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IN THE COURT OF APPEALS OF IOWA

RICHARD CRONE AND LINDA CRONE,

Petitioners-Appellants,

vs.

LOUISA COUNTY BOARD OF ADJUSTMENT,

Respondent-Appellee.

Filed October 18, 1979

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2-62702

Appeal from Louisa District Court - Thomas E. Tucker, Judge.

Petitioners appeal from a judgment affirming defendant-board's denial of their application for a zoning permit. - Affirmed.

Craig Arbuckle, of Day, Meeker, Bates & Arbuckle, Washington, for Petitioners-Appellants.

William L. Matthews, of Hicklin & Matthews, Wapello, for Respondent-Appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Petitioners appeal from a judgment affirming defendant-board's denial of their application for a zoning permit. We affirm.

Petitioners applied for a zoning permit for the construction of a dwelling on property zoned as a conservation district in Louisa County. Residential housing is prohibited in conservation districts by the Louisa County Zoning Ordinance, and the only types of dwellings permitted by the Ordinance in such a district are farm houses and summer cottages. In their application for a zoning permit, petitioners listed the proposed use of their dwelling as a "[s]ummer cottage or permanent residence as farm house." The zoning administrator denied their application and that decision was upheld by the Louisa County Board of Adjustment. Petitioners then petitioned for writ of certiorari to the district court. The district court granted the writ and sustained the action of the Board of Adjustment.

The scope of review of the district court is de novo only in the sense that the district court can allow new evidence to be considered if it believes additional evidence would be necessary for a proper disposition of the case. Weldon v. Zoning Board of City of Des Moines , 250 N.W.2d 396, 401 (Iowa 1977); Vogelaar v. Polk County Zoning Board of Adjustment, 188 N.W.2d 860, 863 (Iowa 1971). The district court then determines whether there is substantial support for the board's action. If the district court's findings of fact leave the reasonableness of the board's action open to a fair difference of opinion, the district court may not substitute its decision for that of the board. Weldon, 250 N.W.2d at 401. The district court's decision has the effect of a jury verdict. Id.; Johnson v. Board of Adjustment, City of West Des Moines, 239 N.W.2d 873, 878 (Iowa 1976). We review that decision on assigned errors only. Trailer City, Inc. v. Board of Adjustment of City of Council Bluffs, 218 N.W.2d 645, 648 (Iowa 1974). If there is substantial evidence for the district court's decision, we may not substitute our decision for that of the district court. Johnson, 239 N.W.2d at 888-89.

Petitioners contend that the dwelling they proposed to build qualified as either a summer cottage or a permanent residence as a farm house, both permitted uses in a conservation district. It was concluded that the dwelling did not qualify as a farm house since the principal use of the land was not agricultural. Principal use has been defined

as "the primary purpose or function that a lot serves or is intended to serve." 3 R. Anderson, American Law of Zoning 2d § 16.11, at 68 (1977). We think there was substantial evidence to lead to the conclusion that the principal use of the land in this case was not agricultural. Petitioners proposed to use the land for a chicken roost with six hens and a rooster, a small fruit and vegetable garden, and rock and flower gardens. The land was a little more than one acre in size. There was also evidence that petitioners proposed to build a dwelling in the particular location to be close to the ailing father of one of the petitioners. We think the board's decision could have been based on the belief that the principal use of the property was intended to be for a permanent residence rather than for agricultural purposes. We think the reasonableness of that decision is open to a fair difference of opinion, and there was substantial evidence for the district court's decision to uphold the board's action. Similarly, we conclude that on the basis of the same evidence, coupled with the inconsistency of arguing in the alternative that the dwelling could on the one hand be considered a permanent residence as a farm house, and on the other hand be considered a seasonal or temporary residence as a summer cottage, the board could reasonably conclude from substantial evidence that the intended use of the property was for a permanent residence rather than a summer cottage.

Petitioners contend that the board improperly denied their application by treating it as an application for a variance. After concluding that the principal use of the property was for a permanent residence rather than a farm house or summer cottage, the board could reasonably have treated the application as an application for a variance, which would be the requisite procedure to allow the construction of a permanent residence in a conservation district. The board could reasonably conclude that th criteria required for a variance were not met in this case, and thus, petitioners' application was appropriately denied.

We find that the district court's findings of fact leave the reasonableness of the board's action open to a fair difference of opinion, and that there was substantial evidence to support the district court's decision to uphold the board's action. Consequently, we affirm the decision of the trial court upholding the board's denial of petitioners' application.

AFFIRMED.