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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2019**

Mathew Davis, et al.,
Appellants,

vs.

Le Sueur County Planning and Zoning Board of Adjustment, et al.,
Respondents.

**Filed May 29, 2018
Affirmed
Hooten, Judge**

Le Sueur County District Court
File No. 40-CV-16-1017

Lawrence M. Shapiro, Katherine M. Swenson, Greene Espel PLLP, Minneapolis,
Minnesota (for appellants)

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Considered and decided by Smith, T., Presiding Judge; Rodenberg, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

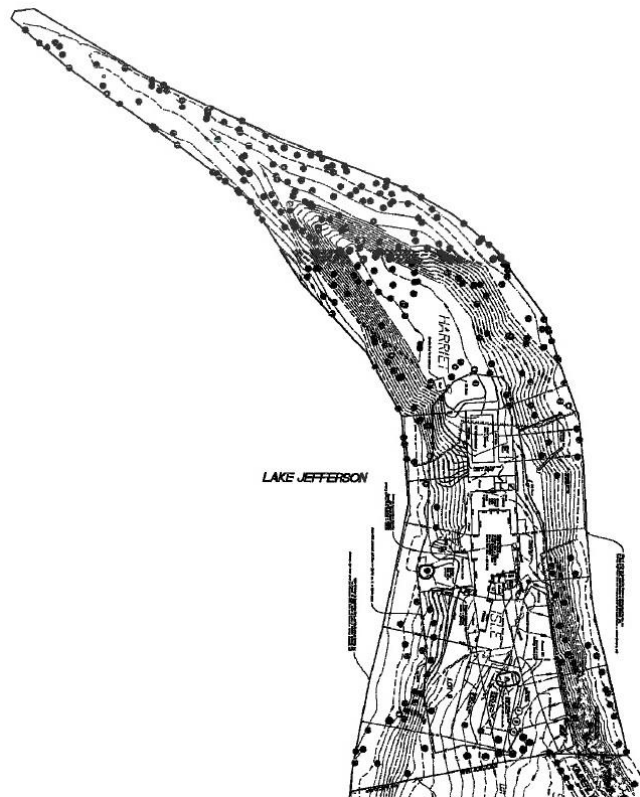
HOOTEN, Judge

Appellants seek a reversal of the respondent county board of adjustment's decision to deny a variance application for the construction of a swimming pool and pool shed, arguing that the decision was arbitrary and capricious, grounded in legally insufficient reasoning, and unsupported by substantial evidence in the record. Appellants also ask this

court to remand the matter to the board of adjustment with instructions to grant the variance. We affirm.

FACTS

Appellant Mathew Davis and his wife¹ purchased property (the Property) along West Jefferson Lake in Le Sueur County. The Property is located on a long and narrow peninsula that is approximately 150 feet wide from east to west. The peninsula projects into the lake at the peninsula's narrow northwest tip. The peninsula's base, which is the broadest part of the peninsula, connects to the mainland from the south. An image of the peninsula from the record is reproduced below.



¹ Davis's wife is not a party to the litigation. Appellant CSE Properties, LLC is the other appellant and current owner of the Property. Davis is a member of CSE Properties and for purposes of simplicity we will refer to both appellants collectively as Davis.

Under Le Sueur County's zoning ordinance, the Property is zoned as recreational residential, which requires any structure on the Property to be at least 100 feet set back from the Ordinary High Water Level (OHWL) of the lake. *See* Le Sueur County, Minn., Zoning Ordinance (LSZO) § 13.2, subd. 5(E)(1) (2013). Davis had the previously-existing house on the Property demolished and developed plans to construct a new house with a swimming pool and pool shed. Because of the unique size and shape of the peninsula, all three structures would be less than 100 feet from the OHWL, requiring Davis to apply for a variance. *See* LSZO § 13, subd. 3(B) (2013).

In July 2016, Davis applied for a variance from the 100-foot setback requirement to allow the planned structure to be built 55 feet from the OHWL. The application noted that the setback for the new house would not be any closer to the lake than the original house. Respondent Le Sueur County Planning and Zoning Commission Board of Adjustment (the Board) held a hearing on Davis's variance application in August 2016. At the hearing, the Board read into the record a letter from an environmental resources specialist who recommended that the variance be approved for the house but not for the pool and pool shed. The Board also read an email into the record from the Minnesota Department of Natural Resources (DNR), which indicated that the DNR had received several concerns about the proposed variance and that approval of these types of variance requests should be limited to "exceptional circumstances."

