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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0987**

Mike and Kristina Herbst, et al.,
Appellants,

vs.

City of Deephaven, a Minnesota municipal corporation,
Respondent,

M.T. Laught L.L.C., a Minnesota limited liability company,
Respondent.

**Filed April 7, 2025
Affirmed
Bentley, Judge**

Hennepin County District Court
File No. 27-CV-23-9443

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Minnesota (for appellants)

Justin L. Templin, Hoff Barry, P.A., Eden Prairie, Minnesota (for respondent City of
Deephaven)

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Considered and decided by Ede, Presiding Judge; Bentley, Judge; and Kirk, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BENTLEY, Judge

Respondent M.T. Laught L.L.C. is a real estate developer that purchased a large residential property in Deephaven for development. The property currently has a single home that sits well below street level. M.T. Laught plans to remove the existing home, increase the grade of some parts of the land by more than three feet, subdivide the property into two lots, and build a new home on each lot. The proposed plans comport with all applicable zoning requirements except for one: respondent City of Deephaven prohibits “any land increase of more than three feet at any point” absent an approved variance. Deephaven, Minn., City Code (DCC) § 1312.04, subd. 1(b) (2013).

M.T. Laught applied for a variance to allow for an increase in the land grade beyond the three-foot limit on some parts of the property, which was considered by the city’s planning commission and ultimately granted by the city council. Appellants Mike Herbst, Kristina Herbst, Holly Jones, Carl Jones, Mark Sparboe, Terrie Sparboe, Scott Krohn, and Ellen Krohn are neighboring property owners who participated in the proceedings before the city and then filed an action in the district court challenging the city’s grant of the variance as “arbitrary, capricious, contrary to law, contrary to the ordinance, and contrary to the evidence.” The district court granted summary judgment for the city and M.T. Laught, concluding that the city council’s decision was reasonable.

Appellants raise two issues on appeal. First, they challenge the district court’s denial of their request to supplement the municipal record and to have the court review the city’s decision on a supplemented record. Second, they argue that the city lacked a reasonable

basis to find that two of the statutory requirements for a variance were met. We conclude that the district court did not err in denying the request to supplement the record. And, based on our review of the existing record, we conclude that the city council’s decision to grant M.T. Laught’s variance application was reasonable. We therefore affirm.

FACTS

M.T. Laught owns the property central to this appeal. The property is a 48,852-square-foot lot located on Linden Road in Deephaven. Appellants are eight homeowners whose properties surround the property on its four sides, including one across the street.

The property contains a single-family home that was built in 1950 and sits about seven feet below street level. It is one of two homes on Linden Road with such a significant drop in elevation from the road, which results in a steep driveway that exceeds the city’s present-day requirement that driveways not exceed a grade of 10%. The property is one of three homes in the neighborhood with driveways that exceed a 10% grade.

The property contains a landlocked wetland with no drainage outlet that serves as the low point of the neighborhood. The property’s low elevation exposes it to stormwater drainage from surrounding properties in all directions—about 6.33 acres of neighboring land.

Deephaven’s Zoning Code

The city’s zoning code regulates grading and filling to “allow the city to better manage stormwater discharge, ensuring drainage does not negatively impact neighboring properties, . . . and [to] prevent erosion issues onto adjacent properties, wetlands, lakes and

roads.” DCC § 1312.04 (2013). Specifically, city code prohibits “any land increase of more than three feet at any point” absent an approved variance. *Id.*, subd. 1(b).

To obtain a variance, an applicant must show that (1) “the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance” (reasonable-use requirement); (2) “the plight of the landowner is due to circumstances unique to the property not created by the landowner” (unique-circumstances requirement); and (3) “the variance, if granted, will not alter the essential character of the locality.” DCC § 1315.03 (2011).¹ Variances must be “in harmony with the general purposes and intent of the ordinance and . . . consistent with the comprehensive plan.” DCC § 1315.04 (2011).

M.T. Laught’s Applications

M.T. Laught submitted a preliminary plat application and accompanying materials to the city to develop the property, in which it proposed “to subdivide the property into two lots” containing one house each. As part of the proposed subdivision, M.T. Laught also applied for a grading variance to raise the level of the new homes beyond the three-foot grading limit by adding fill to portions of the lot.

