

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Greenfield Avenue Properties,
LLC, and Hassan Shanehsaz,
Appellants-Petitioners,

v.

Board of Zoning Appeals of The
City of Noblesville,
Appellee-Respondent

January 30, 2024

Court of Appeals Case No.
23A-PL-976

Appeal from the Hamilton
Superior Court

The Honorable Michael A. Casati,
Judge

Trial Court Cause No.
29D01-2205-PL-3189

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

- [1] Greenfield Avenue Properties, LLC (GAP), and its principal, Hassan Shanehsaz (collectively Appellants), appeal the trial court’s order affirming the decision of the Board of Zoning Appeals of the City of Noblesville (BZA); the BZA’s decision affirmed the determination of the city’s planning and development director that operating a drug rehabilitation and counseling facility on Appellants’ residentially zoned property is not a permitted use of the property. We affirm.

Facts and Procedural History

- [2] GAP owns property on Greenfield Avenue in Noblesville that is zoned “R1 (Low Density Single Family Residential).” Appellee’s App. Vol. 2 at 2.¹ In 2001, GAP’s predecessor in interest, First Pentecostal Church, received a conditional use permit from the BZA to construct a church building on the property. At some point, GAP acquired the property and leased it to Chapel Church.
- [3] In December 2021, Shanehsaz emailed the city’s planning and development director, Caleb Gutshall, to inquire whether operating a drug rehabilitation and

¹ In their appendix, Appellants included only a portion of “those parts of the Record on Appeal that are necessary for [this] Court to decide the issues presented[.]” in contravention of Indiana Appellate Rule 50(A)(1). The BZA submitted an appendix that contains additional portions of the record “that are important to a consideration of the issues raised on appeal[.]” Ind. Appellate Rule 50(A)(2)(g).

job training facility would be a permitted use of the property. Shanehsaz's email reads in pertinent part as follows:

This property was used as church and day care until End of July and for number years. The facility is now being used by Chapel Church to provide church services and other not for profit organizations (Hope and Recovery a 501C3 not for profit)^[2] to provide part of the Ministry to provide drug rehabilitation, Job and training for the rehabilitated patients in our community (Step Up Staffing)....

Dr. Miller from Miller Care Group will be providing outpatient counseling and rehabilitation services and then transferring patients to Marion County until such time that funds are raised to add additional buildings for inpatient services. I understand that the change from outpatient to Inpatient will require permitting or rezoning or change of use. We are at the very early stages of opening this center. Because these activities are part of ministry of church, I strongly believe we do not require a rezone or other actions to use the facility for this ministry.

Id. at 8.

[4] In February 2022, Gutshall sent Shanehsaz a letter that reads in pertinent part as follows:

This letter is to serve as a formal response to your inquiry regarding a Conditional Use Permit determination for [the property].

² The record indicates that Shanehsaz is the president of Hope and Recovery's board. Appellee's App. Vol. 2 at 11.

In order to make a determination on the inquiry and interpret the applicable Noblesville Unified Development Ordinance, it is important to identify specific items affecting this matter.

- The Property is within Noblesville City Limits.
- The Property is zoned R1.
- The Property is bounded by R1 zoning to the North, East, West, and South.
- A Conditional Use Permit was approved by the Board of Zoning Appeals (BZA) on February 5th, 2001 to permit the construction of a church in a R1 zoning district.
- The application for the Conditional Use included a project narrative that described the use as follows: “The church by definition, will not in any way have any uses or activities that would be injurious to the public’s general welfare by reason of excessive noise, smoke, odors, glare or traffic. Production of traffic is traditionally not on a daily basis and is at non-peak times.”
- A request has been made to allow outpatient counseling, drug rehabilitation, and job training/staffing in the existing building on the Property under the previously approved Conditional Use Permit.

Noblesville Unified Development Ordinance

The following definitions found in Article 2 of the Unified Development Ordinance (UDO) are relevant for this determination:

Places of Worship - Structures and other indoor or outdoor facilities used for public worship and related educational, cultural, and social activities.

Office, Medical - An establishment for the care, diagnosis, and treatment of sick, ailing, infirm, or injured persons, and those who are in need of medical and surgical attention, but which building does not provide board, room or regular hospital care

and services. This definition shall include clinics as well as the offices of medical doctors, physicians, dentists, or other health care practitioners.

