

IN THE IOWA DISTRICT COURT FOR WARREN COUNTY

**KADING PROPERTIES, LLC, AN IOWA
LIMITED LIABILITY COMPANY,**

Plaintiff,

vs.

CITY OF INDIANOLA,

Defendant.

Case No. CVCV038374**RULING AND ORDER**

BE IT REMEMBERED that this matter came on before the court on the Plaintiff's motion under Rule 1.904(2) and the Defendant's Resistance. Plaintiff Kading Properties filed a Motion to Enlarge the Court's March 12 ruling denying Plaintiff's Petition for Writ of Certiorari. Specifically, Plaintiff asks the Court to provide a ruling on its argument that "the City Ordinance which allows the City Council to review Site Plans in the R-3 area greater than one acre is in violation of Section 414.7 of the Iowa Code." Plaintiff asserts that this is an illegal usurpation of the city zoning board of adjustment's power to regulate conditional or special uses.

Plaintiff argues that subjecting site plans in the R-3 district that are larger than one acre to undergo a different approval process than those less than one acre is an illegal usurpation of the zoning board of adjustment's powers pursuant to Iowa Code § 414.7. Pl.'s Br. p. 14. Plaintiff asserts that special exceptions, conditional uses, and special uses must be sent to the board of adjustment. *Id.*

Section 414.7 states in part that "the council shall provide that the board of adjustment may in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the ordinances *in harmony with its general purpose and intent* and in accordance

with general or specific rules contained in the ordinance” Iowa Code § 414.7(1) (emphasis added). Furthermore, section 414.12 provides the board of adjustment with certain powers, including the ability “[t]o hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.” Iowa Code § 414.12(2).

In the *Christenson* case, the court “review[s] the function of the board of adjustment and the authority of the City to review site plans” *City of Johnston v. Christenson*, 718 N.W.2d 290, 298 (Iowa 2006). “[T]he power to grant variances and exceptions is exercised solely by the board of adjustment” and the board is also “permitted to grant special use permits.” *Id.* at 298–99. *See also Depue v. City of Clinton*, 160 N.W.2d 860, 864 (Iowa 1968) (concluding that “‘special exceptions’ includes ‘special uses,’ and . . . both must be placed within the jurisdiction of the board of adjustment”). “This power cannot be usurped by the City in any manner, including the exercise of its site-plan authority.” *Christenson*, 718 N.W.2d at 302.

However, the court notes that it has previously recognized that the process of submitting site plans of proposed uses to the city council after it has been reviewed by the planning and zoning commission “allows the city to exercise oversight and control over the development of land through the enforcement of a city zoning code.” *Id.* at 299 (citing *Kane v. City Council*, 537 N.W.2d 718, 722 (Iowa 1995)). *See* Ruling on Pet. for Writ of Certiorari p. 8. This procedure allows the city council to fulfill its purpose and “make certain that the plan complies with all the zoning regulations, other city codes and regulations, and aesthetic and practical concerns, such as lighting, landscaping, and traffic considerations.” *Christenson*, 718 N.W.2d at 299.

The Iowa Supreme Court has acknowledged “that a ‘special exception’ permits in a particular district a use not otherwise permitted when certain conditions specifically set out in the ordinance are satisfied by the board to exist.” *Depue*, 160 N.W.2d at 864. By contrast, a variance

“relaxes the zoning regulations when literal enforcement would result in ‘unnecessary hardship.’”

Id. The court also defined a “conditional use”:

“The term ‘conditional use’ employed in a zoning ordinance means provisional use for a purpose designated by the ordinance itself; a grant of right for any use specified by the ordinance subject to finding by an administrative officer or board that the use is proper, essential, advantageous or desirable to public good, convenience, health or welfare.”

Id. at 863 (quoting *Schultz v. Bd. of Adjustment of Pottawattamie Cty.*, 139 N.W.2d 448, 450 (Iowa 1966)).

Based on these explanations, the Court still fails to see how Kading’s submission of site plans constitutes a request for a special exception, special use, conditional use, or variance. Rather, Kading merely sought approval to develop residential condominiums on its properties and the issues considered by the City Council before approving or denying the site plans concerned the traffic impact and effects on the use and enjoyment of existing properties. Kading was not seeking to, for example, change the use restrictions on properties zoned as “R-3 Mixed Residential.”

Furthermore, requiring land larger than one acre in the R-3 district to undergo a different approval process than land smaller than one acre does not automatically create a special or conditional use, special exception, or variance that would require the matter to be decided by the board of adjustment. The site plan ordinance in the present case does not allocate to the City Council the power to make special exceptions in violation of Iowa Code sections 414.7 and 414.12.

The Court finds that the City of Indianola correctly exercised its administrative authority to approve a site plan because the approval of a site plan is an administrative action vested in the control of the city council. Plaintiff’s motion should be overruled and denied.

SO ORDERED.



State of Iowa Courts

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So Ordered

A handwritten signature in black ink, appearing to read "Richard B. Clogg". The signature is written in a cursive style and is positioned above a horizontal line.

Richard B. Clogg, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2021-04-12 17:18:47