FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

WOODBURY COUNTY, IOWA,	)	
Plaintiff-Appellee,	)	Filed December 29, 1982
vs.	)	
LARRY BALDWIN and SHARON BALDWIN,	)	2-360 2-68140
Defendants-Appellants.	)	

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Appeal from Woodbury District Court - Lawrence W. McCormick, Judge.

Defendants appeal from judgment of the district court enjoining them from maintaining and storing unlicensed motor vehicles on their property, alleging that such activity is permitted under the applicable county zoning ordinances. REVERSED.

Robert W. Green of Gaul, Nymann & Green, Sioux City, Iowa, for defendants-appellants.

Richard Rhinehart of Richard Rhinehart & Associates, Sioux City, Iowa, for plaintiff-appellee.

Considered en banc.

Defendants, Larry and Sharon Baldwin, appeal from judgment of the district court enjoining them from maintaining and storing unlicensed motor vehicles on their property. They allege that such activity is permitted under the applicable county zoning ordinances. We reverse.

On February 28, 1980, plaintiff Woodbury County filed this petition in equity, stating that it had adopted a zoning ordinance for the unincorporated area of the county in 1971. Defendants' land is in a district zoned AR (agricultural-residential). During 1980, defendants began to locate and maintain unlicensed motor vehicles on their land. They engaged in no commercial activity in connection with these vehicles, but instead worked on them as a hobby. Plaintiff alleged this to be a nonconforming use in violation of the county ordinance and sought an injunction to prevent defendants from continuation of such use in the future and to compel them to remove the vehicles already there. The cause was submitted to the court on stipulation, and on July 2, 1981, the court granted the injunctive relief requested by plaintiff. Defendants' motions for new trial and for judgment notwithstanding the verdict were overruled. This appeal followed.

I. Scope of Review. Since this action was brought in equity, our review is **de novo.** Iowa R. App. P. 4.

II. Accessory Uses under the Ordinances. According to Section 11 of the "Zoning and Subdivision Ordinances For the unincorporated area of Woodbury County" ("ordinances"), "[t] he AR District is intended and designed to provide for low-density residential development in conjunction with agriculture." One of the principal permitted uses within AR districts is one and two-family dwellings, while one of the permitted accessory uses is stated as "[u] ses of land or structures customarily incidental and subordinate to one of the permitted principal uses, unless otherwise excluded." "Accessory use" is itself defined in section 4 of the ordinances as a use "on the same lot with, and of a nature customarily incidental and subordinate to the principal use."

Zoning ordinances, enacted by local governing bodies pursuant to the police power delegated to them, are to be strictly construed. Kordick Plumbing and Heating Company v. Sarcone, 190 N.W.2d 115, 117 (Iowa 1971). "Furthermore, the restrictions of a zoning ordinance should not be extended by implication or interpretation." Johnson v. Board of Adjustment, 239 N.W.2d 873, 881 (Iowa 1976). With these principles in mind, we agree with defendants that their storage of unlicensed motor vehicles on their property for noncommercial purposes does not violate the ordinances. Nowhere in the ordinances does it state or even imply that such activity is prohibited in areas zoned AR. We believe defendants' storage of the vehicles on their property for use as a hobby may reasonably be considered to be "customarily incidental and subordinate" to their principal use of the land for their residence. To find otherwise would require a broad or extended construction of the zoning restrictions; this we will not undertake.

The trial court's order granting the relief requested by plaintiff county is reversed. The cause is remanded with directions to dismiss plaintiff's petition.

REVERSED AND REMANDED.

All judges concur except Donielson and Snell, JJ., who dissent.

DONIELSON, J. (dissenting)

I respectfully dissent.

It appears from Exhibits 'B' and 'C' that defendants are maintaining about 25 vehicles and other automobile parts and scraps on their property even though they allege there are 30-40. Most of the vehicles appear to be dismantled or in a state of disrepair. While I realize that "one man's junk is another man's treasure", this array of vehicles is an eyesore. I do not agree with the majority that the storage of these vehicles for use as a "hobby" may reasonably be considered to be "customarily incidental and subordinate" to defendants' residential use of the land. The zoning of this district was "intended and designed to provide for low-density residential development in conjunction with agriculture." In light of this statement of intent, I do not believe we can define "accessory use" to include defendants' storage activities. We should not allow a "hobby" such as theirs to destroy the very purpose of the zoning scheme. I agree with the result reached by the trial court and would hold that defendants are not permitted, under the accessory use provision of the zoning ordinance, to maintain their storage of the automobiles.

Snell, J. joins this dissent.