Determination:

Per the definition stated above, a church would fall under the definition of a “Place of Worship.” The previous Conditional Use Permit allowed a church to be the primary use in the R1 zoning district. While accessory uses and activities such as daycares/pre-schools, evening services, educational camps, and other social gatherings are typically associated with a church, I believe the proposed uses of outpatient counseling, drug rehabilitation, and job training/staffing go beyond those traditional accessory uses.

The proposed use would fall under the medi[c]al office category in the UDO. Such activity is not a permitted use in the R1 zoning district and would require either the rezone of the property to an appropriate district or approval of a land use variance. If church or worship services are no longer the primary use at this facility, the existing Conditional Use Permit is no longer active. That results in the counseling being the primary use of the property and therefore not permitted.

In addition, when the Conditional Use Permit was approved in 2001, the project narrative indicated that the church traffic would neither be on a daily basis nor during peak times, which is consistent to a typical church use. The proposed uses, with regularly scheduled weekday appointments and staffing, goes beyond the scope of what was previously considered and approved by the BZA.

Id. at 5-6.

[5] Appellants filed an appeal with the BZA, and a hearing was held in April 2022. A BZA staff member submitted a staff report that reiterated the facts that “weighed into” Gutshall’s determination and noted the following “[a]dditional facts and conclusions” that had since “come to light”:

- The applicant has noted that the drug rehabilitation and counseling is a ministry, but the Board of Directors for this 501(c)3 does not include a clergy person.
- The Hope and Recovery website specifically lists medically supervised detoxification and clinical assessments conducted by medical professionals in the steps of their treatment plans.
- This type of use typically has multiple medical professionals seeing patients/clients at regularly scheduled intervals. Approval of the proposed land use under the previous conditional use approval would put no restrictions on the proposed operation on this site, and it could very well evolve to be a very intensive use from a traffic standpoint.

Appellants’ App. Vol. 2 at 41. The report further noted that “[t]he Medical Office land use category is only permitted within the commercial zoning districts ... and is prohibited within the R1 zoning district.” *Id.* at 40. The BZA staff member recommended denying Appellants’ appeal.

[6] Appellants presented no documentary evidence in support of their appeal. In response to questions from the BZA’s chairman, Appellants’ counsel stated,

Chapel Church is still a tenant of our building. And though it is not presently conducting its church services there, it plans to do so, at least in part. It has another church over on Walnut Street that it principally uses on Sunday. But our building is a 16,000-square-foot building that can house as many as 400 congregants at a time, so it’s a facility that Chapel Church wants to use.

Secondly, how it is partnering is that it has joined with Hope and Recovery and Miller Care Group, which is the medical provider, to conceive of and execute all this.

When you asked, “Is it going to manage the operation,” on a level we could say that directly, but we haven’t figured that much out yet. What we have figured out is that it is going to go down a path of spiritual and religious training in addition to simply drug detoxification and rehabilitation.

Appellee’s App. Vol. 2 at 30-31. Appellants’ counsel also remarked,

I do have to say we are running into the limit of the ability of the State and its police power to dictate our own religious practices. Now, when I say “our,” I’m using broadly that we are in this arrangement with Chapel Church, and this seems very, very definitely part of Chapel Church’s ministry to try to help those afflicted. And in partnership with us, they think that’s a vehicle to do so. And we think that this is something the State constitution permits us to do unfettered.

Id. at 33. At the conclusion of the hearing, the BZA denied Appellants’ appeal. In August 2022, the BZA issued findings of fact that basically mirror those contained in Gutshall’s letter and the BZA’s staff report.

[7] Appellants petitioned for judicial review of the BZA’s decision. In their petition, Appellants attacked the merits of the decision and also asserted that it contravened “the right to exercise religion and to conduct religious practices guaranteed by Article 1, Section 3 of the Indiana Constitution and by the First and Fourteenth Amendments to the United States Constitution.” Appellants’

App. Vol. 2. at 31. In March 2023, the trial court heard argument on the petition, during which Appellants’ counsel stated that it was “not our intent” to provide the proposed drug rehabilitation services “for free[.]” Tr. Vol. 2 at 26-27. In April 2023, the trial court issued an order affirming the BZA’s decision, concluding that it was not arbitrary and capricious and was supported by substantial evidence. The court further concluded that Appellants did not preserve their federal constitutional claims and did not have standing to assert any violations of Chapel Church’s constitutional rights. This appeal ensued.

Discussion and Decision

Section 1 – Appellants have failed to demonstrate that the BZA’s decision is invalid.

