

2025 IL App (2d) 240276-U
No. 2-24-0276
Order filed May 15, 2025

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ROBERT ATWATER and JENNA)	Appeal from the Circuit Court
ATWATER,)	of Lake County.
)	
Plaintiffs-Appellants,)	
)	
v.)	Nos. 22-MR-523
)	22-MR-417
)	
LAKE COUNTY ZONING BOARD OF)	
APPEALS, GREGORY G. KOEPPEN in His)	
Official Capacity as Member of the Lake)	
County Zoning Board of Appeals,)	
MARGARET (“MAGGIE”) ROCHE in Her)	
Official Capacity as Member of the Lake)	
County Zoning Board of Appeals, LINDA)	
STARKEY in Her Official Capacity as)	
Member of the Lake County Zoning Board of)	
Appeals, GEORGE BELL in His Official)	
Capacity as Member of the Lake County)	
Zoning Board of Appeals, JUDY GARCIA in)	
Her Official Capacity as Member of the Lake)	
County Zoning Board of Appeals, and ERIC)	
WAGGONER in His Official Capacity as)	
Director of the Lake County Planning,)	
Building and Development Department,)	Honorable
)	Charles W. Smith
Defendants-Appellees.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The zoning board’s decision that plaintiffs’ proposed reconstruction did not adhere to the definition of a “boathouse” and that a variance should not be granted was not clearly erroneous. Affirmed.

¶ 2 Plaintiffs, Robert and Jenna Atwater, submitted building plans to defendants, the Lake County Zoning Board of Appeals (Zoning Board), the members in their official capacity, and Eric Waggoner, for the proposed reconstruction of an existing boathouse located on their property. Lake County officials reviewed the plans and determined that the structure did not meet the technical definition of a “boathouse” and appeared instead to be an accessory structure that needed to be set back 30 feet from the lake shoreline. Plaintiffs then applied for a variance to permit the structure to be constructed on the shoreline. The Zoning Board denied the application.

¶ 3 In two cases, Nos. 22-MR-523 and 23-MR-417, plaintiffs sought administrative review of the Zoning Board’s decisions. The cases were consolidated and the circuit court affirmed the Zoning Board. Plaintiffs now appeal from the Zoning Board’s decision finding that (1) the proposed reconstruction of plaintiffs’ existing boathouse did not conform to the Unified Development Ordinance of Lake County, Illinois (UDO) (Lake County Code of Ordinances § 151.001 *et seq.* (adopted Oct. 13, 2009)) definition of a “boathouse” (Lake County Code of Ordinances, § 151.271 (amended Aug. 8, 2023)), and (2) a variance should not be granted. We conclude that the Zoning Board’s decision was not clearly erroneous and affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2022, plaintiffs submitted building plans for the proposed reconstruction of an existing boathouse, a non-conforming structure, located along the shoreline at 28519 and 25823 Oak Lane in Ingleside. Lake County officials reviewed the plans and determined that the structure did not meet the UDO’s definition of a “boathouse” and appeared instead to be an accessory

structure that needed to be set back 30 feet from the lake shoreline. Notably, the boathouse reconstruction plans showed the structure had an enclosed wooden floor and “included other features and activities atypical of boathouses and depicted people congregating inside.” Some of these features included: heated floors; windows; recessed lighting; cabinetry; sky lights; ceiling fans; and a door, which was designed for ingress and egress from land but not the boat slip. Plaintiffs explained that they did not intend to make the boathouse a habitable space, as the heated floors, in particular, were meant to prevent cracking of their surf and wake boards. The proposed structure became the subject of Zoning Board case No. 000760-2022.

¶ 6 On March 30, 2022, plaintiffs applied for a variance to permit the proposed accessory structure to be constructed on the shoreline. On May 12, 2022, Brad Denz, the senior planner with the Lake County Department of Planning, Building, and Development, issued a recommendation that the variance be denied, as it would not amount to a hardship. Denz noted that plaintiffs’ parcel did not preclude the erection of an accessory structure outside of the 30-foot setback requirement, plaintiffs could continue to conduct normal maintenance on the non-conforming structure without requiring a variance, denial of the variance would not deny reasonable use of the property, and the variance request was not in harmony with the general purpose and intent of the zoning ordinances.

