

IN THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR THE STATE OF FLORIDA  
GENERAL CIVIL DIVISION

N BLVD TOWNHOMES LLC,  
a Florida limited liability company,

Petitioner,

CASE NO.: 22-CA-2260

vs.

DIVISION: K

CITY OF TAMPA, FLORIDA  
CITY COUNCIL,

Respondent.

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ORDER DENYING PETITION FOR WRIT OF CERTIORARI

This case is before the court to review Tampa City Council's denial of Petitioner's site plan application for rezoning and related, but separate, request to vacate the alley lying adjacent to the property. This court reviews City Council's decision to determine whether Petitioner was afforded due process, whether the decision is supported by competent, substantial evidence, and whether the decision comports with the essential requirements of law.<sup>1</sup> Petitioner seeks modification to the current zoning to construct twenty-one<sup>2</sup> single-family attached homes. The proposed plans are contingent on the vacation of the adjacent alley. In addressing Petitioner's application, City Council noted that a waiver of the building code requirement that front doors face public rights-of-way was not requested in Petitioner's rezoning application. After Petitioner rejected City Council's offer of a continuance to address lapses in the application, Petitioner was asked to provide justification to support the added waiver. City Council determined that Petitioner's vague reference to traffic circulation was insufficient support for the waiver and did not persuade the City to vacate its alley to support the project. Because the City Council had a right to, and did, retain control of the alley, and the proposed rezoning was contingent on the City Council vacating the alley, it also denied Petitioner's request to rezone the property. This court determines that Petitioner was afforded due process, the decision comports with the essential requirements of law, and that competent, substantial evidence supports City Council's decision. Therefore, the petition must be denied.

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<sup>1</sup> See *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

<sup>2</sup> Petitioner reduced the number of units from 21 to 20 prior to the public hearing.

## SUMMARY OF THE ISSUES

Petitioner contends City Council's denial of its request to vacate the alley and rezoning application violates all three criteria that a decision is required to meet to survive review in certiorari. Petitioner claims that City Council's denial of the rezoning site plan was not supported by competent, substantial evidence because the rezoning plan met all development and comprehensive plan criteria. Petitioner contends that the denial of the site plan application, based upon City Council's determination that Petitioner failed to meet its burden of proof that the development is consistent with city code and the comprehensive plan, departs from the essential requirements of law. Additionally, Petitioner argues that City Council's conclusion that Petitioner failed to request, much less justify, the two necessary waivers is unsupported by competent, substantial evidence. Furthermore, Petitioner claims that it was not afforded a meaningful opportunity to be heard on the second waiver request, violating its due process.

## THE FACTS AND CASE

On July 26, 2021 Petitioner submitted an application for rezoning the 0.99-acre property located at 622 and 642 W. Dr. Martin Luther King, Jr. Blvd/3917, 3915, 3912 N. Boulevard from Planned Development to a PD comprised of twenty three-story residential townhomes. The proposal is dependent on an additional request to vacate the adjacent alley. Petitioner made several amendments to come into compliance with the city code and comprehensive plan. A week before the hearing, city staff completed a "Rezoning Staff Report," finding the rezoning application consistent with local land development regulations, but identifying a required code waiver in order to decrease the required setback from 60 feet to 45 feet.<sup>3</sup> An additional waiver requirement was added to the "Rezoning Staff Report" before the public hearing, according to City Land Development Coordinator Zain Husain. A second waiver was necessary because the site plans have six townhomes facing an alley instead of a street right-of-way, as required by code.<sup>4</sup>

On February 10, 2022, City Council heard Petitioner's two associated applications. City Council heard from City Land Development Coordinator, Zain Husain; President of the Tampa Heights Civic Association, Brian Seale; and several residents. Attorney Stephen Thompson represented the Petitioner. Upon discovering that the second waiver was not initially included in the "Rezoning Staff Report" and recognizing that Petitioner was unaware of the required second waiver prior to the hearing, City Councilmember John Dingfelder reminded the Petitioner that it had the burden to prove its case and offered a continuance to protect the Petitioner's due process rights.<sup>5</sup> Petitioner, instead, proceeded on the issue of justification for the waiver. Petitioner thereby waived the opportunity for a continuance. City Council determined that Petitioner's justification

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<sup>3</sup> See city code §27-160.

<sup>4</sup> City code §27-282.9(c)(1).

<sup>5</sup> See page 182 of Appendix to Initial Brief

was inadequate and proceeded to deny Petitioner's request for the waiver. It, thereafter, also denied the request to vacate the alley on the basis that the general public interest is not served by the vacating. Only after the case was closed did Petitioner's counsel request a continuance. That request was denied.

City Council then proceeded to the application for rezoning. Councilmember John Dingfelder moved to deny the application because the applicant failed to provide competent and substantial evidence that the development, as shown on the site plan, is consistent with the comprehensive plan and city code, and failed to meet its burden of proof with respect to the requested waivers.<sup>6</sup> Petitioner failed to provide evidence that the proposed design is unique such that a code waiver allowing six of the townhomes to face the alley is justified.<sup>7</sup> His motion to deny the application was seconded by Councilmember Miranda and passed unanimously.

Petitioner asks this court to reverse the City Council's denial of the site plan application and request to vacate the alley, and approve both applications. In this "first tier" certiorari proceeding this court reviews the record to determine: (1) whether procedural due process was afforded; (2) whether the "essential requirements of the law" were observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence.<sup>8</sup> Petitioner contends the City Council violated all three criteria. As discussed below, the court disagrees.