Upon receiving M.T. Laught’s applications, the city authorized an engineering firm, WSB & Associates, Inc., to perform a drainage study “reviewing the impacts to future drainage conditions in consideration of the proposed subdivision . . . and determining potential improvements to enhance drainage conveyance along Linden Road” and the

¹ The state statute governing zoning variances is consistent with Deephaven’s city code. *See* Minn. Stat. § 462.357, subd. 6(2) (2024) (explaining, as relevant, the reasonable-use and unique-circumstances requirements).

property. WSB suggested five improvements to “improve drainage conveyance along Linden Road.” WSB concluded that, if M.T. Laught adopted the improvements, M.T. Laught’s development plan would provide “the most efficient and thorough solutions to the existing drainage concerns adjacent to the [property] without adding undue drainage issues to nearby properties.”

Shortly thereafter, the city’s planning commission held the first of two public hearings on M.T. Laught’s applications. In advance of the hearing, the planning commission sent notices to “all property owners within 350 feet of the subject site” and prepared a report recommending approval of the applications subject to some conditions. At the hearing, which took place on November 15, 2022, an engineer from WSB presented the findings of the drainage study. The engineer and a representative from M.T. Laught addressed questions from city staff and residents. Appellants and their attorney raised concerns about potential flooding risks and M.T. Laught’s failure to establish that the grading variance application met the variance requirements. Ultimately, the planning commission granted a continuance on the grading variance application to allow for the Minnehaha Creek Watershed District to review the plans, as required by a local ordinance.

After the hearing, appellants procured an independent engineering report analyzing M.T. Laught’s proposal and WSB’s drainage study. The report was sent to M.T. Laught and city staff and identified issues for further consideration. In response, the city hosted two meetings with M.T. Laught and residents, including appellants. The first meeting facilitated further discussion of outstanding issues, and the second meeting focused on

M.T. Laught's updated development plan, which was revised to address concerns raised at the first meeting.

The Watershed District submitted a report summarizing its review and supported approving M.T. Laught's applications. At around that time, WSB submitted an amended drainage analysis that accounted for a wider area surrounding the property. WSB recommended the same improvements and concluded that M.T. Laught's plans posed "an opportunity to further improve drainage conveyance along Linden Road."

The planning commission held its second public hearing on May 16, 2023. The WSB engineer presented the updated drainage study, and M.T. Laught agreed to adopt WSB's recommendations. The planning commission voted to recommend approving M.T. Laught's applications.

The city council considered M.T. Laught's applications in June 2023 and voted unanimously to adopt the resolution approving them. It based its decision on the planning commission's recommendation; the planning director's presentation on the commission's findings regarding each of the variance criteria required by state and local law; and the administrative record, which included community input, expert reports, and transcripts of the public hearings. By then, M.T. Laught had made two changes to its proposal: a two-foot reduction in the proposed first-floor elevation for the new homes, and an expansion to the wetland capacity, which would reduce the ordinary high-water level of a 100-year storm event and improve existing flood risks to neighboring properties.

District Court Proceedings

Appellants sued M.T. Laught and the city, claiming the city council's decision to approve M.T. Laught's applications was arbitrary, capricious, and contrary to state and local law. The parties filed cross-motions for summary judgment. Appellants also sought to supplement the municipal record. The district court denied appellants' request to supplement the record and granted the city's and M.T. Laught's motions for summary judgment because it determined, based on the existing record, that the city's decision was reasonable.

This appeal follows.

DECISION

Appellants argue that the district court erred when it (I) denied their request to supplement the municipal record and (II) granted summary judgment to the city and to M.T. Laught upon determining that the city council's decision to approve M.T. Laught's grading variance application was reasonable. We address each issue in turn.

I

In challenging the district court's denial of their request to supplement the municipal record, appellants argue that the record before the district court was incomplete and should have included certain communications between the city planning department and M.T. Laught as M.T. Laught was preparing and revising its applications. Appellants ask that we review the merits of their appeal based on a supplemented record. We conclude that it is appropriate to review the city council's decision on the existing record because we agree with the district court that the record is complete.

Generally, if “the municipal proceeding was fair and the record clear and complete,” judicial review of zoning matters should be based on “the record made before the local zoning body.” *Swanson v. City of Bloomington*, 421 N.W.2d 307, 311, 314 (Minn. 1988). The reviewing court, whether the district court or an appellate court on further review, should consider additional evidence “only on substantive issues raised and considered by the municipal body and then only on determining that the additional evidence is material and that there were good reasons for failure to present it at the municipal proceedings.” *Id.* at 313. To be “material,” the evidence must pertain to the standard of review for zoning decisions, which is “whether the municipal body’s decision was unreasonable, arbitrary or capricious, with review focused on the legal sufficiency of and factual basis for the reasons given.” *Id.* The reviewing court should also “consider[] the nature, fairness and adequacy of the proceeding at the local level and the adequacy of the factual and decisional record of the local proceeding.” *Id.* at 312-13. If, based on these considerations, the court determines that the municipal proceeding was unfair or the record is not clear and complete, “the parties are entitled to a trial or an opportunity to augment the record in district court.” *Id.* at 313 (citing *Honn v. City of Coon Rapids*, 313 N.W.2d 409 (Minn. 1981)).

