

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

DECEMBER 5, 1995

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(1), STATS.

NOTICE

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

No. 95-1608

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

JOHN ERICKSON,

Petitioner-Appellant,

v.

ST. CROIX COUNTY
BOARD OF ADJUSTMENT,

Respondent-Respondent.

APPEAL from a judgment of the circuit court for St. Croix County:
ERIC J. LUNDELL, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. John Erickson appeals a judgment affirming the St. Croix County Board of Adjustment's denial of his request for a variance to allow him to construct a storage shed and remodel the residence on his property. Because Erickson failed to prove a hardship justifying a variance, we affirm the judgment.

Erickson bought a small home on the St. Croix River when he was single. After marrying and having three children, he sought a zoning variance in order to enlarge his house and construct a storage shed. The board denied the variance, concluding the literal enforcement of the zoning code would not result in a practical difficulty or unnecessary hardship.

Judicial review of the board's decision is limited to: (1) whether the board kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question. See *State ex rel. Brookside v. Jefferson Bd.*, 131 Wis.2d 101, 120, 388 N.W.2d 593, 600-01 (1986). The board's findings may not be disturbed and its decision is presumed correct and valid if any reasonable view of the evidence supports the findings. *Snyder v. Waukesha County Zoning Bd.*, 74 Wis.2d 468, 476, 247 N.W.2d 98, 103 (1976).

A property owner is entitled to a variance only upon a showing of unnecessary hardship. *Id.* at 472, 247 N.W.2d at 102. Unnecessary hardship exists when compliance with the strict letter of the zoning restrictions would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. See *Arndorfer v. Board of Adjustment*, 162 Wis.2d 246, 255, 469 N.W.2d 831, 834 (1991). Unnecessary hardship relates to a unique condition affecting the owner's land. It does not include a condition personal to the owner of the land, mere inconvenience or a self-created problem. *Snyder*, 74 Wis.2d at 476-79, 247 N.W.2d at 103-04. Unnecessary hardship can best be defined in a situation where, in the absence of a variance, no feasible use can be made of the land. The purpose of the variance is to prevent the land from being rendered useless. *Id.* at 474, 247 Wis.2d at 102.

The board could reasonably conclude that Erickson failed to establish a hardship as that term is defined in *Snyder*. The evidence shows that Erickson's inconvenience is not related to the property, but rather to himself because of his enlarged family. A showing of natural growth of a family and personal inconvenience does not constitute sufficient practical difficulty or unnecessary hardship to justify a variance. *Id.* at 478, 247 N.W.2d at 103-04. Erickson established a need to expand a bathroom to install a whirlpool because

of his wife's headaches. This is also a condition personal to the owner of the land, and not to the land itself. It is not the uniqueness of the owner's plight, but the uniqueness of the land causing the plight that justifies a variance. *See* 8 MCQUILLIN, MUNICIPAL CORPORATIONS § 25.167 at 544 (3d ed. 1965). Erickson presented no evidence that the property could not be used for a permitted purpose or that conformity with the zoning restrictions were unnecessarily burdensome. Therefore, because Erickson failed to meet his burden of establishing an unnecessary hardship, the board's decision was not arbitrary or unreasonable.

By the Court. — Judgment affirmed.

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