## DUE PROCESS

The due process required in quasi-judicial proceedings is not the same as that of a judicial hearing.<sup>9</sup> Rather, it depends on the character of the interest and the nature of the proceeding involved.<sup>10</sup> The "core" of due process is the right to notice and an opportunity to be heard.<sup>11</sup> Here, no one disputes that notice to the City Council hearing was adequate. Petitioner argues instead that it was unaware of the second waiver requirement of city code § 27-282.9 until the hearing and that City Council's denial of a continuance violated Petitioner's right to a meaningful opportunity to be heard on that issue.

The court is unpersuaded by Petitioner's argument because the transcript clearly shows that Councilmember John Dingfelder offered the Petitioner a continuance in order to better prepare to justify the waiver request.<sup>12</sup> The councilmember specifically expressed due process concerns. Counsel for the Petitioner waived the continuance, choosing instead to proceed with testimony

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<sup>6</sup> See page 201 of Appendix to Initial Brief

<sup>7</sup> See city code §§27-139(4) and 27-282.9(c)(1).

<sup>8</sup> *Vaillant*, 419 So. 2d at 626.

<sup>9</sup> *Hadley v. Fla. Dep't of Admin.*, 411 So. 2d 184, 187 (Fla. 1982).

<sup>10</sup> *Id.*

<sup>11</sup> *LaChance v. Erickson*, 522 U.S. 262, 118 S.Ct. 753, 139 L.Ed.2d 695 (1998).

<sup>12</sup> See page 201 of Appendix to Initial Brief

from Petitioner's architect. Only after City Council voted to deny the request to vacate the alley did Petitioner request a continuance. By that time, the matter was closed. The court finds that Petitioner was provided a meaningful opportunity to be heard on all issues and that it waived its opportunity for a continuance of its own accord.

## ESSENTIAL REQUIREMENTS OF LAW

Petitioner further contends that the denial of the site plan application, based upon City Council's conclusion that Petitioner failed to meet its burden of proof that the development is consistent with city code and the comprehensive plan, departs from the essential requirements of law. Petitioner contends "denial of the Application based on the request for waivers which are not at all related to the primary purpose of the Application cannot be the basis for the denial of the requested rezoning."<sup>13</sup> Petitioner is wrong. Rezoning applications must be consistent with both the comprehensive plan and city code.<sup>14</sup> Mr. Hussain made it clear that two waivers were required in order to comply with city code, and the "Rezoning Staff Report" was amended a week prior to the public hearing to reflect both required waivers. The court finds that City Council correctly applied city code §§§§ 27-136(6), 27-139, 27-160, and 27-282.9 in reaching its decisions. Accordingly, there is no departure from the essential requirements of law.

## COMPETENT, SUBSTANTIAL EVIDENCE

Competent substantial evidence is evidence that "a reasonable mind would accept as adequate to support a conclusion."<sup>15</sup> The court must uphold a local government's quasi-judicial decision unless there is *no* competent evidence to support its decision.<sup>16</sup> The court must not focus on whether there is substantial, competent evidence to oppose the decision reached by the agency, but rather whether the local government's decision is supported by competent substantial evidence.<sup>17</sup>

The court finds that Petitioner's argument that the City Planner's determination that the rezoning application was consistent with the city's comprehensive plan is, in and of itself, competent, substantial evidence that the City Commission's denial was erroneous, is without merit. Staff's determination that the application was consistent with the comprehensive plan is not binding or determinative of whether the rezoning application will be granted. Further, applications

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<sup>13</sup> Page 9 of Plaintiff's Petition for Writ of Certiorari.

<sup>14</sup> See *Board of County Comm'r's of Brevard County v. Snyder*, 627 So.2d 469, 476 (Fla.1993); *Sarasota Cnty. v. BDR Invs., L.L.C.*, 867 So. 2d 605, 607 (Fla. 2d DCA 2004).

<sup>15</sup> *Lee County v. Sunbelt Equities*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993).

<sup>16</sup> *Haines City Cnty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

<sup>17</sup> *Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Comm'r's*, 794 So. 2d 1270, 1275 (Fla. 2001).

for rezoning must comply with both the city's comprehensive plan *and* city code.<sup>18</sup> Without a waiver of city code § 27-282.9, the site plans are not in compliance with city code.

Upon review of the record, the court finds that City Council's decisions to deny both applications were supported by competent substantial evidence. It is undisputed that the proposed site plan has six homes facing the adjacent alleyway, which violates city code § 27-282.9. It is Petitioner's burden to show that its application is consistent with city code and the Tampa comprehensive plan, and to properly request any necessary waivers. City Council was well in its own discretion to deny Petitioner's request for waiver, based on the Petitioner's failure to demonstrate compliance with the criteria listed in city code § 27-139(4).<sup>19</sup> Petitioner had its architect speak regarding the site plans, and, as the fact finders, it was City Council's role, not this court's, to weigh the facts and determine compliance with city code § 27-139. Here, City Council denied Petitioner's request for a waiver based on Petitioner's own failure to adequately justify it. The court finds that the site plans provided, along with the weak justification for the waiver, sufficiently supports City Council's decisions to deny the request to vacate the alley and application for rezoning. It is undisputed that the Petitioner's site plans depended on use of the alleyway.

## CONCLUSION

There being no legal basis to disturb the County's decision, the petition for writ of certiorari is **DENIED** on the date imprinted with the Judge's signature.

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CAROLINE TESCHE ARKIN  
CIRCUIT JUDGE

*Electronic copies provided through JAWS*

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<sup>18</sup> See *Board of County Comm'r's of Brevard County v. Snyder*, 627 So.2d 469, 476 (Fla.1993); *Sarasota Cnty. v. BDR Invs., L.L.C.*, 867 So. 2d 605, 607 (Fla. 2d DCA 2004); *Lee County*, 619 So. 2d 996 at 1003.

<sup>19</sup> City code § 27-139 establishes that “

waiver.”