variance “would make it somewhat easier to deal with requests in the future.”

Granting the variance request “would set a preceden[t] and [the board] would still have the same problem of people building where they want and then come to the county for an after-the-fact variance.”

One board member believed that granting the variance “would set a preceden[t] and there would be other variance requests in the future. All members agreed.”

The hearing minutes show that while the board recognized the need to consider the *Statsvold* factors, it did not give particularized analysis to certain of those factors, including the environmental effect of the encroachment, the economic consequences to respondents if respondents were required to remodel the home to correct the encroachment, and a benefits/detriments analysis based on economic factors as required by *Statsvold*. Respondents offered evidence that the total cost of their new home was \$217,000 and that the cost of making the home compliant with the shoreline setbacks would be \$60,000, but the board decision did not weigh this or other less costly

ameliorative alternatives offered by respondents, such as removal of a long-standing shed on the property that was set very near the shoreline. *See id.* at 331 n.5 (“Economic considerations play a role” in “practical difficulties” analysis); *In re Appeal of Kenney*, 374 N.W.2d 271, 275 (Minn. 1985) (permitting “negative” economic factors to property owner to be considered by board in deciding whether to grant variance).

For all of these reasons, we conclude that the board’s decision was arbitrary and unreasonable because the decision expressed the board’s will and not its judgment. *See Bloomquist v. Comm’r. of Nat. Res.*, 704 N.W.2d 184, 190 (Minn. App. 2005) (stating administrative body’s decision arbitrary and capricious if decision reflects its will and not its judgment). We therefore affirm the district court’s reversal of the board’s denial of the variance application.

**Affirmed.**