The Board then voted unanimously to grant the variance for the house but unanimously denied the variance for the pool and pool shed. In approving the variance for the house, the Board filled out a Variance Findings of Fact form. The form provided that

“[a] variance may be granted only where the strict enforcement of the official control will result in a practical difficulty” and that “[i]t is the responsibility of the applicant/landowner to prove evidence that a practical difficulty exists.” Following the next provision, which states that “[a] determination that a practical difficulty exists upon the consideration of the following criteria,” are five questions addressing the statutory requirements for the issuance of a variance under Minn. Stat. § 394.27, subd. 7 (2016). The form also has two questions addressing whether the variance is “in harmony with the general purposes and intent of the official controls.” With reference to Davis’s request for a variance for the house, all of these questions were answered yes on behalf of individual board members with no further comment.

The Board utilized the same form in denying Davis’s request for a variance for the pool and pool shed, with each board member answering all of the seven questions in the negative. There were two additional comments on this form. Under the first question on the form, which asked “[d]oes the property owner propose to use the property in reasonable manner,” the Board explained that “practical need was not proven for a pool.” And for the fifth question on the form, relating to whether “the alleged practical difficulty involved more than economic considerations,” the Board explained that it “involves their preference to use the property by installing a pool.”

Davis filed a complaint against the Board and Le Sueur County (collectively, the respondents) in district court, seeking a declaratory judgment that the Board’s denial of the variance for the pool and pool shed was arbitrary and capricious and contrary to law. He also requested an order directing the Board to grant the variance. After holding a motion

hearing, the district court determined that the Board's reasoning for denying the variance was incomplete and could not provide for adequate review of the decision. The district court thereby remanded the matter to the Board for further findings based on the already-existing record.

In June 2017, the Board conducted a second hearing to further consider Davis's variance application for the pool and pool shed. The Board discussed each of the statutory requirements and voted that the variance did not satisfy any of the requirements. The Board again voted unanimously to deny the variance and later issued written findings in support of its decision.

Davis appealed the Board's decision to the district court, which held another hearing in November 2017. The district court upheld the Board's denial of the variance application for the pool and pool shed. The district court concluded that the record was sufficient to support the Board's findings and that the Board did not misapply the law or act arbitrarily and capriciously. Davis now appeals to this court.

D E C I S I O N

Davis urges us to conclude that the Board's decision is arbitrary and capricious and that we should remand the case and instruct the Board to grant his variance application for the pool and pool shed. He specifically argues that the rationale articulated in the Board's written findings from June 2017 was never discussed or considered by the Board and serves merely to conceal its true motivation for denying the variance—that Davis did not need a pool and pool shed. He also argues that even if the written findings are consistent with the Board's deliberations, these findings lack substantial evidentiary support in the record and

fail to comply with the statutory requirements enumerated in Minn. Stat. § 394.27, subd. 7.

A board of adjustment has broad discretion in deciding whether to grant or deny a variance application. *Kismet Inv'rs, Inc. v. County of Benton*, 617 N.W.2d 85, 90 (Minn. App. 2000), *review denied* (Minn. Nov. 15, 2000). Appellate courts review a board's decision by determining whether the board "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). We independently examine the record of the board's proceedings and review the board's decision without giving any deference to the district court's findings and conclusions. *Swanson v. City of Bloomington*, 421 N.W.2d 307, 311 (Minn. 1988).

I.

Davis challenges the district court's first order remanding the matter back to the Board, claiming that the record was not so inadequate as to preclude judicial review. His argument implies that we may reverse the Board's decision, without even considering the merits of its post-remand actions, because the district court erred by ordering the remand in the first place. Respondents counter that the district court's decision to remand the matter to the Board is not reviewable because it is untimely and moot.