In *Swanson*, the supreme court concluded that the district court “properly based its review of the city council’s zoning decision on the record” where the record included “verbatim transcripts of the public hearings on the matter, including statements by experts on both sides; written reports by the city director of planning and city forester; and contemporaneous written findings by the city council on which the council based its

decision.” *Id.* The existing record provided a sufficient basis for conducting “a satisfactory review” that “demonstrate[d] that the proceedings were fair.” *Id.*

Here, the city council considered a record with the same types of materials. Spanning hundreds of pages, the record contained “verbatim transcripts” of the public hearings, as well as engineering reports prepared “by experts on both sides.” *Id.* The WSB engineer presented at both planning commission hearings, where appellants had the opportunity to challenge his findings. And, like in *Swanson*, appellants and their attorney were allowed to testify and ask questions at the hearings “without any apparent time limits.” *Id.* The record also included comments from appellants and other neighbors who emailed their input. Based on the extensive record before the city council, we conclude that appellants “were given every opportunity to present relevant material” throughout the proceedings, which the record demonstrates were fair and adequate. *Id.* at 312-13.

Moreover, appellants do not explain how the evidence they seek to add to the record is “material”—i.e., how it is relevant to a court’s determination that there was a reasonable basis for the city’s decision. Appellants maintain that the supplemental records, which are mostly email communications between individuals affiliated with M.T. Lought and city planning staff, show that the city was biased in favor of the project. But the city explains that the communications were a routine part of the planning process, and there is no reason to supplement the record with material that the city council did not itself consider in its decision-making. The district court “[did] not find anything in the documents or emails which shows bias or predetermination” because the city’s communications were consistent with advice given to applicants on its website “to consult with the City before [they] get

too far along” and “to consult with the city planner regarding ordinances and procedures that may apply to a project, as well as to meet with the city planner to explain the proposed project.” As discussed more below, there is ample evidence in the record supporting the city’s finding that M.T. Laught met the variance requirements, and none of the materials appellants wish to introduce suggest otherwise.

We therefore affirm the district court’s denial of appellants’ request to supplement the record.

II

Next, appellants challenge the district court’s decision granting summary judgment to the city and M.T. Laught. Specifically, appellants argue that the city council lacked a reasonable basis to conclude that M.T. Laught met the reasonable-use and unique-circumstances requirements for a variance that are set forth in the applicable ordinance. DCC § 1315.03.

On appeal from a grant of summary judgment in a case involving a local government’s zoning decision, an appellate court reviews the decision “independent of the findings and conclusions of the district court.” *See Nw. Coll. v. City of Arden Hills*, 281 N.W.2d 865, 868 (Minn. 1979). Our function is to independently assess the administrative record and decision and reach our “own conclusions as to the propriety of that [decision].” *Swanson*, 421 N.W.2d at 311 (quotation omitted). Given that a “court’s authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked,” *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982), a city’s decision relating to a zoning variance should be set aside

only “if the decision is unreasonable,” *Sagstetter v. City of St. Paul*, 529 N.W.2d 488, 491 (Minn. 1995).

To determine whether an action was reasonable, we consider whether the city supported its action with “any rational basis,” or, in other words, whether the reasons given are legally sufficient and have a factual basis in the record. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 180 (Minn. 2006). When “at least one of the reasons given” by the city “indicate[s] a rational basis” for its decision, it is reasonable and we must affirm. *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 398 (Minn. App. 1989), *rev. denied* (Minn. Dec. 1, 1989) (quotation omitted).

Under this framework, we address appellants’ challenges to the city’s determination that M.T. Laught’s variance application met the reasonable-use and unique-circumstances requirements for a variance.

