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39 N.Y.2d 275
Court of Appeals of New York.

In the Matter of Charles C. **ALLEN** et al., Respondents,
v.
Nancy **ADAMI** et al., Constituting the Board of Zoning Appeals of the Village of Croton-on-Hudson, Appellants, Alan Seide et al., Intervenors-Appellants.

April 8, **1976**.

Owners of adjoining substandard lot, which was in separate ownership on date of enactment of zoning ordinance authorizing special exception, petitioned for judgment annulling a determination of the zoning board of appeals denying application for special exception. The Supreme Court, Special Term, Westchester County, Anthony J. Cerrato, J., entered judgment dismissing the petition and the lot owners appealed. The Supreme Court, Appellate Division, Second Judicial Department, 47 A.D.2d 922, 367 **N.Y.S.2d** 54, reversed and appeal was taken. The Court of Appeals, Jasen, J., held that in absence of unambiguous requirement in ordinance that the separate ownership of adjacent substandard lot be continued up to date of application for special exception such requirement would not be read into ordinance, and owners who had held lot, adjacent to their improved lot, for a number of years were entitled to the special exception.

Order of Appellate Division affirmed.

Breitel, C.J., filed a dissenting opinion in which Jones and Fuchsberg, JJ., concur.

West Headnotes (4)

[1] **Zoning and Planning**
Strict or liberal construction in general

Zoning regulations are in derogation of common law and must be strictly construed against municipality of which has enacted and seeks to enforce them.

26 Cases that cite this headnote

[2] **Zoning and Planning**
Ambiguity

Any ambiguity in language used in zoning regulations must be resolved in favor of property owner.

21 Cases that cite this headnote

[3] **Zoning and Planning**
Right to variance or exception, and discretion

Since ordinance did not clearly provide that the separate ownership of substandard parcels at time of enactment of ordinance permitting exception must continue thereafter to qualify for the exception, owners of adjoining substandard unimproved lot, which was in separate ownership at time of enactment of ordinance but which had been held by owners together with adjoining improved lot for a number of years prior to application, were entitled to specific exception.

6 Cases that cite this headnote

[4] **Zoning and Planning**
Area, frontage, and yard requirements

Merger is not effected merely because adjoining parcels come into common ownership.

3 Cases that cite this headnote

Attorneys and Law Firms

***566 **891 *275** Seymour M. Waldman and Louis Waldman, New York City, for appellants.

*276 Norman Sheer, White Plains, for intervenors-appellants.

William Cohen, New York City, for respondents.

Opinion

JASEN, Judge.

Petitioners Charles and Lucretta **Allen** are the owners, as tenants by the entirety, of two contiguous parcels of land in a residential area of the Village of Croton-on-Hudson. Lot 8 was purchased from Morton Weinerman on September 12, 1962, and Lot 8A from Nathan Frankel on *277 October 29, 1962. Lot 8 is improved with a single-family residence. Lot 8A, an unimproved parcel, is substandard under the current zoning ordinance which was enacted by village board of trustees on December 14, 1961. Hoping to develop this parcel themselves or to sell it for development, petitioners, in September, 1973, applied to the Zoning Board of Appeals for a special exception pursuant to section 5.1.7 of the ordinance. That section, as relevant here, provides as follows: 'A lot owned individually and separately, and separated from any adjoining tracts of land on January 22, 1962, which has a total area or width less than prescribed herein may be used for a one-family residence in RA Districts and a two-family residence in RB Districts, provided such a lot shall be developed in conformity with all applicable district regulations, other than the minimum lot area and lot width requirements, and with the minimum side yards set forth below'. Petitioners take the position that, having shown that Lot 8A was owned individually and separately on January 22, 1962, they were entitled to the requested special exception. The Board of Zoning Appeals and the intervenors, while conceding separate and individual ownership of Lot 8A on January 22, 1962, contend that section 5.1.7 also requires that the lot be owned separately and individually at all times subsequent to that **892 date, up to and including the date application for a special exception is made.