A. Review of the Remand

Respondents apparently propose that a party challenging a district court's remand order in this context must seek discretionary review under Minn. R. Civ. App. P. 105.01

immediately after the ruling. We generally review only final orders or judgments. Minn. R. Civ. App. P. 103.03(a). “A final judgment ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’” *T.A. Schifsky & Sons, Inc. v. Bahr Constr., LLC*, 773 N.W.2d 783, 788 (Minn. 2009) (quotation omitted). Respondents concede that the district court’s remand in this case was not an appealable order because it did not constitute a final order or judgment. Nevertheless, respondents argue that the district court’s remand order is not reviewable, suggesting that the decision became moot after the district court’s second order. We disagree.

One of the methods for which a party may seek discretionary review under rule 105.01 is if it can present a “compelling reason” for the immediate appeal. *Gordon v. Microsoft Corp.*, 645 N.W.2d 393, 398 (Minn. 2002). In deciding whether to exercise discretionary review, Minnesota appellate courts take into account the general disfavor of interlocutory appeals and the policy of avoiding piecemeal appeals that could disrupt and delay the litigation. *Metro. Sheet Metal Journeyman & Apprentice Training Tr. Fund v. County of Ramsey*, 832 N.W.2d 844, 849 (Minn. 2013). Moreover, discretionary review may be refused when judicial economy is best served by permitting the district court to complete the proceedings. *Id.*

Respondents fail to present any compelling reason for why Davis should be required to petition for discretionary review under rule 105.01 after the district court remanded the matter to the Board. While the district court indicated that it could uphold the Board’s decision, the district court ultimately concluded “it would be appropriate to remand this matter back to the [Board] for more complete findings” and that the Board’s further

findings should be “based upon the existing record.” Interlocutory and piecemeal appeals are generally disfavored. *See Emme v. C.O.M.B., Inc.*, 418 N.W.2d 176, 179 (Minn. 1988). And on appeal from a final judgment, appellate courts may review any order affecting the judgment. Minn. R. Civ. App. P. 103.04. We therefore conclude that Davis’s challenge to the district court’s remand order is reviewable and we will address the merits.

B. Remand as a Proper Remedy

Davis argues that the district court erred by ordering the remand in this case and that we should reverse on this basis alone. In resolving a variance application, the board of adjustment “must articulate the reasons for its ultimate decision, with specific reference to relevant provisions of its zoning ordinance.” *Earthburners, Inc. v. County of Carlton*, 513 N.W.2d 460, 463 (Minn. 1994). Minnesota courts typically will order a board to issue a variance if the board’s original decision denying the variance is arbitrary and capricious and unsupported by the evidence because courts are often reluctant to allow the board “an opportunity after the fact to substantiate or justify earlier decisions.” *See Interstate Power Co. v. Nobles Cty. Bd. of Comm’rs*, 617 N.W.2d 566, 577 (Minn. 2000) (quotation omitted); *see also Metro 500, Inc. v. City of Brooklyn Park*, 297 Minn. 294, 299, 211 N.W.2d 358, 362 (1973) (alluding to “danger” of permitting local government body “after several months of thought to present reasons perhaps totally unrelated to the actual reasons for denying the permit” (quotation omitted)).

But, in *Earthburners*, the Minnesota Supreme Court reversed and remanded a county board’s denial of a conditional-use-permit application after concluding that the board’s proceedings were incomplete and that the board failed to adequately articulate the

reasons for its decision. 513 N.W.2d at 462–63. The supreme court determined that a remand would be appropriate because the board’s denial, justified on the mere reference to “public testimony in opposition,” illustrated that several questions remained unanswered and that the board’s decision was premature though not necessarily arbitrary. *Id.* at 463. Similarly, in *White Bear Rod & Gun Club v. City of Hugo*, the supreme court remanded a city council’s denial of a gun club’s application because the city council “cryptically” listed the sources of its information in denying the application but failed to explain how it evaluated this information. 388 N.W.2d 739, 742 (Minn. 1986). Accordingly, in the “rare case” where “judicial review is impossible” because the record is so inadequate, a board should have the opportunity to develop the record to allow meaningful review so long as it confines its inquiry to the issues raised in the earlier proceeding. *Interstate Power Co.*, 617 N.W.2d at 577.

