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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-223 / 88-1138

DICK LUKINS AND RUTH LUKINS,

Plaintiffs-Appellants,

vs.

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THE CITY COUNCIL OF THE CITY OF COLUMBUS JUNCTION, IOWA; THE BOARD OF ADJUSTMENT OF THE CITY OF COLUMBUS JUNCTION, IOWA; and **BILL BOULTON,** Zoning Administrator for the City of Columbus Junction, Iowa; and the **CITY OF COLUMBUS JUNCTION,**

Appellees.

Appeal from the Iowa District Court for Louisa County, John C. Miller, Judge.

Plaintiffs appeal the decision of the district court which dismissed their petitions for writ of certiorari and writ of mandamus on grounds of timeliness and on the merits. **AFFIRMED.**

Craig Arbuckle, Washington, for plaintiffs-appellants.

Timothy K. Wink, of Schweitzer & Wink, Columbus Junction, for defendants-appellees.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J. 252

Plaintiffs Dick and Ruth Lukins (the Lukins) appeal the decision of the district court which dismissed their petitions for writ of certiorari and writ of mandamus on grounds of timeliness and on the merits. The Lukins had sought a zoning variance in order to build a carport. They claim: (1) the city council did not have authority to nullify the variance granted by the board of adjustment on August 4, 1987; and (2) the board of adjustment did not have authority to nullify the variance it had previously granted to plaintiffs. We affirm.

Dick Lukins and Ruth Lukins sought a building permit to build a carport in front of their house in Columbus Junction. The city zoning administrator denied the permit. The Lukins then asked the board of adjustment for a variance. The board granted the variance.

The matter was brought before the city council. Some local residents protested the carport because of restricted vision and blocked light. The council voted not to accept the grant of the variance and sent the matter back to the board for further consideration. The board revoked its earlier grant of the variance.

The Lukins brought petitions for writ of certiorari and writ of mandamus in district court claiming that the board's second action was illegal and asking for the building permit. The district court found the petition for

certiorari was untimely and also denied the petition for mandamus. The Lukins appeal.

The trial court in discussing the petition for mandamus said:

> At the time of trial of this action on April 1, 1988, the parties agreed in effect that the Court's ruling on the certiorari action would be determinative, that is if the writ of certiorari were sustained, the building permit would be issued and if the writ of certiorari were annulled, the Plaintiffs would not be entitled to the building permit. Accordingly, the court will proceed to rule on the issues raised by the Petition for Writ of Certiorari.

The appellant has not appealed the trial court's refusal to rule on the mandamus action. Therefore, we will not address the mandamus issue.

The board of adjustment's last action regarding the Lukins' variance was on September 16, 1987. The Lukins filed a petition for writ of certiorari on December 11, 1987, 86 days after the board's decision to deny the Lukins the variance. The district court stated:

> [The Petition] . . . clearly was not filed within thirty days of any Board of Adjustment decision in this case, as required by IRCP 319 and Code Section 414.15. The Court concludes that it is without jurisdiction of the subject matter of the Plaintiffs' Petition for Writ of Certiorari.

We agree. We find substantial evidence in the record to support the court's findings that the Lukins' petition for writ of certiorari was untimely and that the district court

was without jurisdiction of the subject matter of this case. We affirm the decision of the district court.

AFFIRMED.