[1] [2] [3] The ordinance before us does not clearly provide that common ownership arising subsequent to January 22, 1962, would effect a merger rendering the exception permitted by section 5.1.7 inapplicable to such commonly held adjacent parcels. Had the village intended to impose such a ***567** condition on the exception, it could easily have done so. (Matter of Soros v. Board of Appeals of Vil. of Southampton, 50 Misc.2d 205, 208, 269 **N.Y.S.2d** 796, 799, affd. without opn. 27 A.D.2d 705, **277 N.Y.S.2d** 821.) Since zoning regulations are in derogation of the common law, they must be strictly construed against the municipality which has enacted and seeks to enforce them. (Thomson Ind. v. Incorporated Vil. of Port Washington North, 27 **N.Y.2d** 537, 539, 313 **N.Y.S.2d** 117, 118, 261 N.E.2d 260; Matter of 440 East 102nd St. Corp. v. Murdock, 285 N.Y. 298, 304, 34 N.E.2d 329, 331.) Any ambiguity in the language used in such regulations must be resolved in favor of the property owner. (Matter of Turiano v. Gilchrist, 8 A.D.2d 953, 954, 190 **N.Y.S.2d** 754, 756.) Therefore, since this ordinance does not clearly provide that adjacent substandard parcels must continue to be separately owned to qualify for the exception, we *278 hold that the petitioners were entitled to the special exception upon a showing that Lot 8A was owned individually and separately on January 22, 1962.

[4] A contrary holding could lead to a rule that a substandard parcel merges into an adjoining parcel when both come into common ownership unless the ordinance creating the special exception specifically provides to the contrary. Neither the case law nor sound public policy permits such a rule. A merger is not effected merely because adjoining parcels come into common ownership. (Hemlock Development Corp. v. McGuire, 35 A.D.2d 567, 313 **N.Y.S.2d** 608.) The contrary view would undermine the many cases which have held there to be no merger in the absence of a specific merger clause. (E.g., Matter of Soros v. Board of Appeals of Vil. of Southampton, 50 Misc.2d 205, 208, 269 **N.Y.S.2d** 796, 799, affd. without opn. 27 A.D.2d 705, **277 N.Y.S.2d** 821, Supra; Matter of Feldman v. Commerdinger, 26 Misc.2d 221, 222, 213 **N.Y.S.2d** 484, 485; Matter of Fina Homes v. Beckel, 24 Misc.2d 823, 204 **N.Y.S.2d** 69.) Indeed, were that the rule, there would be no need for the specific merger clauses found in such cases as Matter of Vollet v. Schoepflin, 28 A.D.2d 706, 280 **N.Y.S.2d** 950; Matter of Faranda v. Schoepflin, 21 A.D.2d 801, 250 **N.Y.S.2d** 928, and Matter of Creamer v. Young, 16 Misc.2d 676, 184 **N.Y.S.2d** 10.

Accordingly, the order of the Appellate Division should be affirmed.

BREITEL, Chief Judge (dissenting).

The majority relies upon cases invoking ordinances with

language quite different from that involved in this case. With the analysis of those cases I have no disagreement.

Section 5.1.7 of the Zoning Ordinance of the Village of Croton-on-Hudson in pertinent part provides: 'A lot owned individually and separately, and separated from any adjoining tracts of land on January 22, 1962, which has a total area or width less than prescribed herein may be used for a one-family residence in RA Districts and a two-family residence in RB Districts'.

Read in accordance with its syntactical construction, the ordinance prescribes two standards for an exception: (1) the lot must be owned individually and separately, and (2) the lot must have been separated from any adjoining tracts on January 22, 1962. True, where a contrary intent or an absurd result would otherwise follow, strict rules of grammar and punctuation will be disregarded (see McKinney's Cons.Laws of N.Y., Book 1, Statutes, ss 251, 253). The ordinance should, ***279** however, be read as it is written and the court should not ****893** 'rearrange the wording' of the ordinance (see **Allen** v. Minskoff, 38 **N.Y.2d** 506, 511, 381 **N.Y.S.2d** 454, 344 N.E.2d 386). The use of the comma before the conjunction 'and' indicates that the first clause imposes a requirement separate and independent from that imposed by the second.

The proper syntactical rendering of the ordinance makes sense. Cases in which courts have reconstructed the syntax or punctuation of a statute did so because the *****568** statutory language was deficient in making its meaning clear (see, e.g., Matter of Brooklyn El. R.R. Co., 125 N.Y. 434, 444—445, 26 N.E. 474, 476, where to make legislative sense a comma was 'removed'). That is not the situation here.

GABRIELLI, WACHTLER and COOKE, JJ., concur with JASEN, J.

BREITEL, C.J., dissents and votes to reverse in an opinion in which JONES and FUCHSBERG, JJ., concur.

Order affirmed, with costs.

All Citations

39 N.Y.2d 275, 347 N.E.2d 890, 383 N.Y.S.2d 565

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