IN THE COURT OF APPEALS OF IOWA

FILED
MAY 23 1989
CLERK SUPREME COURT

KEN SOJKA,	)	
Plaintiff-Appellant,	)	
vs.	)	307
CITY OF HARLAN ZONING BOARD OF ADJUSTMENT, JOANNE OUREN, CHAIRMAN,	)	8-709 88-847
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Shelby County (No. 16143), James M. Richardson, Judge.

Plaintiff appeals from a district court order approving the zoning board's decision denying plaintiff a zoning variance in order to construct a carport. **AFFIRMED.**

Ken Sojka and Gregg Rosenbladt of Buckley & Sojka Law Offices, Harlan, for plaintiff-appellant.

Thomas J. Anderson of McMartin & Anderson, Harlan, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

PER CURIAM 398

This dispute centers around a decision by the City of Harlan Zoning Board of Adjustment denying a zoning variance to the appellant. The appellant filed a petition for certiorari in the Shelby County District Court. The district court dismissed the appellant's petition. He timely filed notice of appeal. We affirm.

The appellant's home is located in an R-1 zoning district. The side yard width minimum in an R-1 zone is ten feet. The Sojkas made application for a building permit for construction of a carport. The application requested construction within three and one-half feet of the lot line. The enforcing officer for the City of Harlan rejected the application based upon the minimum side yard requirement as did the Board of Adjustment.

Before a board of adjustment can grant a variance, there must be showing of unnecessary hardship. Graziano v. Board of Adjustment, etc., 323 N.W.2d 233, 236 (Iowa 1982). In order to establish unnecessary hardship, an applicant must show (1) the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone; (2) the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood, which may reflect the unreasonableness of the zoning ordinance itself; and (3) the use to be authorized by the variance will not alter the essential character of the locality. Id.

Our scope of review is limited.[1] The trial court's findings of fact have the effect of a special jury verdict, and an appeal to this court is like that in an ordinary proceeding. Id. Accordingly, factual determinations will be broadly and liberally construed and ambiguity construed to uphold rather than defeat the trial court's judgment. Id.

As stated in Graziano, "[o]ur case law makes it plain that the burden to show unnecessary hardship is on the variance applicant." Id. at 237. The trial court found that the plaintiff-appellant had failed to meet the requisite burden of proof. We find substantial evidence in the record to support the trial court's finding and thus affirm on this issue.

The appellant next asserts that the decision of the zoning board of adjustment denying the variance was invalid because the board made its actual decision in a meeting closed to the public. We agree with the trial court that a "meeting" of the board of adjustment did not take place within the meaning of the open meetings act, Iowa Code

---

1. Except when modified by statute or constitutional principle, certiorari provides limited review of fact findings of an inferior tribunal. In ordinary certiorari actions, the findings of fact of the inferior tribunal may not be upset if they are supported by substantial evidence. However, a statute modifies this rule in zoning cases. Weldon v. Zoning Bd. of City of Des Moines, 250 N.W.2d 396 (Iowa 1977).

Chapter 21. Board members can meet for ministerial functions or in a social setting without following Chapter 21 provisions. Telegraph Herald v. City of Dubuque, Iowa and City Council, 297 N.W.2d 529, 533 (Iowa 1980). We concur with the trial court that the discussion that took place in the City Clerk's office immediately prior to the meeting was nothing more than a ministerial function. We affirm the trial court in this respect.

The appellant next contends that the trial court erred in failing to grant a short continuance during the course of the trial. The matter of granting of continuances rests within the discretion of the trial court. From our review of the record, we do not find an abuse of that discretion. We affirm on this ground.

AFFIRMED.