

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

Filed December 18, 1985

C. DEAN HOENESS and DOROTHY B.
HOENESS,

Plaintiffs-Appellants,

vs

MADISON COUNTY, IOWA, and THE
CITY OF WINTERSSET, IOWA,

Defendants-Appellees.

5-513

84-1845

Appeal from the Iowa District Court for Madison County - Michael J.
Streit, Judge.

Plaintiffs C. Dean and Dorothy B. Hoeness appeal from a trial court order affirming the action of Defendant City of Winterset in granting Defendant Madison County a special use permit to erect an ambulance garage. **REVERSED.**

Jerrold B. Oliver, of Webster, Jordan, Oliver & Walters, Winterset, for the plaintiffs-appellants.

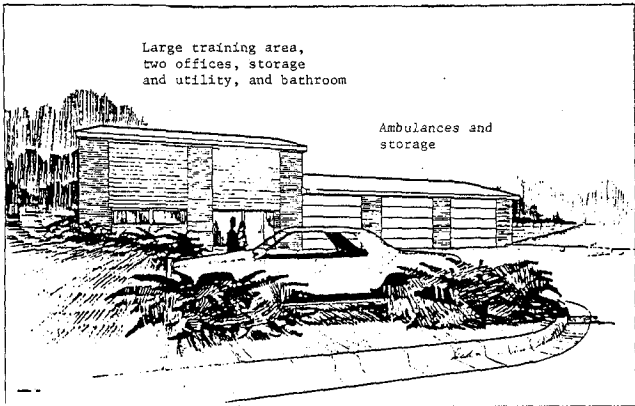
John Casper, Madison County Attorney, for the defendant-appellee Madison County

Gordon K. Darling, Jr., of Darling, Chickering & Darling, Winterset, for the defendant-appellee City of Winterset.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

The issue before us is whether the Board of Adjustment of the City of Winterset acted illegally in granting a special use permit to Madison County to construct a building in an R2 Multiple Family Residential area. The proposed building referred to by the plaintiffs as a garage and by the defendants as an ambulance office or ambulance storage facility, is shown below.¹



Fifty-five percent of the first floor and thirty-three percent of the facility as a whole would be used for storing ambulances. Defendants admit the vehicles would be washed in the facility and service would be done consisting of changing light bulbs, tightening screws, and nuts.

Article XI of the Winterset Zoning Ordinance dealing with special uses provides in relevant part:

¹ The architects labeled the drawing "Ambulance Office."

4 1253. SPECIAL USES. The following uses are declared "special uses" and upon the issuance of a special use permit, such special uses may be authorized in any zoning district, except as it is specifically excluded or limited by the provisions of this Section.

- 1 Accessory or branch structures and facilities for public utilities and public service uses, including reservoirs and tanks, pumping stations, telephone exchanges and power and transformer stations; providing, however, equipment storage yards and garages which are considered commercial, business and industrial uses shall not be permitted in any R-Residential District.

- 3 Buildings and uses owned by a county, city and county, city or other political subdivision which are operated for the social benefit or convenience of the public providing, however, equipment storage yards and garages, etc. which are operated and maintained for the necessary business and industrial service of the community shall not be permitted in any R-Residential District. (emphasis added).

Plaintiffs claim the ambulance building is not allowed in R-2. The ordinance does not define garage. It does, however, define:

Garage, Mechanical:

A structure in which major mechanical repair or rebuilding of motor powered vehicles is performed for commercial gain and in which the storage, care, and minor servicing is an accessory use.

Garage, Private:

An accessory building or an accessory portion of the main building, designed and/or used for the shelter or storage of vehicles owned or operated by the occupants of the main building. A private garage of less than three car capacity may be rented for the private vehicles of persons not residents on the premises.

Garage, Public:

A structure other than a private garage used for the shelter or storage of motor powered vehicles and in which the care, minor servicing, washing, etc. of vehicles is an accessory use.

The Board of Adjustment granted a Special Use Permit. Plaintiffs, adjoining property owners, filed a certiorari proceedings in district court contending the city acted illegally in granting the special use permit. The district court upheld the issuance of the permit. In doing so, the court held:

1. It is not a public garage because the purpose of the ambulance facility is not a public garage unless care, minor servicing, washing, etc. is to be an accessory use of the facility and an ambulance facility is not the type of structure in which the care, minor servicing, washing, etc. of vehicles would be an accessory use. And while there is evidence the ambulances could be washed in the ambulance facility a place to wash the ambulances would not be an expected or necessary use for an ambulance facility. Therefore the Board would not be unreasonable in finding that care, minor servicing, washing, etc. of vehicles was not an accessory use for the ambulance facility.

2. The Board could have treated the ambulance facility as consisting of the main building and an accessory garage and granted the permit under sub. #1 providing only garages which are considered commercial, business and industrial uses shall not be permitted in R-Residential districts. The ambulance area is not a garage for commercial business and industrial use. The ambulance area is only to be used for shelter or storage of the ambulances when not in use.

3. The ambulance facility could be considered as consisting of a building with an accessory garage (ambulance area).

In the case of Weldon v. Zoning Board of City of Des Moines, 250 N.W.2d 396, 401 (Iowa 1977) the court stated:

[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.

Under the principles explained in Trailer City, Inc. v. Board of Adjustment *supra*, 218 N.W.2d 647-648, the findings of fact of the district court have the effect of a special verdict of a jury and an appeal to this court is like that in an ordinary proceeding. See

Johnson v. Board of Adjustment, etc., 239 N.W.2d 873, 888 (Iowa 1976); Deardorf v. Board of Adjustment, etc., 254 Iowa 380, 118 N.W.2d 78 (1962).

See also Nolan v. Board of Adjustment of Iowa City, 350 N.W.2d 744, 746 (Iowa App. 1984).

The question is did the Winterset Board of Adjustment disregard a provision of the ordinance in discharging its administrative duty. If it did, the Board impermissibly amended or set aside the ordinance under the guise of a special use permit. A board of adjustment cannot disregard or exceed the powers conferred by a zoning ordinance. See Johnson v. Board of Adjustment, 239 N.W.2d 873, 886 (Iowa 1976).

The trial court's decision on the facts has the force and effect of a jury verdict. See Johnson at 878; Trailer City, Inc. v. Board of Adjustment, 218 N.W.2d 645, 648 (Iowa 1974). Such factual determination will be broadly and liberally construed, and where ambiguity appears, construed to uphold rather than defeat the judgment reached. Johnson at 878-79; Hammer v. County of Ida, 231 N.W.2d 896, 900 (Iowa 1975).

On certiorari, the board's findings, express and implied, are binding on the trial court so long as supported by substantial evidence resulting from application of correct legal standards. Johnson at 887; see Bennett v. Guthridge, 225 N.W.2d 137, 139 (Iowa 1975).

A board of adjustment may not legislate. It exercises only administrative and quasi-judicial power. See Deardorf v. Board of Adjustment, 254 Iowa 380, 389, 118 N.W.2d 78, 83 (1962).

The real issue is does the question of whether the proposed building is a "garage" constitute a fact question because reasonable minds might draw different inferences therefrom. See Johnson at 888 (whether 200 people consti-

tute a "large assembly" is a question of fact) Or can the only factual finding reasonably be drawn from the evidence be that the building is a garage. Johnson at 888

A careful review of the evidence convinces us no other factual finding can be drawn from the evidentiary facts but that the proposed building was intended to be a garage. Merely calling a garage another name does not make it any less a garage, nor does the fact it could also be called another name make it any less a garage

The board acted illegally in granting the special use permit. The trial court erred in annulling the writ of certiorari

REVERSED