[8] Appellants argue that the trial court erred in affirming the BZA’s decision. We are bound by the same standard of review as the trial court. *City of Indianapolis v. H-Indy, LLC*, 166 N.E.3d 347, 356 (Ind. Ct. App. 2021). “Judicial review of zoning board decisions is governed by Indiana Code Chapter 36-7-4.” *Id.* “Neither the trial court nor this Court may ‘try the cause de novo or substitute its judgment for that of the board.’” *Id.* (quoting Ind. Code § 36-7-4-1611). “As such, neither the trial court nor this Court may reweigh the evidence or reassess the credibility of witnesses.” *Id.*

[9] That said, interpretation of a zoning ordinance is a question of law that we review de novo. *Cnty. of Lake v. Pahl*, 28 N.E.3d 1092, 1102-03 (Ind. Ct. App. 2015), *trans. denied*. “[W]e do not defer to agency decisions on legal questions.”

Noblesville, Ind. Bd. of Zoning App. v. FMG Indianapolis, LLC, 217 N.E.3d 510, 514 (Ind. 2023). “Interpretation of an ordinance is subject to the same rules that govern the construction of a state statute.” *Hall Drive Ins, Inc. v. City of Fort Wayne*, 773 N.E.2d 255, 257 (Ind. 2002). We give words their plain, ordinary, and usual meaning, unless a contrary purpose is shown by the ordinance itself. *Id.* The goal is to determine and effect legislative intent, and we “must give deference to such intent whenever possible.” *Id.* Thus, we must consider the goals of the ordinance and the reasons and policy underlying the ordinance’s enactment. *Id.* If the legislative intent is clear from the language of the ordinance, the language prevails and will be given effect. *Id.*

[10] Judicial relief from a zoning board’s decision shall be granted “only” if the court determines that a person seeking such relief

has been prejudiced by a zoning decision that is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial evidence.

Ind. Code § 36-7-4-1614(d). “A decision is arbitrary and capricious if it is patently unreasonable or made without consideration of the facts and in total disregard of the circumstances and lacks any basis which might lead a reasonable person to the same conclusion.” *H-Indy*, 166 N.E.3d at 356 (citation and quotation marks omitted). “The burden of demonstrating the invalidity of a zoning decision is on the party to the judicial review proceeding asserting invalidity.” Ind. Code § 36-7-4-1614(a).

[11] Essentially, Appellants argue that the BZA’s decision to deny their appeal from Cutshall’s determination is arbitrary and capricious because the BZA failed to consider “the spiritual guidance that [Appellants] considered an integral part of the drug rehabilitation ministry.” Appellants’ Br. at 17. But Appellants presented no concrete evidence that any spiritual component of the drug rehabilitation would actually occur on their property; such plans were nebulous and speculative at best.³ Moreover, it is undisputed that the building on Appellants’ property is not currently being used for public worship, and Chapel Church’s plans to resume that use were also vague and tenuous. The most concrete element of Appellants’ proposal was the “outpatient counseling and rehabilitation services” that would be performed by medical professionals, not by members of the clergy or religious counselors. Appellee’s App. Vol. 2 at 8, 9, 30; Tr. Vol. 2 at 26-27. Under the plain meaning of the UDO, such services

³ Appellants’ assertion that they “introduced substantive evidence about the religious component of their drug rehabilitation program” is simply not supported by the record. Appellants’ Br. at 19.

cannot be considered “educational, cultural, and social activities” that are “related” to “public worship,” which is no longer the property’s primary use. And even assuming that Chapel Church would ultimately resume using the building for public worship and that some spiritual component would eventually be incorporated into the counseling and rehabilitation services, we cannot agree with Appellants that such component would transform the fee-based medical counseling and rehabilitation into “educational” or “social activities” that are “related” to “public worship.” In sum, Appellants have failed to demonstrate that the BZA’s decision is invalid, so we affirm it.

Section 2 – Appellants do not have standing to assert any violations of Chapel Church’s constitutional religious rights.

[12] Appellants also challenge the trial court’s conclusion that they have no standing to assert any violations of Chapel Church’s constitutional religious rights. It is well settled that constitutional rights are personal to an individual, *Richardson v. Richardson*, 34 N.E.3d 696, 702 n.3 (Ind. Ct. App. 2015), and thus Appellants cannot claim the violation of Chapel Church’s rights on its behalf. Accordingly, we affirm on this issue as well.

[13] Affirmed.

Riley, J., and Mathias, J., concur.