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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA
APPELLATE DIVISION

RICHARD CRUSCO, ET AL,
Petitioner,

APPEAL NO.: CACE22-003094
ADMIN.HEARING:
RE: February 1, 2022,
Development Order regarding
1174-1185 Hillsboro Mile

v.

TOWN OF HILLSBORO BEACH, ET AL,
Respondent.

Dated: July 20, 2023.

Petition for Writ of Certiorari from Petitioners, Richard Crusco, Charles Doherty
and Frank J. Kolb Jr.

Ralf Brooks, Cape Coral, for Petitioners.

Martin J. Alexander, Miami and Jeffery Scott Bass, Shubin & Bass, Miami and
Donald J. Doody, Hillsboro Beach, for Respondents.

FINAL ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

PER CURIAM.

This cause, comes before the Court for consideration on Petitioners', Richard Crusco, Charles Doherty and Frank J. Kolb Jr's "Petition for Writ of Certiorari," filed on March 1 , 2022. Having carefully considered the Petition on its own merits separate from our April 21, 2023, Order in a related case, the Appendixes, and the applicable law, being otherwise duly advised, the Petition for Writ of Certiorari is hereby **GRANTED** and the Final Order is hereby **QUASHED** for the reasons discussed below.

Factual and Procedural History

Hillsboro Mile Property Owner, LLC ("the Applicant") is the owner of real property located at 1174-1185 Hillsboro Mile ("the Property") in the Town of Hillsboro Beach

("Hillsboro"). The Applicant, Hillsboro and Eric Fordin are co-defendants in this case and shall be collectively referred to herein as "Respondents." The Applicant is the developer of the Residences at Hillsboro Mile Project that was the subject of the proceedings below. Charles Doherty, Richard Crusco and Frank J. Kolb Jr. (referred to herein collectively as "Petitioners") are all residents of Hillsboro Beach who reside within 500 feet of the Property.

The Property is zoned as RM-16, as a Multiple-Family Dwelling Residential District, by the Town of Hillsboro Beach. Hillsboro's Land Development Code ("Code"), section 12-142, limits the height of structures erected within the RM-16 district to prohibit their construction or alteration to a height exceeding 35 feet, or three stories above dune elevation.

On December 17, 2021, the Applicant submitted a revised site plan to Hillsboro. The December 17, 2021, revised site plan proposed a 130-foot tall building with 102 units. On January 11, 2022, a variance request was approved by the Board at a public meeting to allow for the construction of the 130-foot tower pursuant the December 17, 2021, revised site plan. On February 1, 2022, the Board approved the site plan at issue herein at a subsequent public meeting.

Petitioners timely filed two separate petitions for writ of certiorari on March 1, 2022. One petition challenged the Board's grant of the height variance and the other, at issue herein, challenges the Board's approval of the site plan. On April 21, 2023, this Court granted Petitioner's petition for writ of certiorari quashing the Board's grant of the height variance, finding: 1) Petitioners had standing to challenge the Board's zoning action granting the height variance, 2) Petitioners procedural due process rights were not violated during the January 11, 2022, hearing regarding the height variance and 3) the essential requirements of law were not followed in the granting of the height variance because the Board made no finding that no reasonable use could be made of the property without the variance.

Standard of Review

On a petition for writ of certiorari seeking review of the decision of an administrative agency, the reviewing court is limited to a three-part standard. See *City*

of *Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982); *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). The court must review the record to determine whether: (1) procedural due process is accorded; (2) essential requirements of the law have been observed; and (3) administrative findings and judgment are supported by competent, substantial evidence. *Id.* If the Court determines that any one of the three requirements was not met, the Court can only quash the order below but not enter an order to the contrary. See *Nat'l Adver. Co. v. Broward Cnty.*, 491 So. 2d 1262 (Fla. 4th DCA 1986) ("A court's certiorari review power does not extend to directing that any particular action be taken but is limited to denying the writ of certiorari or quashing the order reviewed.").

Standing of the Parties

Respondents maintain Petitioners lack standing to challenge the variance in question. For a court of law operating as one of the three branches of government under the doctrine of the separation of powers, standing is a threshold issue which must be resolved before reaching the merits of a case. *Solares v. City of Miami*, 166 So. 3d 887, 888 (Fla. 3d DCA 2015). Before a court can consider whether an action is illegal, the court must be presented with a justiciable case or controversy between parties who have standing. *Ferreiro v. Philadelphia Indem. Ins. Co.*, 928 So.2d 374, 376 (Fla. 3d DCA 2006) ("The issue of standing is a threshold inquiry which must be made at the outset of the case before addressing [the merits].").

Herein, the Petitioners are all residents who live within 500 feet of the Property. Charles Doherty and Richard Crusco both reside at 1194 Hillsboro Mile. Frank J. Kolb Jr. resides at 1173 Hillsboro mile, on the parcel directly south of the property that was granted the variance at issue. Thus, Petitioners will be adversely affected by the variance to a greater extent than the community in general. See *Renard v. Dade County*, 261 So. 2d 832 (Fla. 1972). The right of an adjacent or nearby home-owner directly affected by zoning action to sue is generally recognized. *Id.*; see *Elwyn v. City of Miami*, 113 So. 2d 849, 853 (Fla. 3d DCA 1959). Thus, as neighboring and proximate property owners, Petitioners have a cognizable right to sue and thus have standing.

Approval of the Site Plan

In their Petition, Petitioner's argue that the Board should not have approved the site plan because its approval was premised on an illegally granted height variance. Hillsboro's code outlines site plan approval standards which require compliance with "all applicable town zoning ordinances and regulations." Hillsboro Beach, Fla., CODE OF THE TOWN OF HILLSBORO BEACH ch. 12 , § 12-48(F). The record establishes the Property is located in an area zoned as RM-16, as a Multiple-Family Dwelling Residential District by the Code. The heights of buildings in areas zoned as RM-16 districts are limited to 35 feet, or three stories above dune elevation. *Id.* at § 12-142(A). In order to bring their site plan into compliance with all applicable town zoning regulations, it was necessary for Applicant to seek a height variance from the Board.

Petitioners argue that Hillsboro failed to follow the essential requirements of law when it relied on an illegally granted height variance when it granted the final site plan approval for the Property. This Court granted Petitioner's petition for writ of certiorari quashing Hillsboro's grant of the height variance on April 21, 2023. Thus, Applicant's site plan is not in compliance with all applicable zoning regulations, specifically, the height restriction on buildings constructed in a RM-16 district. Therefore, Petitioners have demonstrated Hillsboro did not follow the essential requirements of law when granting the subject site plan.

Accordingly, it is hereby **ORDERED** that the Petition for Writ of Certiorari is **GRANTED**.

Bowman, Levenson & Gamm JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

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