¶ 7 On June 19, 2022, the Zoning Board heard arguments on the variance application. Denz testified at the hearing that the structure was classified as an accessory structure, not a “boathouse,” because plaintiffs’ proposed plans did not have the structure built over an earthen floor or boat slip and because the structure appeared to be used for human congregation. Denz noted that boathouses should be used only for the storage of boats and boating materials and should not contain “other rooms or workshops, greenhouses, or similar uses.” Thereafter, Krista Braun, the planning and zoning manager, explained that, pursuant to UDO sections 151.271 and 151.149(H)(7), a

“boathouse” is used to store boats and, thus, may not contain other rooms, workshops, greenhouses, or similar structures, and it must be erected over an earthen floor or water slip. Lake County Code of Ordinances, § 151.271; Lake County Code of Ordinances, § 151.149(H)(7) (amended Aug. 8, 2023). Moreover, a “boathouse” cannot be used for human habitation; rather, it should be used only for storing boats and tools. Braun concluded that a boathouse, under these ordinances, could not have two levels. Plaintiffs, in rebuttal, showed several boathouses that were two-level structures but were unable to indicate if these structures were defined as “boathouses” or “accessory structures,” or if the parcel owners received variances. At the conclusion of the hearing, plaintiffs were told that, if they wished to contest the definition of a “boathouse,” they needed to file an administrative appeal of an administrative decision. Thereafter, the variance application was denied.

¶ 8 On November 4, 2022, plaintiffs sought administrative review in case No. 22-MR-523. On May 10, 2023, the circuit court stayed the proceedings and ordered plaintiffs to seek an administrative determination from Eric Waggoner, the director of the Department of Planning, Building, and Development. Accordingly, on May 22, 2023, plaintiffs filed a zoning determination application, seeking guidance on whether a “boathouse” may be constructed with multiple floors. Waggoner responded that, based on the building plans provided, which depicted a wooden floor that separated the building interior from the water slip, the absence of an interior trap door between the slip and the upper floor, and the depiction of people congregating in the second floor of the structure, plaintiffs’ proposed building plans did not meet the definition of a “boathouse.” Moreover, Waggoner noted that, although boathouses may be constructed with the “lowest floor” below the floodplain, this did not mean that boathouses may contain multiple floors or levels. Instead, he indicated that, at most, the definition allowed for the building of a perimeter catwalk

within a “boathouse,” which would be built over the earthen floor or boat slip but would still allow direct access to the boat and would not create a separate enclosed room.

¶ 9 Thereafter, plaintiffs appealed Waggoner’s determination to the Zoning Board. In mid-September 2023, the Zoning Board upheld Waggoner’s decision. Specifically, the Zoning Board reiterated that the building plans did not contain a hatch or other access between the boat slip and the proposed upper floor; increased the size of the nonconforming structure; and included ceiling fans, heating, and electrical outlets.

¶ 10 On September 29, 2023, plaintiffs again sought administrative review in case No. 23-MR-417. The circuit court, thereafter, consolidated case Nos. 23-MR-417 and 23-MR-523. On January 30, 2024, the court found that the facts of this case (*i.e.*, doubled square footage, sky lights, electricity, windows, heating, lack of trap door, and no storage access) supported the Zoning Board’s concerns that the structure would not be used solely for boat and equipment storage. Accordingly, the court issued a final order denying plaintiffs’ request for relief. On February 1, 2024, the court struck its language from the January 30th decision indicating it was a final order and continued the cause to rule on the issues presented in case No. 23-MR-523. On March 15, 2024, the circuit court considered and denied plaintiffs’ request for a variance to construct a two-story boathouse on the lake shoreline. Thereafter, plaintiffs timely appealed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, plaintiffs contend that the Zoning Board erred in finding that their proposed structure did not meet the definition of a “boathouse” and in denying plaintiffs’ request for a variance. Defendants assert that the Zoning Board’s decisions were not clearly erroneous. We agree with the decisions of the Zoning Board.

¶ 13 A. Standards of Review

¶ 14 The parties dispute the standard of review to be employed in this case. Plaintiffs argue that the Zoning Board’s construction of a “boathouse” is reviewed *de novo* and the Zoning Board’s decision not to grant the variance is reviewed under the clearly-erroneous standard. However, defendants assert that the clearly-erroneous standard applies to both arguments. Plaintiffs seek review of the Zoning Board’s decision pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2022)). In these cases, we review the decision of the administrative agency and not the decision of the circuit court. *Housing Authority of the County of Lake v. Lake County Zoning Board of Appeals*, 2017 IL App (2d) 160959, ¶ 37.

