FILED
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IN THE COURT OF APPEALS OF IOWA

No. 0-638 / 90-261

DENNIS SHARKEY,

Petitioner-Appellant/Cross-Appellee,

vs.

CITY OF DUBUQUE ZONING BOARD OF ADJUSTMENT,

Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan, Judge.

Petitioner Dennis Sharkey and the City of Dubuque appeal an order affirming the board of adjustment's action. **AFFIRMED.**

Dennis J. Naughton, Dubuque, for appellant/cross-appellee.

James A. O'Brien, Assistant County Attorney, for appellee/cross-appellant.

Heard by Schlegel, P.J., and Sackett, and Habhab, JJ.

PER CURIAM

This case addresses continuance of a nonconforming use. The Board of Adjustment of the City of Dubuque determined property, belonging to appellant Dennis Sharkey, qualified for one nonconforming use but not a second. The district court agreed with the board. Sharkey appeals, contending both nonconforming uses should qualify. The City of Dubuque, an intervenor, cross-appeals, contending neither as qualified. We affirm.

Sharkey has owned the real estate since 1969. He and his tenants have used the real estate for various purposes relating to auto repair, other forms of mechanical work, and auto salvage and storage.

The first zoning ordinance applicable to the real estate became effective in 1971. In 1972 the property was annexed to the City of Dubuque. Since being zoned, the property has been zoned for residential use. However, the applicable zoning ordinances have contained an exception allowing for the continuance of preexisting nonconforming uses.

In 1988 the City of Dubuque Zoning Board of Adjustment considered the propriety of the uses then being made of the Sharkey property. The board concluded that the use being made of the front half of the property, a commercial auto repair shop operated by a tenant, was proper under the zoning ordinance; the Board found that this nonconforming

use had been continuous since before 1972. However, the Board concluded that the use being made of the back half, auto salvage and storage, was not proper under the zoning ordinance because that nonconforming use had been interrupted during the period since 1972.

Both sides contend the board's decision is not supported by the evidence. The appendix contains only the pleadings, the decision of the trial court and the board of adjustment, and a copy of the zoning ordinance. Sharkey's brief contains no reference to the appendix or other materials. The city's brief contains only four references to the appendix, and reference to the transcript. Neither party has complied with applicable rules of appellate procedure.

We have, however, made our own review of the available record. We find the decision of the board and the district court that the property qualifies for one conforming use but not the second to be supported by substantial evidence. See Weldon v. Zoning Board of the City of Des Moines, 250 N.W.2d 396, 401 (Iowa 1977). We affirm.

AFFIRMED.

Schlegel, P.J., concurs; Habhab, J., specially concurs.

HABHAB, J. (specially concurring)

I concur in the result only.