

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

ATLANTIC CIRCLE, LLC,

Case No.: 20-CA-48-P

Petitioner,

vs.

MONROE COUNTY PLANNING
COMMISSION and RANDOLPH WALL
and NANCY WALL,

Respondents.

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ORDER DENYING AMENDED PETITION FOR WRIT OF CERTIORARI

THIS CAUSE comes before the Court upon the Petitioner's Amended Petition for Writ of Certiorari (the "Petition"), challenging Monroe County, Florida Planning Commission Resolution No. P58-19 which approved a setback variance. The Court, having considered the Amended Petition, Monroe County's Response Brief, the Petitioner's Reply, the record, pertinent legal authority, and being otherwise fully advised in the premises, finds and orders as follows:

I. Factual and Procedural Background

On March 6, 2019, Randolph Wall submitted a variance application seeking a variance of five (5) feet from the required 25-foot primary front

yard setback and ten (10) feet from the required 20-foot rear yard setback to build a single-family residence. He requested the variance because his lot is triangular, resulting in a small and atypical buildable area under the standard setback requirements.

On September 23, 2019, the Planning Director determined that the subject application complied with the requirements and standards of the Monroe County Land Development Code (“LDC”). The Planning Director sent notice of the proposed approval to owners of real property located within six hundred (600) feet of the subject property, in accordance with LDC Section 102-186(i). Pursuant to this notice, the Planning Department received several written requests that the subject application be scheduled for a public hearing.

On December 18, 2019, the Planning Commission considered the variance application at a public hearing. The staff report submitted to the Planning Commission concluded that the application was in compliance with the LDCs and recommended approval of the variance. The Planning Commission took sworn testimony from Randolph Wall and other members of the general public. Petitioner, who owns property behind and adjacent to the subject lot, was represented by counsel who provided statements in opposition to the variance application on behalf of the Petitioner. At the conclusion of the hearing, the Planning Commission unanimously approved the setback variance. On January 9, 2020, the Planning Commission codified its decision approving the variance with conditions in Resolution

No. P58-19. This Petition to quash Planning Commission Resolution No. P58-19 followed.

II. Standard of Review

First-tier certiorari review is limited to reviewing whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

III. Discussion

The standards for granting a variance are found in the Monroe County Land Development Code. Specifically, LDC Section 102-187(d) states:

Standards. The Planning Commission has the authority to grant a variance to the standards described in (b)(1) through (6), with or without conditions, if and only if the applicant demonstrates that all of the following standards are met:

- (1) The applicant shall demonstrate a showing of good and sufficient cause;
- (2) Failure to grant the variance would result in exceptional hardship to the applicant;
- (3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
- (4) Property has unique or peculiar circumstances;
- (5) Granting the variance will not give the applicant any special privilege denied to another property owner in the immediate vicinity;
- (6) Granting the variance is not based on disabilities, handicaps or health of the applicant or members of his family;
- (7) Granting the variance is not based on the domestic difficulties of the applicant or his family; and
- (8) The variance is the minimum necessary to provide relief to the applicant.

In this case, the Planning Department staff report found the variance application to be in compliance with all eight of these standards. After reviewing the staff report, the variance application, and hearing from the public, the Planning Commission concluded that the applicant demonstrated that all the required standards set forth in the LDC had been met and it approved the variance with conditions in Resolution P58-19. Petitioners argue that Resolution P58-19 is not supported by substantial competent evidence and that the Planning Commission misapplied LDC 102-187(d) which is a departure from the essential requirements of law.

A. Competent Substantial Evidence

“Competent substantial evidence is tantamount to legally sufficient evidence.” *School Board of Hillsborough County v. Tenney*, 210 So. 3d 130, 134 (Fla. 2d DCA 2016) (internal citation and quotation omitted). Thus, “[a] circuit court’s review of an agency decision for competent substantial evidence is limited to determining whether the evidence before the agency was legally sufficient to support the agency’s decision.” *Id.* The circuit court, upon this review, “may not reweigh the evidence to determine whether the agency made ‘the ‘best’ decision or the ‘right’ decision or even a ‘wise’ decision.’” *Id.* (quoting *Dusseau v. Metro. Dade Cty. Bd. of Cty. Comm’rs*, 794 So. 2d 1270, 1276 (Fla. 2001)).

Petitioner contends that the record does not contain legally sufficient evidence to support a finding that the applicant satisfied each of the eight standards required by LDC Section 102-187(d), and thus, Resolution P58-19

is not supported by substantial competent evidence. The Court disagrees. In this case, the evidence presented to the Planning Commission consists of the variance application, the site plan, boundary surveys, the planning department's staff report, the oral presentations, and public comments. The variance application states grounds supporting each standard. The staff report discussed each standard, ultimately concluding that each standard had been met. This evidence, along with the testimony provided at the public hearing provides competent, substantial evidence supporting the Planning Commission's decision to approve the variance and to adopt Resolution P58-19. So long as there is competent substantial evidence presented to the Planning Commission to supports its ruling, there is no requirement that the Planning Commission make detailed findings of fact as to each standard. *Board of County Com'rs of Brevard County v. Snyder*, 627 So. 2d 469, 476 (Fla. 1993).