¶ 15 The degree of deference afforded to an agency’s decision depends on whether the question considered is a question of fact, a question of law, or a mixed question of law and fact. *Id.* Where the controlling law is undisputed, the facts are established, and the issue is whether the facts satisfy the statutory standard, the case presents a mixed question of fact and law and the standard of review is “clearly erroneous.” *Id.* ¶ 38; see also *Swank v. Department of Revenue*, 336 Ill. App. 3d 851, 860-62 (2003) (utilizing the clearly-erroneous standard where a legal interpretation was required before the court applied the law to the facts). An agency’s decision is clearly erroneous only if the reviewing court is left with a “ ‘definite and firm conviction that a mistake has been committed.’ ” *AMF Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 393 (2001) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). To the extent that we must interpret the language of the various ordinances, our review is *de novo*. However, an agency’s construction of an ordinance will still be given deference unless its decision is unreasonable or erroneous “in recognition of the fact that agencies make informed judgments on the issues based upon their experience and expertise and serve as an informed source for ascertaining the [drafter’s] intent.” *Provena Covenant Medical Center v. Department of Revenue*,

236 Ill. 2d 368, n. 9 (2010). As such, we review the ultimate questions of whether plaintiffs' structure is a boathouse and whether the Zoning Board's denial of plaintiffs' request for a variance was improper under the clearly-erroneous standard.

¶ 16 B. Plaintiffs' Structure is Not a "Boathouse"

¶ 17 Plaintiffs argue that this case turns on the Zoning Board's definition of a "boathouse." The rules of statutory construction apply to municipal ordinances, much like statutes. *Housing Authority*, 2017 IL App (2d) 160959, ¶ 48. In reviewing a zoning ordinance, the objective is to ascertain and give effect to the intent of the drafters. *Id.* The best indication of the drafters' intent is the plain and ordinary meaning of the language used. *Id.* Administrative regulations should be read "in concert and harmonized, and, in giving meaning to the words and clauses of a statute, no part should be rendered superfluous." *D&L Landfill, Inc. v. Illinois Pollution Control Board*, 2017 IL App (5th) 160071, ¶ 23. Moreover, we presume the drafters did not intend absurd or unjust results. *Id.*

¶ 18 With these rules of statutory construction in mind, we now review the Zoning Board's decision finding that plaintiffs' structure does not meet the definition of a "boathouse," rather it was an "accessory structure." An "accessory structure" is one that customarily,

“(1) Is subordinate to and services a principal building or a principal use legally existing on the same zoning lot; (2) Is subordinate in area, extent, and purpose to the principal building or principal use; (3) Contributes to the comfort, convenience or necessity of the occupants, business, or industry of the principal structure or principal use served; and (4) Is located on the same zoning lot as the principal structure or principal use served.”
Lake County Code of Ordinances, § 151.271.

¶ 19 On the other hand, section 151.271 of the UDO provides that “boathouse” is “a structure erected for the purpose of storing boats on an earthen floor or over a water slip.” Lake County Code of Ordinances, § 151.271. Regarding development in a regulatory floodplain, the UDO allows for development of a “boathouse” if it conforms to the following guidelines:

“Boathouses may be constructed with the lowest floor below the flood protection elevation in accordance with all of the following:

- (a) The boathouse shall be built on an earthen floor or over a water slip;
- (b) The boathouse shall not be used for human habitation;
- (c) All areas below the base flood elevation shall be constructed with waterproof material;
- (d) The boathouse shall be anchored to prevent flotation;
- (e) Service facilities such as electrical and heating equipment shall be elevated or flood-proofed to the flood protection elevation (a flood-proofing certificate shall be required); and
- (f) The boathouse shall be used only for the storage of boats or tools and may not contain other rooms, workshops, greenhouses, or similar uses.” Lake County Code of Ordinances, § 151.149(H)(7).

¶ 20 Plaintiffs assert that nothing in section 151.271 prohibits a boathouse from having multiple levels or storage rooms. They also argue that section 151.149(H)(7) suggests that a boathouse *may* have multiple floors, as the reference to “lowest floor” implies a structure may have multiple levels. Defendants disagree and argue that the UDO requires boathouses be built over an earthen floor or water slip and “shall not contain other rooms, workshops, greenhouses, or similar uses.”

Id. We conclude that plaintiffs’ interpretation attempts to inject ambiguity into the ordinance provisions where there is none and fails to harmonize the UDO’s provisions.

¶ 21 Reading the UDO provisions in concert, a “boathouse” is a kind of accessory structure. Lake County Code of Ordinances, § 151.149(H); Lake County Code of Ordinances, § 151.271 (accessory structure defined). Section § 151.271 requires that a boathouse must be built over an earthen floor or water slip. It may not have two enclosed levels, as it may not contain other rooms or workshops within the structure (Lake County Code of Ordinances, § 151.149(H)(7)), and, as a kind of accessory structure, it may only be one story (Lake County Code of Ordinances, § 151.113(C)(1) (amended March 12, 2024)). Section 115.149(H)(7)’s reference to the “lowest floor” does not contradict the UDO’s express disallowance for multiple rooms and levels. Rather, this language, as referenced in section 151.271, generally defines the term as the “[l]owest floor of the lowest enclosed area.” Lake County Code of Ordinances, § 151.271 (lowest floor defined). However, it also disjunctively lists two other kinds of “lowest floor.” As important here, the “lowest floor” may also refer to “[a]n unfinished or flood resistant enclosure, usable solely for parking of vehicles.” We conclude this definition controls regarding boathouses—a flood-resistant, storage enclosure. See *Id.* (also noting that the more specific definition controls over a more generic one). Moreover, Waggoner described allowing the building of a perimeter catwalk within a “boathouse,” which would be built over the earthen floor or boat slip but would still allow direct access to the boat and would not create a separate enclosed room. Within this description, “lowest floor,” under the general definition, would still refer to the earthen floor or boat slip beneath the catwalk and would not create an ambiguity in the definition, which would allow boathouses to be two stories. See *Provena Covenant*, 236 Ill. 2d at fn. 9. In sum, section 115.149(H)(7) does not create an ordinance ambiguity; rather, when read in context, it reaffirms