The Board in this case held the first hearing to address Davis’s variance application for the house, pool, and pool shed in August 2016. After the Board read the letter from the environmental resources specialist into the record, which recommended granting the variance for the house but denying the variance for the pool and pool shed, the chairperson stated, “To me, it seems overkill. You’ve got a peninsula. You’ve got water on three sides of it. And you want a pool.” The Board then took a voice vote with respect to each statutory requirement, and each member voted that the pool and pool shed did not meet any of the requirements. During the vote, the chairperson also stated, “I don’t think there’s a practical need for those.” The Board then moved to deny the variance request for the

pool and pool shed. The motion passed and the chairperson explained, “Okay. You got a house. No pool, no pool house.”

When the district court reviewed the Board’s Variance Findings of Fact relative to its denial of a variance for a pool and pool shed, it concluded that the Board offered some reasons for its decision but that its reasoning was ultimately incomplete.² Citing *Earthburners*, the district court remanded the matter to the Board for additional findings based on the already-existing record. Based upon our review of the Board’s initial decision, we are satisfied that the Board considered the statutory criteria in denying the variance as evidenced by its answers to each of the seven questions on its form. However, we agree that the decision does not sufficiently set forth the facts supporting its decision or adequately explain its reasons for answering each of the questions in the negative. See *Earthburners*, 513 N.W.2d at 463 (requiring county board to “articulate the reasons for its ultimate decision, *with specific reference* to relevant provisions of its zoning ordinance” (emphasis added)). We conclude that the district court did not abuse its discretion by remanding for more complete findings.

II.

Davis insists that, even if the district court did not err by remanding the matter to the Board, we should reverse the Board’s denial of his variance application because the Board’s written findings after the remand did not accurately reflect the Board’s deliberations but were rather constructed in a manner to conceal the Board’s true rationale

² We also note that the Board did not make any specific references to the relevant zoning ordinance in its first decision.

that he had no practical need for a pool and pool shed. He attempts to highlight several findings that do not mirror the Board's actual deliberations at the previous hearings. Davis also points out that the "practical need" of a pool and pool shed was not explicitly listed in the Board's written findings.

Upon remand, the Board conducted the second hearing in June 2017 to discuss Davis's variance application for the pool and pool shed. During the hearing, the Board discussed each of the statutory requirements of Minn. Stat. § 394.27, subd. 7 in more significant detail. The chairperson stated:

[E]laborating on our reasons, you know, last time it was stated the practical need was not proven. The request is for a 55-foot setback from the ordinary high water level, where the setback allowed is 100 feet. This is a substantial intrusion into the setback area, and it actually represents 45 percent of the setback intrusion. There's already, to me, significant intrusion with the home, and approving this would only compound that intrusion problem. If you've driven by the lake, you can certainly see the house very boldly on that peninsula. And, to me, if you add a pool and pool shed, again, you increase the visibility, not only from the road, but for the property owners in the area or along the lake.

Many of the board members also expressed concerns that the setback variance could cause issues with "erosion control" and could "change the character of that area." And several board members determined that the variance was not consistent with the zoning ordinance, finding that granting the variance would contradict the Board's objective of protecting and preserving the quality of the local lakes. After the Board voted to deny the variance a second time, it asked its attorney to draft written findings. The Board's written findings include, among others, that:

3. The variance requested that the residence, swimming pool, and pool house be constructed within 55 feet of the lake on both sides.
4. The variances for the pool and pool shed represent substantial intrusions into the setback areas, because they are seeking setbacks up to 45% of the setback distance.
5. The pool and pool shed variance come on top of the very substantial variance requested and granted for the principal residence that is to be constructed on the site.
....
7. The pool and pool shed would be placed in a location that is elevated well above the lake and would be highly visible to surrounding properties, given the location on a peninsula in Lake Jefferson.
....
13. There are no nearby pool houses or pools within 100 feet of Lake Jefferson.
14. Construction of the pool and pool house would present problems related to erosion control. Construction of the pool would contribute to runoff from the peninsula, because all water falling on the pool area would result in runoff.
15. The official controls and the comprehensive plan recognize the importance of limiting development within the shoreland impact zone. The variance granted for the residence was a very significant deviation from the minimum setback from the OHWL.
16. The variances requested are very substantial departures from existing standards.
17. There is no circumstance unique to the property that necessitates the construction of the pool and pool house.

