COURT OF APPEALS
DECISION
DATED AND RELEASED

FEBRUARY 6, 1996

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.

NOTICE

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

No. 95-1925

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE EX REL. LISA PRINCE AND PAUL PRINCE,

Plaintiffs-Respondents,

v.

ZONING BOARD OF APPEALS FOR RUSK COUNTY,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Rusk County: FREDERICK A. HENDERSON, Judge. *Reversed*.

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

PER CURIAM. The Zoning Board of Appeals for Rusk County appeals a judgment reversing its decision to deny Lisa and Paul Prince a variance to approve already completed construction of a dwelling that violates the county's seventy-five foot setback restriction. The trial court concluded that the board's decision was unreasonable and oppressive. Because we conclude

that the Princes have not established that application of the zoning regulations will result in unnecessary hardship, we reverse the trial court's decision and reinstate the board's denial of a variance.

The Princes constructed a dwelling within seventy-five feet of the ordinary high water mark of Clear Lake. The land use permit application indicated that the house would be built with a setback of eighty-five feet from the lake. Without a sanitary permit or a building permit, the Princes began construction of the house. The zoning administrator for Rusk County visited the site during construction and told Paul Prince that he thought the house might be too close to the lake. Prince, the owner of a construction company who has built at least five houses on Wisconsin lake frontage, told the zoning administrator that the house was set back far enough from the lake. He did not remeasure the setback at that time. The Princes now concede that a corner of their residence is between five and nine feet too close to the lake.

The parties disagree on this court's standard of review. The board argues that this court should give deference to its decision. The Princes argue that, because the trial court took some additional evidence and viewed the scene, the trial court made a de novo decision and this court should give deference to the trial court's findings of fact. We need not resolve this dispute because, applying the standard of review suggested by the Princes, we conclude that the trial court's findings do not support its legal conclusion and that, as a matter of law, the Princes have not established unnecessary hardship.

The Princes argue that the definition of "unnecessary hardship" set out in ***Snyder v. Waukesha County Zoning Bd.***, 74 Wis.2d 468, 474, 247 N.W.2d 98, 102 (1976), is not applicable because that case was based on common law standards of review and this is a statutory certiorari case. The method of review affects neither the requirement that the applicant prove an unnecessary hardship before a variance can be granted or the definition of "unnecessary hardship."

The trial court concluded that the Princes' good-faith efforts to comply and the fact that nearly all other cottages on Clear Lake are within seventy-five feet of the shore established that the board's decision was unreasonable. We disagree. It is reasonable for the board to refuse to grant a

variance when the applicants have not met their burden of proving that a literal application of the zoning regulations will result in unnecessary hardship. *See* ***Arndorfer v. Board of Adjustments***, 162 Wis.2d 246, 253-54, 469 N.W.2d 831, 833 (1991). Unnecessary hardship exists in a situation where, in the absence of a variance, no feasible use can be made of the land. ***Snyder***, 74 Wis.2d at 474, 247 N.W.2d at 102. Hardship cannot be self-created or merely a matter of personal inconvenience. ***Id***. at 476, 247 N.W.2d at 103. Rather, it must relate to a unique condition affecting the land rather than the landowner. ***Arndorfer***, 162 Wis.2d at 255-56, 469 N.W.2d at 834.

The Princes have not shown that they would not be able to use their property for a permitted purpose in the absence of a variance. A smaller house could have been constructed on the site without violating any ordinance. Furthermore, the hardship claimed by the Princes was self-created, resulting from their own negligent measuring, proceeding without permits and completing construction inconsistent with the plans they submitted. They did not establish that the hardship was unique to conditions of the land because their own evidence established that a smaller dwelling could have been built on the premises.

The trial court's findings of "good-faith efforts" and other cottages on Clear Lake within seventy-five feet of the shore do not constitute proof of unnecessary hardship or provide a basis for overturning the board's decision as unreasonable. A good-faith mistake that results in a hardship created from ignorance does not justify granting a variance. *See* ***Snyder***, 74 Wis.2d at 476-77, 247 N.W.2d at 103. The fact that other cottages on the lake were constructed within seventy-five feet of the shoreline is irrelevant. The zoning administrator testified that the neighboring lot was unique for several reasons including the presence of wet land and the locations of two roads. Other lots may have been improved before the zoning ordinance was enacted or may themselves be subject to removal. Irrespective of the reasons other cabins are closer than seventy-five feet to the shore, the question is whether the Princes have established unnecessary hardship due to the unique condition of their property. They have not.

The trial court found the board's decision oppressive because alteration of the dwelling to make it conform to the zoning code would cost $41,000 to $46,000. Economic considerations are not a correct basis upon which

to base a variance. *See* ***State v. Ozaukee County Bd. of Adjustment***, 152 Wis.2d 552, 563, 449 N.W.2d 47, 51 (Ct. App. 1989). Economic conditions are personal to the owner of the property, not the property itself.

Although this result may seem harsh as to the Princes, the public interest requires enforcement of zoning ordinances, even where substantial sums of money have been expended by the violating party. Zoning ordinances are enacted for the benefit and welfare of the citizens who have to rely on enforcement by zoning officials charged with doing so. ***Milwaukee v. Leavitt***, 31 Wis.2d 72, 78, 142 N.W.2d 169, 172 (1966).

By the Court.—Judgment reversed.

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