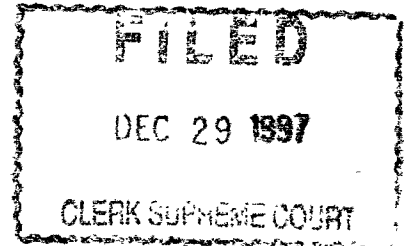


IN THE COURT OF APPEALS OF IOWA

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No. 7-653 / 96-1567
Filed December 29, 1997



**JAMES G. BEALER and
DONNA S. BEALER,**
Appellants,

vs.

**CITY OF MAQUOKETA
ZONING BOARD OF ADJUSTMENTS,**
Appellee.

Appeal from the Iowa District Court for Jackson County, David Schoenthaler,
Judge.

Plaintiffs appeal the district court order affirming the board of adjustments
denial of plaintiffs' request for a variance. **AFFIRMED.**

James G. Bealer and Donna Bealer, Maquoketa, pro se.

Mike Kane, Maquoketa, for appellee.

Considered by Cady, C.J., and Streit and Vogel, JJ.

STREIT, J.

Plaintiffs appeal a district court decision which affirmed the denial of their request for a variance by the City of Maquoketa's Zoning Board of Adjustment. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

James and Donna Bealer own property in Maquoketa. In May 1994, they applied for a building permit to extend and enclose a carport. The carport is a nonconforming use because it is closer to the side lot line than permitted by the city zoning ordinance. The city building inspector granted the request for a building permit. The Bealers began work on the project.

In July 1994, the mayor of Maquoketa noticed the building permit had been improperly granted. Under the city ordinance, a variance is required to make a structural alteration to a building which is a nonconforming structure. The mayor ordered the building inspector to issue a second permit which purported to cancel the earlier permit. The second permit was also improper because the mayor did not have the ability to order such a permit. In August 1994, the city council ordered the Bealers to stop all construction.

On September 22, 1994, the Zoning Board of Adjustment determined the two building permits had been issued in error and canceled the permits. The board also prohibited enclosure of the carport, but allowed a roof extension to the existing carport.

The Bealers filed suit against the city, claiming damages and asking to be allowed to enclose the carport. The damages claims were eventually settled for \$1000. The district court determined the Bealers had not requested a variance, and remanded to allow them to present a request for a variance to the Board of Adjustment.

On August 22, 1995, the Board denied the request for a variance for these reasons: (1) there was a verbal agreement between a prior city manager and a prior owner that the carport could be built, but not enclosed; (2) there was no hardship because the Bealers could have built a new garage in the backyard; and (3) enclosing the carport would constitute a structural alteration to an already nonconforming structure.

The district court considered the Bealers' suit as a certiorari action. The court determined the Board's decision was supported by substantial evidence. The Bealers now appeal.

I. On appeal, we review for assigned errors only. *Lauridsen v. City of Okoboji Bd. of Adjustment*, 554 N.W.2d 541, 543 (Iowa 1996). We are bound by the findings of the district court if they are supported by substantial evidence in the record. *Chrischilles v. Arnolds Park Zoning Bd. of Adjustment*, 505 N.W.2d 491, 493 (Iowa 1993). We are not bound by erroneous legal rulings that materially affect the court's decision. *Danish Book World, Inc. v. Board of Adjustment*, 447 N.W.2d 558, 560 (Iowa App. 1989).

II. The Bealers contend the district court erred by upholding the board's decision the proposed improvements to the carport constituted a structural alteration to the nonconforming structure. They assert they were not intending to alter the structure of the carport, but only wanted to enclose the structure which was already there.

The city ordinance defines "structural alteration" as follows:

Any change except those required by law or this Code, that would prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beam or girders, not including openings in bearing walls as permitted by other regulations.

Evidence was presented to the board to show the proposed garage doors would need supports and headers. Also, the carport would be enclosed in siding. We find this is substantial evidence to support the board's conclusion the proposed changes to the carport would constitute a structural alteration.

III. The Bealers claim the district court erred in finding there was substantial evidence to support the board's conclusion they had not shown an undue hardship. The Bealers testified they needed to enclose the carport to keep out leaves and snow. They also testified they would need many inches of fill in the backyard before they could build a garage there.

There is a fair difference of opinion about whether the Bealers would suffer an undue hardship if not allowed to enclose their carport. We find the Board did not act illegally in finding no undue hardship.

IV. The Bealers assert they have a vested right to enclose the carport due to the first building permit. We note they have already received damages for detrimental reliance on the first permit. The illegal permit did not give the Bealers the right to enclose the carport.

V. The Bealers contend the board's decision to deny their request for a variance was not supported by substantial evidence. We find the board's decision was supported by substantial evidence. The board relied on evidence there was an agreement between a former owner and the city at the time the carport was built that the carport would not be enclosed. The board found denying the variance would not cause undue hardship to the Bealers. The board also considered the proposed changes would constitute a structural alteration to a nonconforming structure.

VI. The Bealers claim the district court did not apply the correct standard in reviewing the decision of the board. The court correctly set out the proper standard to review the decision of an inferior tribunal by certiorari action.

Other issues raised by the Bealers were not raised before the district court and are not preserved for our review.

We affirm the decision of the district court and the Board of Adjustment. Costs of this appeal are assessed to the Bealers.

AFFIRMED.