

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE CIVIL DIVISION: AY
CASE NO.: 50-2022-CA-001388-XXXX-MB

1020 SOUTH OCEAN LLC,
Petitioner
vs.

TOWN OF PALM BEACH
1015 SOUTH OCEAN LLC,
Respondents.

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Opinion filed: July 21, 2023

Petition from the Town of Palm Beach Town Council

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The Petition for Writ of Certiorari is **DENIED**. *Falk v. Beard*, 614 So. 2d 1086, 1089 (Fla. 1993); *Golfcrest Nursing Home v. State, Agency for Health Admin.*, 662 So. 2d 1330, 1333 (Fla. 1st DCA 1995); *Dusseau v. Metropolitan Dade County Bd. Of County Com'rs*, 794 So. 2d 1270, 1276 (Fla. 2001).

(ROWE and DELGADO, JJ. concur.) (SHEPHERD, J., dissents with opinion.)

SHEPHERD, J., dissenting.

At issue here is the Town of Palm Beach's (the "Town") granting of the requested front yard setback and height plane variances for the property located at 1015 South Ocean Boulevard (the "Property"). Respondent, 1015 South Ocean LLC ("Respondent") is required to demonstrate a hardship to obtain the requested variances. *Bernard v. Town Council of Town of Palm Beach*, 569 So. 2d 853, 854-5 (Fla. 4th DCA 1990); *Town of Indialantic v. Nance*, 485 So. 2d 1318, 1320 (Fla. 5th DCA 1986) *rev. denied*, 494 So. 2d 1152 (Fla.1986). The test for whether a hardship exists is whether no reasonable use can be made of the property without the variance, stated otherwise, without the variances, it is virtually impossible to use the land for the purpose for which it is zoned. *Id.* Furthermore, Respondent carries the burden of establishing that the criteria necessary to grant the variance request has been met. *City of Satellite Beach v. Goersch*, 217 So. 3d 1143, 1145 (Fla. 5th DCA 2017) (citing *Bd. Of Cty. Cm'rs v. First Free Will Baptist Church*, 374 So. 2d 1055 (Fla. 3d DCA 1979)).

The Town's grant of the variances is not supported by competent substantial evidence. *See Thompson v. Planning Comm'n*, 464 So. 2d 1231 (Fla. 1st DCA 1985) (hardship necessary to obtain zoning variance may not be found unless there is showing that under present zoning no reasonable use can be made of the property, and a self-created hardship cannot constitute basis for zoning variance); *DeGroot v. Sheffield*, 95 So. 2d 912 (Fla. 1957) (holding that competent substantial evidence is defined as such relevant evidence as a reasonable mind would accept as adequate to support the conclusion reached). In the instant case, there was no competent substantial evidence presented that without the requested variances, no house or even a smaller home could be constructed on the property. Indeed, Respondent's architect admitted that at least part of the need for the height plane variance would be eliminated by moving the home back. (Petitioner's

Appendix, Pgs. 227-8). Additionally, there was no evidence presented that Respondent did not create the “hardship” by demolishing the prior home and designing a home that was too large for the Property. Finally, the Town’s grant of the variances violates the essential requirements of law as the Town relied on factors that are not contained in the Town of Palm Beach Code Section 134-201(a). *See City of Jacksonville v. Taylor*, 721 So. 2d 1212 (Fla. 1st DCA 1998) (“Prior grant of variances to others was not appropriate consideration under applicable local zoning ordinance”); *Herrera v. City of Miami*, 600 So. 2d 561, 563 (Fla. 3d DCA 1992) (“In review of administrative grant of zoning variance, standard is not whether variances have been granted to similarly situated applicants in community.”). For the foregoing reasons, I would grant the Petition for Certiorari and quash the Town’s grant of the variances.