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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1999-322 (9-575) / 98-1286
Filed March 29, 2000

CAROL GRANT, JOHN GRANT, HELEN HULL, DALE HULL, LEE SCOTT, TOM SCOTT, KEITH KETCHAM, PHYLLIS KETCHAM, ROYCE WINGE, MICHAEL STOHLMEYER, MAUREEN STOHLMEYER, MICHAEL FAULKNER, KATHLEEN FAULKNER, MARK ROYER, MARTHA ROYER, ADRIAN BENNETT, NANCY BENNETT, JERRY NORDIN, MYRNA NORDIN, ERIK MUNN, SHELLI MUNN, CHARLES BEALL, and JANET BEALL,
Plaintiffs-Appellants,

vs.

THE ZONING BOARD OF ADJUSTMENT FOR THE CITY OF AMES and DARUL ARGUM MASJID,
Defendants-Appellees.

Appeal from the Iowa District Court for Story County, Ronald H. Schechtman, Judge.

Plaintiffs appeal from the district court's affirmation of the defendant-appellee The Zoning Board of Adjustment for the City of Ames's issuance of a special use permit to defendant-appellee Darul Argum Masjid to construct a mosque in a residential neighborhood. Plaintiffs contend the trial court erred in (1) ruling there was substantial evidence to support the Zoning Board of Adjustment's issuance of a special permit; and (2) in relying solely upon the zoning ordinance requirements for parking and traffic, rather than considering the actual and anticipated conditions. We affirm. **AFFIRMED.**

Robert W. Goodwin of the Goodwin Law Office, P.C., Ames, for appellants.

Judy K. Parks, Assistant City Attorney, Ames, for appellee-zoning board.

Daniel L. Manning and Patrick T. Burk of Connolly, O'Malley, Lillis, Hansen & Olson, L.L.P., Des Moines, for appellee-Masjid.

Considered by Sackett, C.J., and Vogel and Hecht, J.J.

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PER CURIAM.

Plaintiff-appellants Carol Grant, John Grant, Helen Hull, Dale Hull, Lee Scott, Tom Scott, Keith Ketcham, Phyllis Ketcham, Royce Winge, Michael Stohlmeyer, Maureen Stohlmeyer, Michael Faulkner, Kathleen Faulkner, Mark Royer, Martha Royer, Adrian Bennett, Nancy Bennett, Jerry Nordin, Myrna Nordin, Erik Munn, Shelli Munn, Charles Beall, and Janet Beall appeal from the district court's affirmation of the defendant-appellee The Zoning Board of Adjustment for the City of Ames's issuance of a special use permit to defendant-appellee Darul Argum Masjid to construct a mosque in a residential neighborhood. Plaintiffs contend the trial court erred in (1) ruling there was substantial evidence to support the Zoning Board of Adjustment's issuance of a special permit; and (2) in relying solely upon the zoning ordinance requirements for parking and traffic, rather than considering the actual and anticipated conditions. We affirm.

On June 9, 1997, defendant-appellee Darul Argum Masjid, a subsidiary of the North American Islamic Trust, made an application to the City of Ames, Iowa, Zoning Board of Adjustment for a special permit to construct a mosque in a residential neighborhood near Iowa State University. A mosque is a sacred building used for the performance of Islamic prayers. The mosque is to replace an existing mosque located about three blocks west of the proposed building site.

The current mosque has eighty members. Most members are Iowa State University students. The Iowa State University Memorial Union is the primary site for Islamic prayer worship, while the second mosque is used as an additional

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place for prayer services. The most highly attended prayer service is at midday on Fridays.

The property purchased by this defendant for purposes of constructing this mosque is located in an area zoned R1-6 (low density residential). Places of worship are permitted uses in this zoning district.

The mosque is to be a one-story structure of approximately 6900 square feet. Defendant plans to build the mosque on a rectangular .95-acre lot that abuts to its west on Iowa Avenue. Iowa Avenue is a residential street that runs north and south and connects to the south to Ross Road and to the north to Ontario Street. Ontario Street is an east-west arterial that leads to Lincolnway and Interstate 35 North respectively. Ross Road is a collector street. Defendant's lot is 365 feet from the intersection of Iowa Avenue and Ross Road. Seven of the plaintiffs' lots directly abut defendant's lot on its north-east-south lines. Two of the plaintiffs live on the south side of Ross Road. One of the plaintiffs owns the property on the corner of Iowa Avenue and Ross Road. Two of the plaintiffs live on the west side of Iowa Avenue across the street from defendant's lot.