First, Davis argues that the Board only offered one rationale for denying the variance for the pool and pool shed in August 2016. But, the record shows that the Board's initial decision expressly found that the pool and pool shed did not fulfill any of the necessary statutory requirements for granting the variance. Second, several of the Board's written findings after the remand accurately track comments made by the board members

during the June 2017 hearing. For example, the chairperson stated she was critical of the variance request because it would be “a substantial intrusion into the setback area” and would “increase the visibility” to neighboring property owners. Other board members conveyed concerns regarding erosion problems that often arise from setbacks for shoreland properties. And, contrary to Davis’s assertions regarding storage, the chairperson did state that “[t]here’s no demonstrated practical difficulty. For example, on the pool shed or pool house, whatever title you want to use, you know, those things can be stored in that house, the residence.” Because the Board’s written findings are consistent with the reasons presented at the June 2017 hearing, it would be inappropriate to assume that the Board manufactured these reasons merely to mask its alleged motivation—that Davis did not need a pool and pool shed—for denying the variance application. We will not reverse the Board’s decision on the basis of its reasons being unrelated to its deliberations at prior hearings. We move next to address whether the Board provided legally valid reasons supported by evidence in the record.

III.

Davis contends that the Board’s findings and conclusions in denying the variance are unsupported by substantial evidence in the record and are legally insufficient to justify its ultimate decision. Appellate courts “examine the municipality’s action to ascertain whether it was arbitrary and capricious . . . or whether the reasons given by the body were legally sufficient and had a factual basis.” *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 508 (Minn. 1983). Davis asks us to reverse the Board’s decision and order the Board to grant his variance for the pool and pool shed. *See Krummenacher v. City of*

Minnetonka, 783 N.W.2d 721, 732–33 (Minn. 2010) (“In cases where a variance has been denied, the general rule is that if the zoning authority’s decision is arbitrary and capricious, the standard remedy is that the court orders the permit to be issued.” (quotation omitted)).

Minnesota statutes establish the requirements for a board of adjustment to issue a variance that deviates from the requirements of an official control, such as a zoning ordinance. Minn. Stat. § 394.27, subd. 7. The board may only grant a variance if the variance is “in harmony with the general purposes and intent of the official control and . . . [is] consistent with the comprehensive plan.” *Id.* In order for the board to grant the variance, the applicant must also establish that there are “practical difficulties” in complying with the official control. *Id.* Practical difficulties mean: (1) “that the property owner proposes to use the property in a reasonable manner not permitted by an official control”; (2) “the plight of the landowner is due to circumstances unique to the property not created by the landowner”; (3) “the variance, if granted, will not alter the essential character of the locality.” *Id.* But “[e]conomic considerations alone do not constitute practical difficulties.” *Id.* Because a variance allows an applicant to use his property in a manner originally forbidden by the official control, the applicant bears a “heavy burden” in demonstrating that granting the variance is permissible. *Luger v. City of Burnsville*, 295 N.W.2d 609, 612 (Minn. 1980).

During the August 2016 hearing, the Board read two documents into the record: a letter from an environmental specialist and an email from the DNR. The environmental resources specialist stated in relevant part:

I would not recommend approval of the requested variance for the pool and pool house. There is no practical difficulty for these structures. The only reason for the variance request is to allow for the construction of a pool area on a lot that does not have sufficient room for a pool. If a pool is not constructed, then there is no need for a pool house.

....

If [the] variance is granted for the pool and pool house, additional conservation practices will need to be installed on the lot to offset the shortened setback from the OHWL for this area. The applicant will need to work with the Environmental Resources Specialist to provide these additional conservation practices. This can include but is not limited to a rain barrel(s), rain garden(s) or increased buffer area(s).

In addition, the DNR's email provided that:

[P]lease be advised that [the] DNR has received several phone calls of concern regarding the proposed Mathew Davis OHWL setback variance on Lake Jefferson. As you know, shoreland setbacks are needed to ensure adequate space between structures and public waters in order to protect against runoff and pollution, and to preserve the natural shoreline. As such, these types of variance requests are to be limited to "exceptional circumstances" and must be carefully examined to determine whether all statutory and local criteria are satisfied.

