

IN THE UTAH COURT OF APPEALS

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Thad Stevens,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellant,	)	
	)	Case No. 20090568-CA
v.	)	
	)	F I L E D
Fillmore City,	)	(July 15, 2010)
	)	
Defendant and Appellee.	)	2010 UT App 194

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Fourth District, Fillmore Department, 080700143  
The Honorable Donald J. Eyre Jr.

Attorneys: James K. Slavens and Tate W. Bennett, Fillmore, for Appellant  
Kaela P. Jackson and Greg J. Greathouse, Delta, for Appellee

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Before Judges Thorne, Voros, and Roth.

THORNE, Judge:

Thad Stevens appeals from the district court's ruling upholding a Board of Adjustment (the Board) decision that a steel carport on his property violates the Fillmore City Municipal Code and that Stevens is not entitled to a variance. Specifically, Stevens argues that the district court erred in ruling that the carport is a "structure" as defined by the Fillmore City Municipal Code. Stevens also argues that the district court erred in refusing to allow him to present additional evidence showing he is entitled to a variance. We affirm.

"Since the district court's review of the Board's decision was limited to a review of the Board's record, we do not accord any particular deference to the district court's decision. Instead, we review the Board's decision as if the appeal had come directly from the agency." Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602, 603 (Utah Ct. App. 1995) (footnote omitted). The Board's decision is presumed to be valid, and we will not disturb that decision absent a showing that it is "so unreasonable" as to be deemed arbitrary or capricious or that the

decision is illegal. See id. Furthermore, we will uphold the Board's decision if the decision is supported by substantial evidence in the record. See id. at 604. "Together, these concepts mean that the Board's decision can only be considered arbitrary or capricious if not supported by substantial evidence." Id.

The main issue is whether Stevens's carport is a structure as defined by Fillmore City's zoning code. Fillmore City Municipal Code section 6-2 defines a structure as "[a]nything constructed, the use of which requires a fixed location on or in the ground, or attached to something having a fixed location on the ground and which imposes an impervious material on or above the ground; definition includes 'Building.'" Fillmore City, Utah, Mun. Code § 6-2 (2005). A building is further defined as "[a]ny structure, whether temporary or permanent, having a roof, and used or built for the shelter or enclosure of persons, animals, possessions, or property of any kind." Id.

Stevens argues that the carport on his property does not fall within the definition of a structure. The district court found that Stevens's carport was "something constructed which requires and is attached to a fixed location on the ground and imposes a material of some kind above the ground" and that "[t]he main dispute is over whether the material imposed is impervious." Stevens conceded before the Board that the carport is attached to something having a fixed location on the ground and thus meets the first part of the definition of a structure. However, Stevens argues on appeal that the carport does not meet the second part of the definition because the carport is not impervious, reasoning that the carport is not enclosed on the sides or front and, thus, "just about anything can pass through the covering."

As both the Board and the district court emphasized, the focus is not whether the carport itself is impervious but whether the material imposed above the ground is impervious. See Fillmore City Mun. Code § 6-2 (defining a structure in terms of "impos[ing] an impervious material on or above the ground"). Stevens's carport is made of steel--which is indisputably an impervious material--and imposes a large roof surface above Stevens's driveway. Because Stevens's carport is a construction attached to something having a fixed location on the ground and imposes an impervious material above the ground, the Board's decision that the carport meets the definition of a structure is

supported by substantial evidence and is not arbitrary or capricious.<sup>1</sup>

Stevens next argues that the district court erred in upholding the Board's denial of a variance. See generally Utah Code Ann. § 10-9a-702 (2007) (governing variances). Stevens argues that the district court erred by refusing to take additional evidence regarding Stevens's entitlement to a variance and that the denial of this opportunity was a violation of his due process rights. Upon review of the transcript of the Board proceedings and the record, we agree with the district court's finding that "[Stevens] was given sufficient opportunity to present evidence and argument, and that no evidence given was improperly excluded." The Board allowed Stevens's counsel to present arguments and evidence, then conducted a question-and-answer session in which Stevens and his counsel had the further opportunity to present evidence. Neither Stevens nor his counsel ever offered any evidence that was rejected by the Board, nor was there any indication that Stevens had more evidence to present. Under these circumstances, the district court was barred by statute from considering additional evidence and did not err by declining to do so. See id. § 10-9a-801(8)(a)(ii) ("The court may not accept or consider any evidence outside the record of the land use authority . . . unless that evidence was offered to the land use authority . . . and the court determines that it was improperly excluded.").

In sum, there is substantial evidence that Stevens's carport is a structure under the Fillmore City Municipal Code, and Stevens was given the opportunity before the Board to present evidence in support of a variance. Accordingly, the district

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<sup>1</sup>Stevens's carport also meets the definition of a building. The carport has a roof that provides shelter for Stevens's possessions or property, specifically his vehicles. According to the district court's findings, Stevens himself stated to the Board that the carport was constructed to "protect his vehicles from snow, rain, and other things that may do damage to his vehicle." Thus, by Stevens's own description, the carport meets the zoning code's definition of a building. See Fillmore City, Utah, Mun. Code § 6-2.

court properly limited its review of the Board to the record below, and we will not disturb the Board's decision. Affirmed.

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William A. Thorne Jr., Judge

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WE CONCUR:

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J. Frederic Voros Jr., Judge

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Stephen L. Roth, Judge