

SUPREME COURT OF NORTH DAKOTA

Robert Hale, d/b/a Bullwinkle Builders, Inc. v. City of Minot

2015 ND 216 (N.D. 2015) · No. 20140337 · Decided August 25, 2015

SUMMARY

The North Dakota Supreme Court affirmed the denial of Robert Hale’s application for a building permit for an addition to an assisted living facility in Minot. The Court held that the City’s Board of Appeals reasonably classified the facility as Institutional Group I-1 rather than Residential Group R-2, and that substantial evidence supported the classification and documentation requirements. The Court also upheld the Board’s refusal to grant requested modifications or alternative wiring methods under the applicable building code.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Carol Ronning Kapsner, Justice; Carol Ronning Kapsner; Lisa Fair McEvers; Daniel J. Crothers; Dale V. Sandstrom; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	August 25, 2015
DOCKET	20140337
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court order affirming a City of Minot Board of Appeals decision that affirmed the denial of an application for a building permit.
STANDARD OF REVIEW	Under N.D.C.C. § 28-34-01, the Supreme Court independently determines the propriety of the local governing body’s decision without special deference to the district court. The decision must be affirmed unless the local body acted arbitrarily, capriciously, or unreasonably, or substantial evidence does not support it. Interpretation of an ordinance is a question of law reviewed fully on appeal, but the Court gives deference to a governing body’s reasonable interpretation of its own ordinance.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Robert Hale, d/b/a Bullwinkle Builders, Inc. v. City of Minot

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the City Board of Appeals acted arbitrarily, capriciously, or unreasonably, or lacked substantial evidence, in classifying Somerset Court's proposed addition as Institutional Group I-1 rather than Residential Group R-2.
2. Whether the Board properly upheld the building official's requirement that Hale submit plans and a code study prepared or certified by a registered design professional.
3. Whether the Board was required to grant a modification or approve alternate materials or methods of construction under IBC §§ 104.10 and 104.11.

HOLDINGS

1. The Board did not act arbitrarily, capriciously, or unreasonably in classifying Somerset Court's proposed addition as Institutional Group I-1 rather than Residential Group R-2, and substantial evidence supported that classification.
2. The Board properly upheld the building official's determination that Hale's submitted documents were insufficient and that plans and a code study prepared or certified by a qualified, licensed design professional were required.
3. Hale was not entitled to a modification or approval of alternate wiring under IBC §§ 104.10 and 104.11 because the record did not establish that the proposed alternative satisfied the applicable safety and equivalency requirements.

KEY QUOTATIONS

“The Board’s decision must be affirmed unless the local body acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision.” (¶ 5)

“Under our limited and deferential standard of review, we conclude the Board did not act arbitrarily, capriciously, or unreasonably in affirming the building official’s classification of Hale’s facility and in denying the building permit, and we conclude substantial evidence supports its decision.” (¶ 19)

“We conclude the Board did not act arbitrarily, capriciously, or unreasonably in classifying Hale’s facility and denying the building permit and substantial evidence supports the Board’s decision.” (¶ 36)

FACTUAL BACKGROUND

Robert Hale sought a building permit for a three-story, 70-unit addition to Somerset Court, an assisted living facility in Minot. The City classified the proposed addition as Institutional Group I-1 under the 2009

International Building Code, rather than Residential Group R-2, based on the facility's assisted-living licensing, public representations, services, and supervised residential environment. The classification required additional documentation prepared or certified by a registered design professional and more expensive wiring. Hale submitted plans that were not drawn and stamped by a registered architect and did not provide the requested code study, leading to denial of the permit.

PROCEDURAL HISTORY

Hale applied for a permit to construct a three-story addition to an assisted living facility. The City building official denied the application for failure to provide required documentation and because the facility was classified as Institutional Group I-1 rather than Residential Group R-2. The City Board of Appeals unanimously affirmed, and the Ward County District Court affirmed the Board. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Dahm v. Stark County Board of County Commissioners, 2013 ND 241, ¶ 8, 841 N.W.2d 416
- Grand Forks Housing Authorities v. Grand Forks Board of County Commissioners, 2010 ND 245, ¶ 6, 793 N.W.2d 168
- Hector v. City of Fargo, 2009 ND 14, ¶ 9, 760 N.W.2d 108
- Dakota Resource Council v. Stark County Board of County Commissioners, 2012 ND 114, ¶ 16, 817 N.W.2d 373