A special permit was required to build the mosque because it was to be built on a partially platted lot. Section 29.9(5) of the City of Ames Municipal Code authorizes the issuance of a special permit after notice is mailed to all landowners within 200 feet of the site, and after a hearing finding "issuance of the permit will not contribute excessively to any adverse effect on infrastructure, city services, traffic and parking, or property values in the locale."

Defendant Zoning Board of Adjustment has a Staff Development Review Committee to assist it in reviewing applications for special permits. A planning specialist with the City of Ames chairs this committee. Other members are a traffic engineer, a municipal engineer, a local electric utility representative, a building official, a fire inspector, and the city's economic development coordinator. The public works director and planning and housing director oversee it. The committee reviewed the special application and the site plan submitted by Darul Argum Masjid's engineer and submitted a report to defendant Zoning Board. After a hearing, defendant Zoning Board of Adjustment granted the application for the special permit.

On July 24, 1997, plaintiffs filed a petition for writ of certiorari, alleging defendant Zoning Board's issuance of the special permit was illegal. The district court heard thirteen witnesses and received thirty-eight exhibits in evidence. The district court annulled plaintiffs' writ and denied their petition, finding defendant Zoning Board appropriately considered and found a special permit would not contribute excessively to any effect on infrastructure, city services, traffic and parking, or property values in the locale.

The district court's scope of review in considering the certiorari challenge is set out in *Laurisden v. City of Okoboji Bd. of Adjustment,* 554 N.W. 2d 541, 543 (Iowa 1996) where the court said:

> In a certiorari proceeding in a zoning case the district court finds the facts anew on the record made in the certiorari proceeding. That record will include the return to the writ and any additional evidence which may have been offered by the parties. However, the district court is not free to decide the case anew. Illegality of the challenged board action is established by reason of the court's findings of fact if they do not provide substantial support for the board decision. If the district court's findings of fact leave the

> reasonableness of the board's action open to a fair difference of opinion, the court may not substitute its decision for that of the board.

Id.; *Weldon v. Zoning Bd.*, 250 N.W.2d 396, 401 (Iowa 1977).

Our scope of review on appeal of the district court's decision is at law. Iowa R. Civ. P. 318; *U.S. Cellular Corp. v. Board of Adjustment of the City of Des Moines,* 589 N.W.2d 712, 716 (Iowa 1999). Thus, we are bound by the district court's findings if they are supported by substantial evidence in the record. *Id.; see Chrischilles v. Arnolds Park Zoning Bd. of Adjustmemt.* 505 N.W.2d 491, 493 (Iowa 1993). That others may have reached a different conclusion or an opposite result would have been fully justified by the evidence is of no importance. *Giesey v. Board of Adjustment of Iowa City,* 229 N.W.2d 258, 260 (Iowa 1975).

We first address plaintiffs' contention there was not substantial evidence to support the Board's finding granting the special use permit would not have an adverse impact on parking in the area and the district did not use the proper standard in assessing the parking issue.

Plaintiffs Grant and Ketcham introduced an exhibit showing in the early afternoon for six Fridays they saw between forty-six and eighty-six cars parked in the area of the current mosque. Grant testified on weekdays there had been overflow parking by Iowa State students on Ross Road that spilled over to Iowa Avenue.

This evidence conflicts with the testimony of Eden Schmidt, a planning specialist with the City of Ames and Chairman of the Staff Development Review Committee of the Defendant Zoning Board. Schmidt testified she went to the

current mosque on a Wednesday, Thursday, and a Friday at 1:00 p.m. to check the parking situation. On Wednesday and Thursday she found there were a small number of cars parked near the mosque and on Friday there were forty-three.

Mosque member, Riad Mahayni, testified a survey he made from January to June 1997 showed there were between zero and twenty-two cars parked near the mosque by people actually attending services there.

Paul Wiegland, the public works director for the City of Ames, also testified on the parking issue. He testified there was no formal study made of parking in the area. He said he considered parking is allowed on both sides of the street on Iowa Avenue and the availability of on site parking in making his analysis, that while there would be an impact on parking and traffic, it would be reasonable. He testified if cars are parked on both sides of Iowa Avenue only fourteen feet are left for traffic forcing cars to drive into empty space to wait for cars coming in the opposite direction.

City of Ames Municipal code sections 29.40 and 29.41(7) require places of worship have one parking space for each 120 feet of worship area. This would translate to require twenty-seven parking spaces for the proposed mosque. The plan for the mosque provides for forty-three parking spaces on its site.

The district court found while there would be more cars parked on adjoining streets during time of high use of the mosque, the parking spaces to be provided on site are more than double those required by the Ames city code. The court further found due to the time the mosque was used, off street parking would not be affected to an excessive degree. The court also noted plaintiff

unintentionally counted cars of people not attending services at the existing mosque.

