

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

ENTRY ORDER

FEB 25 2010

SUPREME COURT DOCKET NO. 2009-282

FEBRUARY TERM, 2010

In re King Garage Construction Permit	}	APPEALED FROM:
	}	
	}	
	}	Environmental Court
	}	
	}	
	}	DOCKET NO. 202-9-08 Vtec
	}	
	}	Trial Judge: Thomas S. Durkin

In the above-entitled cause, the Clerk will enter:

Neighbors appeal the Environmental Court's decision approving applicant's request for a permit to construct a replacement garage on her residential property. We affirm.

Applicant applied for a zoning permit to construct a garage to replace her existing garage attached to a single-family residence in the City of Winooksi's Low Density Residential (R-1) District. The property, located at 70 Bernard Street, is a corner lot that abuts Bernard Street and Gail Street. Applicant's house does not sit exactly parallel to Bernard Street, but the front of the house sits at only a fifteen-degree angle to Bernard Street. The junction of Bernard Street and Gail Street creates an interior angle of about one-hundred degrees. Thus, the front of applicant's residence is plainly oriented toward Bernard Street. Winooksi's R-1 District has a minimum front-yard setback of twenty feet and a minimum side-yard setback of fifteen feet. Winooksi Zoning Ordinance, § 4.004. Applicant's proposed garage is, at its closest point, twenty-two feet from Bernard Street and fifteen feet, ten inches from Gail Street. The City's zoning administrator and Development Review Board approved a permit to construct the new garage, which was opposed by neighbors. Neighbors appealed to Environmental Court, which concluded that applicant's permit application satisfied all applicable provisions of the City's zoning ordinance, including the setback requirements.

The central issue in this case is which setback requirement applies to the portion of applicant's yard that abuts Gail Street. If it is the front-yard setback, the application violates the ordinance. If it is the side-yard setback, the application satisfies all setback requirements. The ordinance generally defines "setback" as "[t]he distance between the nearest portion of a building projection on a lot and the right-of-way of the street or property line." Winooksi Zoning Ordinance, § 2.044. The ordinance further defines "front yard" as the open space "between the nearest portion of a principal building in a lot and the front property line of the lot," and "side yard" as the open space "between the nearest portion of a principal building on a lot and the side property line of the lot." *Id.* § 2.052a-b. The ordinance does not define the terms "front property line" or "side property line." Pointing to a general provision of the ordinance, which provides that "[w]hen not inconsistent with the context, . . . words in the plural number include the singular number, [and] words in the singular number include the plural number," neighbors argue that the ordinance unambiguously allows multiple front yard property lines for a

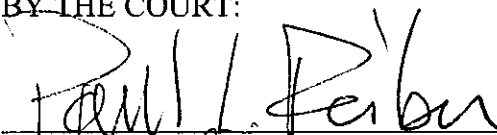
setback. Thus, according to neighbors, the proposed garage in this case fails to satisfy the front-yard setback with respect to Gail Street.

The Environmental Court rejected this argument, reasoning that the Winooski zoning ordinance does not provide clear notice that a corner lot owner's use of her property may be limited by the application of the front-yard setback requirement to open space abutting multiple right-of-ways. The court concluded that, in the absence of a specific provision subjecting corner lots to a front-yard setback with respect to more than one right-of-way, the court would construe the ordinance in favor of the applicant. Given that applicant's residence was oriented primarily toward Bernard Street, the court concluded that the front-yard setback applied exclusively to the yard between the proposed garage and Bernard Street.

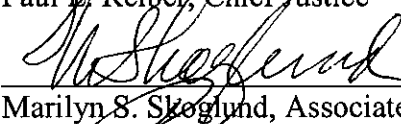
We find no fault with this reasoning. Despite applicant's arguments to the contrary, the ordinance in question does not unambiguously permit multiple front-yard setbacks for corner lots. To the contrary, the ordinance is silent on that point, even though, as neighbors concede, other city ordinances explicitly address that issue. The general provision upon which neighbors rely that allows the plural number to substitute for the singular number might allow the construction they favor, but decidedly does not create an unambiguous provision supporting their construction of the ordinance. Under these circumstances, the Environmental Court did not err in construing the ordinance favorably to the applicant. See In re Champlain College, 2009 VT 55, ¶¶ 14-15, 980 A.2d 273 (deferring to Environmental Court ruling that applied zoning ordinance's setback requirements in unaddressed situation so as not to be in derogation of property rights); In re Jenness, 2008 VT 117, ¶ 28, 185 Vt. 16 (concluding that Environmental Court's application of setback ordinance in favor of applicant was not erroneous, given that ordinance contained no specific provision on how to treat corner lots).

Affirmed.

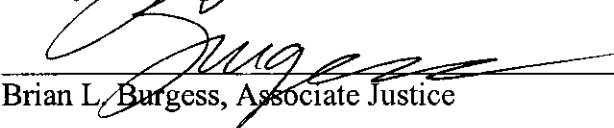
BY THE COURT:



Paul L. Reiber, Chief Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice