COURT OF APPEALS
DECISION
DATED AND FILED

March 7, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2016AP2119 **Cir. Ct. No. 2015CV1729**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

LYNN E. SCHULDT AND CHRISTINA L. BASS,

PLAINTIFFS-APPELLANTS,

V.

VILLAGE OF UNION GROVE AND VILLAGE OF UNION GROVE BOARD OF ZONING AND APPEALS,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Racine County: EUGENE A. GASIORKIEWICZ, Judge. *Affirmed*.

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

¶1 PER CURIAM. Lynn E. Schuldt and Christina L. Bass (the landowners)[1] appeal an order affirming a decision by the Village of Union Grove Board of Zoning and Appeals (the Board) that an addition built on the landowners' property failed to comply with a Village of Union Grove zoning ordinance. The landowners argue that the Board acted unreasonably in applying the ordinance to their corner-lot property. They further challenge the Board's composition as biased and statutorily insufficient. We reject the landowners' arguments and affirm.

¶2 This appeal concerns a zoning ordinance dispute regarding the construction of an addition to the landowners' house which is located on a corner lot between Twelfth Avenue and Cardinal Street. The subject addition is located on the east side of the residence in the yard that abuts Cardinal Street. Initially, the landowners halted construction of the addition after receiving a letter of noncompliance from the building inspector regarding the lack of proper permits and an asserted violation of the twenty-five-foot setback requirement for front yards in zone R-80.[2] The landowners asserted that the addition was in their side yard and, therefore, a six-foot setback was appropriate.

¶3 The Village Zoning Administrator reviewed the matter and determined that regardless of whether the Cardinal Street yard was considered a

[1] Schuldt is the recorded property owner; Bass purchased the property through an unrecorded land contract dated January 1, 2015. In conformity with the parties' briefs, we refer to Schuldt and Bass collectively as "the landowners."

[2] The landowners' property is located in the Village's R-80 district, a single-family residential district. VILLAGE OF UNION GROVE, WIS., CODE § 118-278(3), provides that setback requirements in the R-80 district are twenty-five feet for front yards, thirty feet for rear yards, and in general, six feet for side yards.

side yard or a front yard for purposes of VILLAGE OF UNION GROVE, WIS., CODE § 118-278, the addition violated VILLAGE OF UNION GROVE, WIS., CODE § 118-993, which provides: "Additions the street yard of existing structures shall not project beyond the average of the existing street yards on the abutting lots or parcels." Determining that there was one adjacent property to the south, on Cardinal Street, and that the subject addition projected farther than that property's setback, the administrator concluded that the addition did not comply with § 118-993.

¶4 The landowners appealed to the Board. The landowners took the position that every residence in the R-80 district had only one street yard, which was also its front yard. Asserting that their front yard was on Twelfth Avenue, the landowners urged the Board to deem the yard on Cardinal Street a "side yard" to which VILLAGE OF UNION GROVE, WIS., CODE § 118-993 should not apply.

¶5 The Board observed that "street yard" was not defined in the code, but considered other provisions including the definition of "front yard" in VILLAGE OF UNION GROVE, WIS., CODE § 118-1:

> *Front yard* means the minimum horizontal distance between the street line and the nearest point of a building or any projection thereof, excluding uncovered steps. Where the street line is an arc, the front yard shall be measured from the arc. In some sections of this Code, the front yard is also called a setback.

The Board also credited the building inspector's testimony that "street yard" and "front yard" were used interchangeably in the code. The Board concluded that, for purposes of VILLAGE OF UNION GROVE, WIS., CODE § 118-993, the landowners' property had two street yards, or, front yards. The Board found it persuasive that the code defined "front yard" by its relationship to and distance from a street, and

that nowhere in the code was it stated that a lot could have only one front yard or only one street yard.

¶6 The Board further explained that corner lots "have characteristics that are unique from lots that are not on a corner," with the latter having "one front yard, two side yards and one rear yard," such that VILLAGE OF UNION GROVE, WIS., CODE § 118-993 would limit the projection of an addition in a noncorner lot's street or front yard. The Board stated: "Interpreting Sec. 118-993 in regard to a corner lot requires one to view the addition from the perspective of the street yard where the addition is to be located." The Board added that because of a corner lot's features, "the width of the lot varies depending upon the perspective from which a street yard is viewed"—in this case, whether it is viewed from the perspective of the street yard abutting Cardinal Street or the street yard abutting Twelfth Avenue. The Board stated: "From both perspectives, the street yard extends the full width of the lot, which is entirely consistent with the definition of 'Yard' in the Code." Having determined that the yard on Cardinal Street was a "street yard" under § 118-993, the Board affirmed the administrator's decision that the addition violated the ordinance.

¶7 The Board considered but rejected the landowners' argument that VILLAGE OF UNION GROVE, WIS., CODE § 118-993 applied to only one of the property's street-fronting yards:

> The Property Owner's position is not consistent with the provisions of the Code. Furthermore, the Property owner is essentially arguing that Sec. 118-993 only applies to one yard of a corner lot that abuts a street, but does not apply to the other yard of that same corner lot that abuts a street. There is simply no basis for such a conclusion and it is unreasonable to so interpret Sec. 118-993. The text of the Sec. 118-993 obviously communicates a desire to regulate the impact of street yard additions on neighboring property owners. To argue, as the Property Owner does, that the

> ordinance only requires consideration of abutting setbacks on neighboring properties on one street yard of a corner lot, but not on the other street yard, is not a reasonable interpretation and totally undercuts the rationale of Sec. 118-993 regarding the neighbor(s) whose setbacks would not be considered.