As discussed previously, the Board held a second hearing in June 2017 and issued written findings based on the record existing at the time of the August 2016 hearing. In its written findings, the Board referred to the land use goals and policies of the relevant zoning ordinance and comprehensive plan. The Board decided that Davis's variance application was not consistent with the goals of the zoning ordinance and the comprehensive plan to preserve the areas adjacent to the lakes because it would result in a substantial expansion in the shore impact zone and failed to account for the preservation of scenic resources in an environmentally sensitive area. The Board also determined that the variance would

result in Davis using the property in an unreasonable manner due to the unique configuration of the Property on a narrow peninsula and the substantial intrusion into the protected shoreland area.

We focus our attention on whether the variance conforms to the policies of the official control—specifically the relevant zoning ordinance provisions—and the comprehensive plan. We also consider whether the variance would lead to the Property being used in a reasonable manner. Ultimately, we conclude that the variance does not meet these essential statutory requirements.

A. The Zoning Ordinance and the Comprehensive Plan

Davis asserts that the Board’s finding that the variance is in discord with the purposes of the zoning ordinance and is inconsistent with the comprehensive plan is not supported by the evidence. In determining the reasonableness of the Board’s decision, we are guided by the standards established in the zoning ordinance. *Kismet*, 617 N.W.2d at 90. Stated otherwise, we will not conclude that a board of adjustment’s decision is arbitrary “when it bears a reasonable relationship to the purpose of the ordinances.” *Clear Channel Outdoor Advert., Inc. v. City of St. Paul*, 675 N.W.2d 343, 346 (Minn. App. 2004), *review denied* (Minn. May 18, 2004).

Consistent with the statute, the zoning ordinance provides that “[a] variance may not circumvent the general purposes and intent of this Section.” LSZO § 13, subd. 3(B)(1) (2013). The pertinent purposes of the zoning ordinance include: (1) “[p]rotecting and preserving agricultural land and natural resources,” (2) “[c]onserving the natural and scenic beauty of the County,” and (3) “[m]inimizing environmental pollution.” See LSZO § 1(A).

The zoning ordinance and the comprehensive plan share the land use goals of conserving and restoring natural resources, protecting the ecological systems of the natural environment, and improving water quality in Le Sueur County.³

1. Erosion Control and Runoff

Davis claims that the Board’s findings regarding erosion control and runoff lack factual support in the record. At the June 2017 hearing, two board members briefly mentioned erosion as a possible result of a reduced setback. Davis frames these discussions of erosion control as merely “generalized concerns” that are insufficient to deny his variance application. *See Bartheld v. County of Koochiching*, 716 N.W.2d 406, 413 (Minn. App. 2006) (explaining that local governing body may consider neighborhood opposition to conditional-use permit only if it rests on concrete information rather than vague, generalized concerns). We agree with Davis that the discussion of erosion control is vague, and we find it difficult to conclude that this was an adequate reason for denial without further context in the record.

But, the Board also found that “[c]onstruction of the pool would contribute to runoff from the peninsula, because all water falling on the pool area would result in runoff.” While none of the board members mentioned the term “runoff” during either hearing, these concerns are likely based on the DNR’s email. In the email, the DNR stated, “As you know, shoreland setbacks are needed to ensure adequate space between structures and

³ The Le Sueur County comprehensive plan is available online. Le Sueur County, *Le Sueur County Land Use Plan 10-14* (July 24, 2007), http://www.co.le-sueur.mn.us/departments/environmental_services/planning_and_zoning/index.php (follow “Le Sueur County Comprehensive Land Use Plan”).

public waters in order to protect against runoff and pollution, and to preserve the natural shoreline.”

Again citing *Bartheld*, Davis claims that the letter simply expresses “generalized concerns” about runoff and pollution which are not supported by substantial evidence. See 716 N.W.2d at 413. We disagree for two reasons. First, when reading the email in context, we interpret the concerns about runoff as specifically directed to Davis’s proposed variance, not generally about water pollution from any structure built on shoreland property. Second, Davis construes the “generalized concerns” language in *Bartheld* too broadly. There is a difference between neighborhood opposition to a conditional-use permit based on noise and traffic worries, see *id.*, and environmental concerns raised in an email from the DNR. And, in arguing that the email does not satisfy the substantial-evidence standard or that the Board should have requested more information about the implications of runoff, Davis forgets that he bears the burden in showing that the variance is permissible and consistent with the zoning ordinance. See *Luger*, 295 N.W.2d at 612. He did not present any evidence at the August 2016 hearing that would alleviate the concerns regarding runoff. Based on the evidence supplied in the DNR’s email, we conclude that it was reasonable for the Board to determine that Davis’s variance request, with its risks of runoff, conflicted with Le Sueur County’s interest in minimizing environmental pollution. See LSZO § 1(A).

