

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 22, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-0623

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ROBERT F. CERVENKA AND DEBRA A. CERVENKA,

PLAINTIFFS-APPELLANTS,

v.

**SAWYER COUNTY, A MUNICIPAL CORPORATION, AND THE
SAWYER COUNTY BOARD OF APPEALS, A/K/A SAWYER
COUNTY BOARD OF ADJUSTMENT,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Sawyer County:
NORMAN L. YACKEL, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Robert and Debra Cervenka appeal a judgment that upheld a decision of the Sawyer County Board of Adjustment. The board denied them a setback variance that would have permitted them to add a bedroom for Debra's elderly parents, who the Cervenkas claim may wish to live with the

Cervenkas in the future. Their A-frame home, as a nonconforming use, already breaches the seventy-five-foot shoreline setback. On appeal, the Cervenkas argue that a variance is the only reasonable alternative and that the board's decision subjects them to an unnecessary hardship. We see no basis to overturn the board's decision. We therefore affirm the trial court's judgment and uphold the board's decision.

Local governments have considerable freedom to withhold zoning variances to preserve the public interest. *See* § 59.69(7)(c), STATS. For a variance, the Cervenkas needed to show an unnecessary hardship. *See* § 59.69(7)(c). This means that they must have no reasonable use of the property without the variance. *See State v. Kenosha County Board of Adjustment*, 218 Wis.2d 396, 413, 577 N.W.2d 813, 821-22 (1998). If the Cervenkas' land has other feasible uses, then the board must deny them a variance. *See id.* We must affirm the board's decision as long as it was reasonable, nonarbitrary, noncapricious, within the board's jurisdiction, and supported by the evidence. *See Snyder v. Waukesha County Zoning Board*, 74 Wis.2d 468, 475, 247 N.W.2d 98, 102-03 (1976). Here, we see none of the above-cited extraordinary circumstances needed to overturn the board's zoning decision.

The Cervenkas' property has feasible uses without the variance. They may continue to make good use of their eight-acre land and A-frame house without further breach of the setback law. The Cervenkas may put an additional bedroom for Debra's parents on another part of the house and still meet the dictates of the setback code. As the board noted, for example, they may relocate their driveway, swimming pool, septic system pump, or septic system drain field and put the new bedroom on their house in the area vacated by any of these items. Although it may be expensive, this is a practical, straightforward alternative to a

variance, and we are satisfied that the board could rationally rule that it gives the Cervenkas feasible use of their property. The additional cost of such action does not change this; economic factors are not controlling. *See Kenosha County*, 218 Wis.2d at 413, 577 N.W.2d at 821-22. In short, the Cervenkas have given no basis to overrule the board's decision.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