The plaintiffs contend the district court only looked at whether the mosque met the parking requirement of the Ames Zoning Code. The court considered the code requirement and found them in compliance. However, the court also considered the time of worship activity and the characteristics of the surrounding streets. Consequently, we disagree with the plaintiffs that the district court did not apply the proper legal standard. Additionally, we find there is substantial evidence to support the district court's decision on the parking issue.

Plaintiffs next contend there was not substantial evidence to support the finding the proposed mosque will not increase traffic in the area.

Plaintiff Bennett anticipated if the new mosque were built there was a possibility attendance at the mosque would increase. He was of the opinion the growth would cause additional problems. He felt traffic would increase with the new structure and cause problems in the neighborhood. He did not feel there were adequate plans for the future. He noted a Unitarian Church around the corner from his home had expanded in the thirty years it was there.

Wiegand testified a traffic count conducted by the city department of planning and housing indicated there were one hundred cars a day on Iowa Avenue and the city expected the mosque would generate an additional fifty vehicles a day. He further testified the city engineer's opinion after reviewing the site plans was that access to the site would not cause any traffic problems. He admitted on cross-examination information provided him by the city staff did not include any counts of traffic on Iowa Avenue or Ross Road.

No formal traffic study was done though the potential usage in the area was evaluated using standards generated by the Institute of Traffic Engineers as to the number of parking stalls and specific area need for each person.

The district court found there would be additional traffic on adjoining streets at times of large attendance at the mosque including during the month of Ramadan. The district court also found high activity at the mosque is at times when the non-Islamic population is devoted to other activities and not dependent on vehicular use. The court determined the mosque should play only a small part in contributing to vehicular congestion in the area. There is substantial evidence to support these findings.

The plaintiffs next contend their property values will decrease and the district court considered the zoning ordinance requirements rather than the existing and anticipated problems.

Charles R. Stauduhar, an independent fee appraiser in technical valuations and a senior member of the American Society of Appraisers and the American Association of Cost Engineers as well as a licensed appraiser, was called as a witness by plaintiffs. He testified new places of worship are built with an anticipated growth of seventy-five to eighty percent growth within a year and a half or two years. He was concerned about the storm water system and the availability of fire protection. He testified storm water would at times overflow and water would run off the lot onto four of the plaintiffs' properties. He said the pipes were not adequate to handle the storm water and the city did not do an impact study on the storm water. Jerry Byg, an engineer for the City of Ames,

disagreed and testified the storm water management plan in place exceeded city requirements and the pipes were adequate to handle storm water run off.

Stauduhar voiced concerns about fire truck access to the mosque. John Dethrow, a fire inspector with the Ames Fire Department testified access for safety vehicles in the area was adequate.

Stauduhar determined each of the plaintiffs' properties would decrease in value because of the non-conforming design of the mosque, additional parking and any other use of the mosque should it no longer be used for that purpose. He was of the opinion this corner would eventually become commercial. He concluded the value of the twelve properties would be decreased by $321,305. He contended he arrived at the figure based on his judgment of property values in an average neighborhood with a church that was having problems and he had a large inventory of appraisals of properties located near churches and schools. On cross-examination he conceded he did not have data to support his opinion as to the decrease in the value of plaintiffs' property.

At the Board of Adjustment meeting the architect for the proposed mosque stated the building was designed with sensitivity to the residential makeup of the neighborhood and he had not encountered any adverse impact on property values for other mosques he designed in residential area.

The defendant called Fred Locke as a witness. Locke had been a real estate appraiser for twenty-five years and was employed by Iowa Appraisal and Research Corporation in Des Moines. He holds certification from the State of Iowa and is a member of the Appraisal Institute. Locke testified there was no

support in Stauduhar's appraisals for the determination the surrounding properties would decrease in value if the mosque were built.

The district court found property values in the area would not decrease as a result of the new mosque. The court considered the plan for construction and found it attractive and designed with sensitivity to the neighborhood. The court found the building materials to be used were compatible with those used in the neighborhood. He further determined the building would be a proper size in relation to the size of the lot according to the zoning requirements, which would have permitted three homes on the lot. The court noted the height of the structure met code requirements and there would be a minimal deprivation of light and view.

The court gave little weight to Stauduhar's appraisals. The court found them difficult to understand, arbitrary, and based on hypotheses that do not exist and certain erroneous or incomplete information. The district court considered more than just the zoning requirements. Its findings are supported by substantial evidence. We affirm.

AFFIRMED.