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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

PAUL V. FITZGERALD, et al,)
Appellants,) Filed April 28, 1978
vs.)
B. (ED) EDWARDS, et al,) 457 / 2-59841
Appellees.)

Appeal from Hancock District Court - Jack W. Frye, Judge.

Plaintiffs appeal trial court's denial of an injunction to prohibit issuance of a building permit for two attached buildings in tandem to the main building. - Affirmed.

J. Ramsay McKey, Garner, for Appellants.

James M. Stanton, of Boyle, Schuler & Stanton, Clear Lake, for Appellees.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Plaintiffs Paul V. Fitzgerald and other Garner, Iowa, homeowners appeal the trial court's ruling that the zoning ordinance allowed an eight-plex structure to be constructed on defendant B. (Ed) Edward's Lot Five as an "addition" to an existing four-plex structure on Lot Six. We affirm.

The trial court found no inconsistency between the provisions of sections 10 and 11 of the Garner ordinance and chapter 413, The Code. Further, it found no violation of sections 3(7) and 4 in the municipal officer's issuance of the building permit for the eight-plex building. Plaintiffs, in brief and argument on appeal, have postulated their claim for injunctive relief on violations of section 3(1) and 3(17). These subsections merely define "accessory building" and "lot". They make no provision prohibiting construction unless in conformity with the ordinance regulations or mandating certain requirements as to use, coverage and area.

Absent an indication by plaintiffs of how the permit violates positive prohibitions of the ordinance, we are unable to review the propriety of the interpretation made by the municipal officer, confirmed by the board of review, and upheld by the trial court. On the record before us, we cannot say the plaintiffs are entitled to an order enjoining further construction and requiring removal of all prior construction completed under the permit.

AFFIRMED.

DONIELSON, J., dissents.

DONIELSON, J. (dissenting)

Because I am unable to agree with the result reached by the majority, I must dissent. Under the facts before this court, there can be no reasonable interpretation that the eight-plex constructed on lot five constitutes an addition to an existing four-plex structure on lot six. The shallowness of the argument that this eight-plex constitutes an addition is best demonstrated by the abortive attempt to make it such by connecting the two structures with a laundry room which does not even provide a direct means of access from either building, thus requiring the user to enter this facility from the outside only. Even a cursory examination of the facts before us refutes this argument. The eight-plex structure in this case is as much a "second building" as the one determined to be a second building by the court in Giesey v. Board of Adjustment, 229 N.W.2d 258, 260-261 (Iowa 1975).

I believe that upon our **de novo** review, plaintiffs are entitled to the injunctive relief they seek in this equity action. In my view, it would be totally inequitable to deny relief to the good-faith plaintiffs in this case merely because of a minor deficiency where an erroneous and illogical administrative interpretation of a municipal ordinance has so clearly been shown.