IN THE COURT OF APPEALS OF IOWA

No. 3-392 / 93-88

FILED
MAY 26 1994
CLERK SUPREME COURT

RANDALL & SHUBERT PARTNERSHIP,

Appellant,

vs.

CITY OF AMES, IOWA, ZONING BOARD OF ADJUSTMENT,

Appellee.

Appeal from the Iowa District Court for Story County, Carl E. Peterson, Judge.

Plaintiff appeals a district court ruling denying plaintiff's petition for writ of certiorari from a zoning board decision denying plaintiff's request for a variance. **AFFIRMED.**

John L. McKinney, Ames, for appellant.

John R. Klaus, Ames City Attorney, for appellee.

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

DONIELSON, C.J.

Randall & Shubert Partnership purchased two lots in an Ames subdivision in 1984 for $38,000. The lots are in a concentrated commercial zone and abut on an alley known as Chamberlain Place. In 1986 the Partnership obtained a permit to demolish the existing rental house and build a warehouse on lot 13.

In 1989 the Partnership obtained a permit to construct a foundation/retaining wall on lot 14. The partnership intended to build an addition to the warehouse. However, in 1990 the City of Ames discovered that Chamberlain Place was only sixteen feet wide. Ames City Ordinance 29.8(7) provides that a lot upon which a principal building is placed must abut a city street or public place. A public place must be at least twenty feet wide under City Ordinance 29.1(36). A city street must be at least twenty-four feet wide.

The partnership applied to the zoning board for a variance to develop lots 13 and 14. The board granted the variance as to lot 13 but denied the variance as to lot 14 on the basis that there would not be an unnecessary hardship.

The partnership filed a petition for writ of certiorari with the district court, alleging the enforcement of the ordinance would result in an unnecessary hardship because it could not obtain a reasonable rate of return on lot 13. The partnership asserted that lot 13 could only be used as

a parking lot if a variance is not granted and pointed out that the city recently had built a parking lot next to lot 13. The district court agreed with the zoning board and denied the petition and the partnership's motion for new trial.

The partnership has appealed.

Certiorari is a procedure to test the legality of an action by a lower board, tribunal, or court. Lane v. Oxberger, 224 N.W.2d 245, 247 (Iowa 1974). It is an action at law and is not triable here de novo. City of Des Moines v. Iowa Dist. Court, 428 N.W.2d 292, 296 (Iowa 1988); see Iowa R. Civ. P. 318. We will uphold the fact findings of the district court if they are supported by substantial evidence. Wells v. Dallas County Zoning Bd. of Adjustment, 475 N.W.2d 680, 682 (Iowa App. 1991). We also review the record to determine whether the district court applied correct legal standards. Garman v. Ames Zoning Bd. of Adjustment, 436 N.W.2d 651, 653 (Iowa App. 1988).

An applicant for a zoning variance must establish literal enforcement of the ordinance would result in unnecessary hardship. Iowa Code § 414.12(3) (1993); City of Des Moines v. Board of Adjustment, 448 N.W.2d 696, 698 (Iowa App. 1991). The issue in this case is whether an unnecessary hardship exists because the denial of the variance would not permit a reasonable return on the property. "The legal standard is not that more profit could be made if a variance is granted. The standard is

that a reasonable return could not be garnered from a permitted use." Graziano v. Board of Adjustment of Des Moines, 323 N.W.2d 233, 237 (Iowa 1982).

Our review of the record discloses the district court properly applied the standards of Iowa Code section 414.12(3) in evaluating the public interest and the hardship on the owner of the property. The record also discloses substantial evidence to support the findings of the district court.

AFFIRMED.