A. Reasonable Use

Turning first to the reasonable-use requirement, the city council was required to find that, by seeking to raise the grade of the property higher than what is allowed under city ordinance, M.T. Laught “propose[d] to use the [property] in a reasonable manner not permitted by the zoning ordinance.” DCC § 1315.03; *see also Rowell v. Bd. of Adjustment of the City of Moorhead*, 446 N.W.2d 917, 921 (Minn. App. 1989). The owner is not required to “show the land cannot be put to any reasonable use without the variance.” *Rowell*, 446 N.W.2d at 921. Rather, the record must include evidence that the proposed use is consistent with reasonable use of the property. *See id.*

The record supports the city's finding. The city planning director explained that the existing house on the property "sits approximately 6.7 feet below Linden Road, which is not desirable" because "[d]evelopments are typically designed with the garage floor above the adjacent street grade in order to direct stormwater away from the house and garage and towards the street." Citing to engineering reports, the city planning director determined that "[b]uilding the site up" would "reduce the amount and rate of stormwater flowing towards the houses and garages and creat[e] safer driveways" that would comply with the city's 10% grade limit. In both of its drainage studies, WSB concluded that M.T. Laught's final development plan would improve drainage not only on the property but along Linden Road and on nearby properties. These conclusions were consistent with the Watershed District's independent conclusions that M.T. Laught's development plan would reduce the risk of flooding on site and to the property abutting the site and the wetland. Based on the evidence, the city found that M.T. Laught's development plan would not "alter[] overall drainage patterns in a significant or detrimental way."

In light of the record, we conclude that the city's finding that M.T. Laught proposed to use the property "in a reasonable manner not permitted by the zoning ordinance" was reasonable. DCC § 1315.03.

B. Uniqueness.

The record also supports the city's finding that M.T. Laught's need for the grading variance was "due to circumstances unique to the property not created by" M.T. Laught. *Id.*

Whether an applicant satisfies this requirement depends on “all the circumstances surrounding” the property, *Merriam Park Community. Council, Inc. v. McDonough*, 210 N.W.2d 416, 421 (Minn. 1973), *overruled on other grounds, Arden Hills*, 281 N.W.2d at 865, and thus is “not limited to the purely physical condition of the land,” *State ex rel. Neighbors for East Bank Livability v. City of Minneapolis*, 915 N.W.2d 505, 509 (Minn. App. 2018) (*East Bank*), *rev. denied* (Minn. Aug. 7, 2018).

Here, the location, orientation, and existing conditions of the property, as well as the delineated wetland and existing home, are “circumstance[s] unique to the property” that have created “practical difficulties in complying with city ordinances.” *East Bank*, 915 N.W.2d at 517. First, the city council found that the existing house on the property sits unusually far below Linden Road, contrary to typical design where the garage floor is built above the adjacent street grade “to direct stormwater away from the house and garage and towards the street.” Second, it found that the “drop-in grade . . . results in a driveway that has a grade of 13.3%, exceeding the city’s maximum driveway grade,” which the city limits “for safety reasons.” Only two “[o]f the 20 homes along Linden Road . . . have driveways that exceed the City’s maximum 10% grade limit.” The grading variance would permit the new houses on the property to be built at “3.5 to 4.5 feet below Linden Road,” which would place them “appropriately with the neighboring properties” and allow for driveways that meet the city’s 10% grade limit.

The record supports these findings—a point that appellants do not dispute. Rather, appellants argue that these characteristics do not make the property “unique” because there are a few nearby properties that also sit significantly below street-level and have driveways

that exceed the maximum grade limit. In effect, appellants argue that, for a property to be unique for purposes of a variance, it must be one-of-a-kind and there must be no other property in the relevant vicinity with the same characteristics that justify the variance request.² The supreme court has never interpreted “unique” so narrowly. In *Merriam Park*, the supreme court affirmed the district court’s finding that the unique-circumstances requirement was met because, “if the variances were not granted, [the applicant] would suffer undue hardship because of unique circumstances *not reflective of conditions general to the neighborhood*.” 210 N.W.2d at 420-21 (emphasis added). So too here. The record shows that the property possesses characteristics that are “not reflective of conditions general to the neighborhood.” *Id.* at 421. And, the council found it relevant to the uniqueness issue that the current grade of the house was “not desirable,” which is reasonable given evidence in the record that drainage patterns cause the property to accumulate stormwater from all directions. That characteristic of the property is atypical.

We conclude that the city council’s finding that M.T. Laught satisfied the unique-circumstances requirement to obtain a variance was reasonable.

Affirmed.

² Appellants have not offered a workable standard to identify the relevant vicinity. In their opening brief, they point to properties outside city limits that share characteristics with the property as evidence that the property is not “unique.” But in their reply brief, appellants maintain that a city is not required to “analyze every property within the neighborhood to confirm the uniqueness of the property proposed for a variance.”