2. Visibility

Davis also argues that the Board’s finding that the pool and pool shed “would be highly visible to surrounding properties” lacked substantial evidentiary support in the

record. We note that the zoning ordinance directs the Board to consider the impact of the development on neighboring property owners. See LSZO § 13, subd. 3(B)(1) (“In considering a variance request, the Board of Adjustment must also consider . . . the characteristics of development on adjacent properties.”). For example, the zoning ordinance provides that in order for a swimming pool to be a permissible accessory structure, the lighting for the pool must not cast light onto adjacent properties and a five-foot fence must enclose the pool area. See LSZO § 13.2, subd. 4(B) (2013). We also reiterate that one of the zoning ordinance’s overarching land use goals is to preserve the natural and scenic beauty of the area. See LSZO § 1(A).

Davis attempts to dismiss the Board’s concerns about visibility, stating that these concerns were based solely on speculation of a non-existing pool and pool shed. We are unpersuaded considering that Davis similarly speculates that the non-existing pool “would certainly not be visible from the lake.” And, Davis does not discuss the potential visibility of the pool house beyond speculating that it will be “far smaller” than the new house and “will be partially screened from view”.

Adequate evidence is present in the record for us to conclude that the Board was in a reasonable position to determine how the visibility of the pool and pool shed may impact nearby properties. The Board was able to review the site plan as well as several photos and maps of the Property. See *In re Krenik*, 903 N.W.2d 224, 232 (Minn. 2017) (noting city council’s review of various photographs of property in deciding to uphold city council’s abatement order). Indeed, the Board conducted a site visit of the Property prior to making its initial decision in August 2016. In *Krenik*, the supreme court concluded that

a city council's decision regarding an abatement order to screen collector vehicles from ordinary public view had sufficient evidentiary support in the record, emphasizing the "visually based" and "fact-intensive" nature of the city council's decision. *Id.* Similar to the supreme court's ruling in *Krenik*, the Board's concerns about visibility are supported by evidence in the record and are consistent with the policies and goals identified in the zoning ordinance.

B. Reasonable Manner

Davis also claims that the Board's conclusion that he does "not propose to use the property in a reasonable manner" lacked evidentiary support and applied the incorrect legal standard. He believes that the Board substituted the statutory "reasonable manner" requirement with a necessity-based standard. *See* Minn. Stat. § 394.27, subd. 7. Citing the supreme court's decision in *Stadsvold*, respondents counter that the "setback is nearly half of the 100-foot setback requirement and would require significant intrusion on both sides of the lake." *See* 754 N.W.2d at 331 (explaining that one of six factors to be considered in the "practical difficulties" analysis is "how substantial the variation is in relation to the requirement"). We recognize that, in response to *Stadsvold*, the legislature amended the prior version of Minn. Stat. § 394.27, subd. 7 in 2011 to limit the "practical difficulties" standard to the three current statutory requirements. *See* 2011 Minn. Laws ch. 19, § 1, at 106. Although Davis submitted his variance application after the amended statute went into effect, and therefore we do not address the substantial-variation factor as an

independent requirement, we may consider the degree of the variance in whether Davis proposes to use the Property in a reasonable manner.

Davis asserts that the Board created an arbitrary double standard by granting the variance for the house but denying the variance for the pool and pool shed, even though the setback was the same for each structure. But the evidence in the record is consistent with the Board's apprehensions that the addition of the pool and pool shed would only "compound" the problem on an already unique piece of property. The environmental resources specialist recommended approving the variance for the house but not the variance for the pool and pool shed, finding that the "lot is narrow" and "does not have sufficient room for a pool." In determining whether the evidence in the record supports the Board's decision, it is not our role to substitute our judgment for that of the Board's, even if we believe the Board could have reached a different decision. *See VanLandschoot*, 336 N.W.2d at 509. We conclude that there is evidence in the record sufficient to support the Board's decision that Davis's proposed variance does not satisfy the first practical difficulty requirement because it does not result in him using the Property in a reasonable manner.

Affirmed.