B. Essential Requirements of the Law

"A ruling constitutes a departure from the essential requirements of law when it amounts to a violation of a clearly established principle of law resulting in a miscarriage of justice." *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 199 (Fla. 2003) (internal quotation and citation omitted). Thus, a circuit court reviewing an agency action looks to whether the agency "applied the correct law," which is synonymous with "observing the essential requirements of law." *Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

Petitioner argues that the Planning Commission departed from the essential requirements of law when it failed to consider or discuss how all eight factors in LDC 102-187(d) were established. LDC Section 102-187(d) requires the applicant to demonstrate that all eight variance standards are met; it does not impose a requirement on the Planning Commission to explicitly discuss how each factor applies to the case at bar at the hearing or in its written decision.

Petitioner claims that the Planning Commission departed from the essential requirements of the law by failing to consider LDC 102-187(d)(3) and (8). However, as previously noted, the record provides competent substantial evidence supporting each of the eight standards, and the Planning Commission's reasoning for granting the variance is implicit from the record. Resolution P58-19 repeats the standards and states that based on all the evidence before it, that "[t]he applicant has demonstrated that all of the required standards set forth in Section 102-187(d) have been met." The Planning Commission applied the correct law in finding each standard in LDC 102-187(d), including standards (3) and (8), to be established in this case.

At the heart of this case is whether the Planning Commission departed from the essential requirements of law by finding that the failure to grant the variance would result in exceptional hardship to the applicant (Standard (2)). LDC Section 101-1 defines "exceptional hardship" as "a burden on a property owner that substantially differs in kind or magnitude from the

burden imposed on other similarly situated property owners. Financial difficulty/hardship does not qualify as exceptional hardship.” Petitioner claims that any hardship in this case is a self-created, financial hardship that is precluded from the definition of exceptional hardship. *See Clarke v. Morgan*, 327 So. 2d 769, 770 (Fla. 1975) (In seeking a variance on the grounds of hardship, a property owner cannot assert the benefit of a self-created hardship.)

“The necessity of proving unnecessary hardship in order to obtain a variance is well settled in Florida.” *Thompson v. Planning Com’n of City of Jacksonville*, 464 So. 2d 1231, 1237 (Fla. 1st DCA 1985). The Court notes that variances are generally hard to come by and even harder to hold on to in the appellate process. However, the present case is analogous to *City of Coral Gables v. Geary*¹, 383 So. 2d 1127 (Fla. 3d DCA 1980), where the court upheld the granting of setback variances based upon the finding that the unusual triangular shape of the property constituted a hardship, because it was virtually impossible to develop the property in accordance with existing regulations. *Id.* at 1128.

In *Geary*, the applicant purchased a piece of property with full knowledge of its irregular triangle shape. *Id.* The circuit court required the city to grant setback variances and wall height limitations and the city

¹ Petitioner contends that *Geary* “is a departure from Florida law” (Reply at 9). However, *Geary* is a decision from the Third District Court of Appeal which has not been overruled, and the decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by the Florida Supreme Court. *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992).

appealed. The Third District Court of Appeal affirmed the decision of the circuit court and held that the alleged hardship, the fact that the unusual triangular shape of property rendered it simply and practicably impossible for it to be developed in accordance with the existing regulations, was not self-created. *Id.* The court stated that it is “well recognized that the irregular shape or other peculiar physical characteristic of a particular parcel constitutes a classic ‘hardship’ unique to an individual owner which justifies, and in some cases requires the granting of a variance.” *Id.*

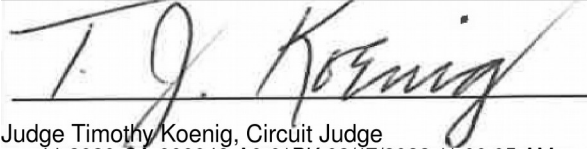
In the present case, as in *Geary*, the applicant sought a variance for a hardship based on the irregular shape of his property. At the public hearing, Petitioner’s counsel argued that it is not an exceptional hardship to have to build a different type of design due to the shape of the property. (Tr. 20-21). Commissioner Scarpelli noted, “the triangular shape that’s left, without the variances, absolutely can’t build.” (Tr.21). Without the variance, the Walls, like *Geary*, could not make reasonable use of their property which constitutes an exceptional hardship. Therefore, the Planning Commission did not depart from the essential requirements of law by finding that LDC 102-187(d)(2) had been established.

IV. Conclusion

The Planning Commission applied the correct law in applying all the eight (8) standards set forth in LDC Section 102-187 and each standard was supported by competent substantial evidence. Therefore, Petitioner’s Petition for Writ of Certiorari is hereby **DENIED**.

DONE AND ORDERED at Key West, Monroe County, Florida this Thursday, February 17, 2022

44-2020-CA-000048-A0-01PK 02/17/2022 11:00:05 AM



Judge Timothy Koenig, Circuit Judge
44-2020-CA-000048-A0-01PK 02/17/2022 11:00:05 AM

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