that a *single-story* boathouse may be constructed in a floodplain when the six listed criteria are met.

¶ 22 Moreover, the Zoning Board’s findings that plaintiffs’ structure was not a “boathouse” was not clearly erroneous. Section 151.149(H)(7)(b) states that a “boathouse” must not be a habitable space. Plaintiffs assert that nothing in section 151.271 prohibits a boathouse from having windows, ceiling fans, heat, or electrical outlets. However, the Zoning Board listed these fixtures, *as well as* the lack of a hatch access into the boat area, the depiction of people congregating in the proposed plans, and “other features and activities atypical of boathouses.” All this evidence informed the Zoning Board’s decision that plaintiffs were constructing a structure that was “atypical” for only boating storage and more likely used for human habitation, which violated section 151.149(H)(7)(b). We cannot conclude that the Zoning Board erred in determining that windows, ceiling fans, radiant floor heating, electrical outlets, recessed lighting, cabinetry, countertops, small entry ways, and lack of hatch access (originally depicted in the plans), when viewed in light of the building plans, which depict people congregating in the proposed structure, suggest that plaintiffs’ structure would not be a habitable space. Thus, the Zoning Board’s decision was not clearly erroneous.

¶ 23 C. Variance Application

¶ 24 Plaintiffs next argue, in the alternative, that the Zoning Board’s decision not to grant a variance waiving the 30-foot shoreline set-back requirement for an accessory structure was clearly erroneous. Defendants assert that plaintiffs fail to meet all the requirements for a variance. We agree with defendants.

¶ 25 Pursuant to section 151.056(C)(4), a zoning variance may be approved if the movant establishes *all* the following “(a) Exceptional conditions peculiar to the applicant’s property; (b)

Practical difficulties or particular hardships in carrying out the strict letter of the regulation; and (c) Harmony with the general purpose and intent of the zoning regulations.” Lake County Code of Ordinances, § 151.056(C)(4) (amended Aug. 14, 2012).

¶ 26 Plaintiffs suggest that there are exceptional circumstances justifying the variance because the area approaching the proposed boathouse is particularly steep, and carrying boating items, like kayaks, would be difficult if the 30-foot set-back requirement is enforced. As to the second element, plaintiffs assert that enforcing the set-back requirement would create a practical difficulty by requiring them to haul wakeboards, surfboards, and kayaks up a steep hill after every use. Finally, plaintiffs argue that the Zoning Board’s finding that the proposed structure was unharmonious with the UDO was clearly erroneous because plaintiffs testified the structure would not be used for habitation; the expanded floor plan was justified, as plaintiffs required additional storage space for boating accessories; and several other boathouses along the lake were two levels.

¶ 27 As we only need to find fault with one element to reject plaintiffs’ claims, we address plaintiffs’ second argument. The Zoning Board found that there was nothing unique about plaintiffs’ property that precluded them from building their proposed structure 30 feet back from the water, modifying their proposed plans to eliminate the features inconsistent with the UDO, or repairing the existing non-conforming structure. This determination was not clearly erroneous. Plaintiffs’ argument assumes that there are no resolutions available, which would allow them to store their boating accessories on the water’s edge, and, thus, they reason they will experience a practical hardship by moving heavy boating accessories to and from the water. However, this is simply not the case. Plaintiffs may build a structure on the water’s edge that conforms to the UDO’s requirements, or they may continue to maintain their present non-confirming structure. Rather, plaintiffs are just disallowed from building the *proposed* structure, as it is not in harmony with the

UDO. Dissatisfaction with the zoning regulations and the impact on plaintiffs’ “desires for their property” does not manufacture a practical hardship justifying a variance. Accordingly, the Zoning Board’s decision denying the variance was not clearly erroneous.

¶ 28

III. CONCLUSION

¶ 29 For the reasons stated, we conclude that the Zoning Board’s decision was not clearly erroneous, and, therefore, affirm the judgment of the circuit court of Lake County.

¶ 30 Affirmed.