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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1600**

Continental Property Group, Inc., petitioner,
Appellant,

vs.

Hassan Township,
Respondent.

**Filed July 8, 2008
Affirmed
Klaphake, Judge**

Hennepin County District Court
File No. 27-CV-06-19067

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this variance dispute, appellant Continental Property Group, Inc. challenges the
district court's grant of summary judgment in favor of respondent Hassan Township.
Appellant argues that respondent wrongfully denied appellant's application for a variance

to allow it to build an office/warehouse that would encroach on the minimum side setbacks established by respondent's ordinance. Appellant also argues that respondent's failure to preserve a verbatim record of the variance proceedings precludes summary judgment in respondent's favor. Because appellant did not meet the requirements necessary to show undue hardship and because the record is sufficient to allow review, we affirm.

D E C I S I O N

Undue Hardship

This court reviews an appeal from a summary judgment to determine if the record as a whole, when viewed in a light most favorable to the party against whom summary judgment was granted, presents any genuine issues of material fact, and if the district court erred in its application of the law. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993); *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We review a city's variance decision independent of the findings and conclusions of the district court to determine whether the city's action was reasonable, or arbitrary or capricious. *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 508 (Minn. 1983). We must decide whether the reasons articulated by the city were "legally sufficient and had a factual basis," or did not have the "slightest validity or bearing on the general welfare." *Id.* (quotation omitted). Although rebuttable, there is a strong presumption that a city's actions are proper. *Arcadia Dev. Corp. v. City of Bloomington*, 267 Minn. 221, 226, 125 N.W.2d 846, 850 (1964). A municipality has broad discretion in denying variances.

Kismet Investors, Inc., v. County of Benton, 617 N.W.2d 85, 90 (Minn. App. 2000), review denied (Minn. Nov. 15, 2000).

Minn. Stat. § 462.357, subd. 6 (2006) establishes the scope of a municipality's authority to grant variances. A city may also establish by ordinance the standards under which it grants variances. *VanLandschoot*, 336 N.W.2d at 508, n.6. According to both Minnesota statute and Hassan Township ordinance, respondent must evaluate variance requests to determine whether the strict enforcement of an ordinance without the requested variance would cause a property owner to suffer an undue hardship. Minn. Stat. § 462.357, subd. 6; Hassan Township, Minn., Development Code ch. I, § 6.4(3) (March 1, 2006) ("Code"). "Hardship" is defined by both statute and ordinance to include three factors: (1) lack of reasonable use without the variance; (2) unique circumstances not shared by neighboring properties and not created by the landowner; and (3) maintenance of the essential character of the locality, despite the variance. Minn. Stat. § 462.357, subd. 6; Code, ch. I, § 6.4(4). A variance is permitted only if an applicant demonstrates that *all three factors* are met. *Nolan v. City of Eden Prairie*, 610 N.W.2d 697, 701 (Minn. App. 2000), review denied (Minn. July 25, 2000).

Here, the board found that (1) appellant had not demonstrated proven hardship, noting that financial and economic considerations do not constitute a hardship, and (2) the property was usable without the requested variance. We conclude that these findings were legally sufficient and had a factual basis in the record. Both the statute and ordinance state that economic considerations alone shall not constitute an undue hardship if a reasonable use exists. Minn. Stat. § 462.357, subd. 6; Code, ch. I, § 6.4(4)(E).

“Reasonable use” does not relate to economic viability. *See VanLandschoot*, 336 N.W.2d at 509-510 (holding that “undue hardships” primarily concerned with costs were insufficient to justify granting variances). Although appellant proposed a reasonable, permitted use for its property, the only hardship appellant alleged is economic. Without the desired variance, appellant is still able to build a smaller, allegedly less marketable office/warehouse than the one it has proposed. This is a financial or economic consideration and was duly noted as such by the board and therefore does not constitute a hardship.

In addition, we observe on this record that appellant has not shown that its lot possesses unique features, topographical or otherwise, that would create a hardship, a circumstance that alone defeats appellant’s claim of hardship. There is nothing in the record suggesting that the shape of this lot is “irregular” or different in some way from neighboring properties. It is a rectangular parcel similar in size and shape to all of its neighboring parcels. We conclude that because there is nothing in the record to distinguish this property from other neighboring properties, summary judgment is appropriate.

Lack of Verbatim Record

Appellant argues that because respondent did not preserve a verbatim record of the proceedings at which its variance request was decided, summary judgment is precluded. We disagree. In deciding whether a municipality acted reasonably, a court reviews the record and evidence that was available to and considered by the municipality. *Swanson v. City of Bloomington*, 421 N.W.2d 307, 311 (Minn. 1988). If the record below is

adequate, a reviewing court may grant summary judgment on the record without receiving additional evidence. *Id.* at 313. This court must review the record to determine whether the municipality's decision was unreasonable, arbitrary or capricious, with its review focused on the legal sufficiency of and the factual basis for the reasons given. *Id.*

Municipalities are not obligated by statute or otherwise to preserve a verbatim record of their proceedings. We conclude that the record here is sufficient to allow us to review the basis for respondent's decision. Respondent made findings and stated its reasons for denial. The facts set forth in the record further support this denial. *See Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416 (1981) (holding that a record of municipal proceedings is adequate, for purposes of judicial review, where reasons for the decision are reduced to writing in more than just a conclusory fashion).

Affirmed.