¶8 The landowners petitioned the circuit court for a writ of certiorari. The circuit court affirmed the Board's decision, observing that the Board "reviewed the various interpretations in light of the overall purpose of the zoning ordinances in the Village." It agreed with the Board's analysis, stating: "It would be an absurd reading of the ordinance to apply a setback requirement to one street-fronted portion of the property and not the other." The landowners appeal.

¶9 On certiorari review, this court reviews the decision of the Board, not the circuit court. ***Hillis v. Village of Fox Point Bd. of Appeals***, 2005 WI App 106, ¶6, 281 Wis. 2d 147, 699 N.W.2d 636. Our review is limited to: (1) whether the Board kept within its jurisdiction; (2) whether the Board proceeded on a correct theory of law; (3) whether the Board's action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the Board might reasonably make the determination in question, based on the evidence. ***State v. Waushara Cty. Bd. of Adjustment***, 2004 WI 56, ¶12, 271 Wis. 2d 547, 679 N.W.2d 514.

¶10 We conclude that the Board's decision is reasonable and based on the evidence. The plain language of VILLAGE OF UNION GROVE, WIS., CODE § 118-993 refers to a "street yard." The reasonable inference is that the ordinance applies to all street-fronting yards. Nothing in the code states that a property can have only one street yard or only one front yard. The landowners provide no rational basis for limiting the ordinance's application to one street-fronting side over the other, and point to no code provision exempting any street-fronting yard

from § 118-993. Though we owe no deference to the circuit court's decision, we agree with its reasoning that the landowners' interpretation "would result in arbitrary application of the ordinance setback requirements and discriminatory application of the ordinance." The Board's decision represented a considered exercise of its judgment and cannot be characterized as arbitrary or capricious.

¶11 The landowners maintain that the plain language of VILLAGE OF UNION GROVE, WIS., CODE § 118-993 requires a different result because it refers to "*the* street yard," a singular definite object, and not to "*a* street yard" (an indefinite article), or to "street *yards*" (a plural object).[3] We disagree. The Village's zoning code provides that for purposes of statutory construction, "the singular number includes the plural number, and the plural number includes the singular number." VILLAGE OF UNION GROVE, WIS., CODE 118-1(a). Further, as the Board acknowledged, corner lots are unique; standard noncorner lots do, in fact, have a single front or street yard. Given the language in the code providing that the singular includes the plural, and in the absence of any language either prohibiting a property from having two street yards or exempting any street-fronting yard from § 118-993, we reject the landowners' argument.[4]

¶12 Finally, the landowners contend that the Board entered its decision in violation of its own procedures or jurisdiction. First, they assert that the Board

[3] The landowners point to other instances in the code using a singular, definite article to refer to the terms "front yard," "rear yard," and "street yard," and to VILLAGE OF UNION GROVE, WIS., CODE §118-278(3), which refers to "side yards" in the plural.

[4] To the extent we have not addressed an argument made by the appellants, it has been considered and rejected. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance each and every tune played on an appeal.").

as constituted was invalid because it consisted of four members whereas both a Village ordinance, VILLAGE OF UNION GROVE, WIS., CODE § 118-96, and WIS. STAT. § 62.23(7)(e)2. (2015-16),[5] provide that the board of appeals "shall consist of 5 members." We agree with the Board that the landowners forfeited any such challenge by appearing before and failing to assert any objection to the four-member Board. *See* ***State v. Outagamie Cty. Bd. of Adjustment***, 2001 WI 78, ¶55, 244 Wis. 2d 613, 628 N.W.2d 376 (the failure to raise an issue before the administrative body constitutes a waiver of the right to raise it before a reviewing court). Additionally, as observed by the circuit court, § 62.23(7)(e)3m., provides that if a quorum is present, the Board may take action by a majority of the Board members present. A "quorum" consists of a majority of the Board's body. *See Quorum*, BLACK'S LAW DICTIONARY (10th ed. 2014); VILLAGE OF UNION GROVE, WIS., CODE § 2-57. Because four members were present, a quorum existed to exercise the Board's powers. Further, the landowners have failed to develop a reasoned argument supported by legal authority that a decision made by four members of the Board is voidable at the option of the property owner. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶13 Second, the landowners assert that the Board's decision carried an impermissible risk of bias because the administrator who made the initial determination underlying the appeal was also the Village president and, as such, had the power to initiate the removal of Board members for cause. We reject this argument as undeveloped. The landowners present no evidence that the Board was biased. To the extent the landowners purport to rely on legal principles such

[5] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

as the common law doctrine of "incompatibility," their brief fails to develop coherent arguments that apply relevant legal authority to the facts of record, and instead relies on generic, conclusory assertions. *See* ***id.***

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.