

IN THE COURT OF APPEALS OF IOWA

No. 0-591 / 90-349

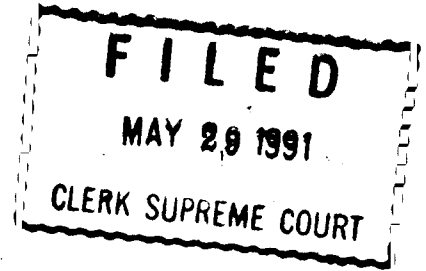
FRANK WISE and CATHERINE WISE,

Appellants,

vs.

ZONING BOARD OF ADJUSTMENT OF POTTAWATTAMIE COUNTY, IOWA,

Appellee.



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Appeal from the Iowa District Court for Pottawattamie
County, James M. Richardson, Judge.

The Wises appeal a district court decision upholding
the Board of Adjustment's decision that the Pechaceks were
in compliance with the home occupation exception to the
zoning ordinance. **AFFIRMED.**

A.W. Tauke of Porter, Tauke & Crowl, Council Bluffs,
for appellants.

E.A. Westfall, County Attorney, for appellee.

Considered by Oxberger, C.J., and Sackett and Habhab,
JJ.

OXBERGER, C.J.

This case involves an appeal from a district court decision upholding the Pottawattamie County Board of Adjustment's decision that Frank and Beth Pechacek were in compliance with the home occupation exception to a county zoning ordinance. We affirm.

Frank Pechacek and Beth Pechacek live in a residence on Vista Lane in Council Bluffs, Iowa. The Pechaceks operate a business called the House of Collectibles in their basement. They sell collectible figurines. The Pechaceks obtained a zoning certificate in May 1981 which allows them to come within a home occupation exception to the Pottawattamie County zoning ordinance. Frank Wise and Cathy Wise, the plaintiffs, live on Vista Lane in close proximity to the Pechaceks.

In 1988 the Wises filed a complaint with the Pottawattamie County Planning and Development Director, claiming that the Pechaceks were violating the home occupation exception to the zoning ordinance. The zoning ordinance in question provides:

Home occupation. An occupation carried on within a dwelling by members of a family with no servant, employee, or other person being engaged therein, provided the residential character of the building is maintained and the home occupation is conducted in such a manner as not to give an outward appearance nor manifest any characteristic of a business in the ordinary meaning of the term. It shall not infringe upon the right of neighboring residents to enjoy the peaceful occupancy of their homes for which purpose the residential district was created and primarily intended. A home occupation shall occupy less than one quarter of

the ground floor area of the main building and shall not be conducted in an accessory building.

The Wises alleged that the Pechaceks have employees, that the business infringes upon the peaceful occupancy of the neighbors, and that the business occupies more than one-quarter of the main floor. Specifically, they claimed that the business has created traffic congestion, interfered with mail delivery, and has increased truck traffic. The development director decided that the Pechaceks were in compliance with the zoning ordinance.

The Wises appealed to the Zoning Board of Adjustment. Following a hearing, the Board upheld the director's decision and refused to revoke the Pechaceks' zoning certificate.

The Wises then filed a petition for a writ of certiorari in the district court. The district court remanded for more specific factual findings. After the Board filed more specific findings, the court upheld the Board's actions. The Wises appeal.

The principles of judicial review in a zoning case were set forth in Weldon v. Zoning Bd. of Des Moines, 250 N.W.2d 396, 401 (Iowa 1977):

[I]n a certiorari proceeding in a zoning case the district court finds the facts anew on the record made in the certiorari proceeding. That record will include the return to the writ and any additional evidence which may have been offered by the parties. However, the district court is not free to decide the case anew. Illegality of the

challenged board action is established by reason of the court's findings of fact if they do not provide substantial support for the board decision. If the district court's findings of fact leave the reasonableness of the board's action open to a fair difference of opinion, the court may not substitute its decision for that of the board.

This court's scope of review on appeal from the trial court's judgment on a writ of certiorari is governed by Iowa Rule of Civil Procedure 318. Garman v. Ames Zoning Bd. of Adjustment, 436 N.W.2d 651, 653 (Iowa App. 1988). We review the record to determine whether the trial court applied the correct legal standards and whether its decision is supported by substantial evidence. Id.

The Wises point out that the general intent of a zoning ordinance is to promote public health, safety, comfort, and general welfare. We believe that the home occupation exception to the Pottawattamie Zoning Ordinance adequately promotes these goals.

The Wises contend that the Board of Adjustment's decision that the Pechaceks' business did not interfere with the peaceful enjoyment of the neighborhood was arbitrary and capricious. We believe the Board's decision is supported by substantial evidence. While there were an unusual number of cars parked on Vista Lane on two occasions in 1988, this situation only lasted for approximately one hour. The gift shop is only open ten months out of the year for seventeen hours per week. The Pechaceks have provided off-street parking places for their

customers. There has been no actual interruption of mail delivery on Vista Lane. All deliveries to the House of Collectibles are made by UPS, not by larger trucks.

Based on the factual findings set forth here, we do not believe the Board's decision was arbitrary or capricious, but was substantially supported by the evidence. We will not substitute our decision for that of the Board.

The Wises also contend that the court incorrectly defined the terms "occupation", "employee", and "other person being engaged therein." The district court defined "occupation" as vocation or the work in which a person is regularly employed. We have no objection to this definition.

The district court determined that occasional volunteers at the home occupation were neither employees nor other persons being engaged in the home occupation, under the terms of the zoning ordinance. We agree with the district court's conclusion that the Pechaceks' occasional use of volunteers does not violate the terms of the zoning ordinance.

We affirm the district court on all issues. The decision of the Zoning Board of Adjustment of Pottawattamie County is affirmed. The costs of this matter are taxed to the appellants.

AFFIRMED.