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

APPELLATE DIVISION: AY
CASE NO.: 50-2023-CA-001502-XXXX-MB

OCEAN'S EDGE AT SINGER ISLAND CONDOMINIUM ASSOCIATION INC., and SEAWINDS PROPERTY OWNERS ASSOCIATION, INC.,
Petitioners,

vs.

CITY OF RIVIERA BEACH and INTEGRA REAL ESTATE, LLC,
Respondents.
_____/

Opinion filed: April 10, 2024

On Petition for Writ of Certiorari from the City of Riviera Beach Development Special Magistrate.

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PER CURIAM.

Ocean's Edge at Singer Island Condominium Association, Inc. ("Ocean's Edge"), filed an Amended Petition for Writ of Certiorari seeking review of the City of Riviera Beach's ("City")

conditional[1] approval of a variance application submitted by Integra Real Estate, LLC ("Integra"). Integra requested the variances to redevelop a two-story condominium into a seventeen-story condominium. Pursuant to Florida Rule of Appellate Procedure 9.360(a), Seawinds Property Owners Association, Inc. ("Seawinds") elected to realign as a petitioner in the instant proceeding. Upon certiorari review, this Court remains limited to evaluating (1) whether the essential requirements of law have been observed, (2) whether the petitioner has been afforded procedural due process, and (3) whether competent, substantial evidence supports the findings and judgment under review. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

According to the City's Code of Ordinances, "[a]ny property owner…or authorized applicant if he or she meets the qualifications in section 31-39 below, shall have standing to apply for a variance". Code of Ordinances, Riviera Beach, Fla. ("Code"), § 31-38(a). For an application by an authorized applicant, "the record title owner shall also sign the application, and the applicant's interest in the real property shall be disclosed." Code, § 31-39(a)(1). Integra, as the non-record title owner of the property on its variance application, failed to satisfy the requirements for authorized applicants. The record also reflects that the property owner executed an agent authorization form to assist Integra "with its potential purchase" but that "[n]o zoning or variance changes are to be finalized until Integra or its assignee has become the owner of the Property." In addition, the order rendered by the Development Special Magistrate listed the following variances for approval: front and side setbacks, high-rise building setbacks, floor area calculations, and density calculations. Given that Integra had apparently withdrawn its request for a variance pertaining to density calculations, the City improperly granted unrequested relief. *See Spiegel v. Dade Cnty.*, 567 So. 2d 558 (Fla. 3d DCA 1990). Moreover, the City's Code prohibits approval

[1] The conditions imposed by the Development Special Magistrate varied from those initially recommended by the City's staff in their report, including omission of the second recommended condition relating to wetlands.

of "a variance which has the effect of increasing the density and the number of dwelling units to be allowed on residential property as defined in the applicable sections of the land development code." Code, § 31-42(d)(2). By approving Integra's application and by granting a density variance, the City failed to comply with its Code, which constitutes a departure from the essential requirements of the law. *Alvey v. City of N. Miami Beach*, 206 So. 3d 67, 73–74 (Fla. 3d DCA 2016).

Further, the Code requires an "unnecessary and undue hardship" for approval of variances. Code, §§ 31-42(b)(1)(d), 31-1. Such a hardship exists when a property would have no reasonable use or would be virtually unusable. *See, e.g.*, *Thompson v. Planning Com'n of City of Jacksonville*, 464 So. 2d 1231, 1237 (Fla. 1st DCA 1985) (citation omitted); *Maturo v. City of Coral Gables*, 619 So. 2d 455, 456 (Fla. 3d DCA 1993) (citations omitted). The City's decision to grant the variances contains no articulable facts regarding consideration or application of the foregoing case law for establishing the requisite hardship. A failure to apply controlling law consists of "a classic departure from the essential requirements of the law." *Save Calusa, Inc. v. Miami-Dade Cnty.*, 355 So. 3d 534, 541 (Fla. 3d DCA 2023), *reh'g denied* (Feb. 12, 2023) (quoting *State v. Jones*, 283 So. 3d 1259, 1266 (Fla. 2d DCA 2019)). Based on the findings herein that the City neglected to observe the essential requirements of law, this Court declines to address the remaining arguments advanced by the parties. Accordingly, the Petition for Writ of Certiorari is GRANTED and the City's order is QUASHED.

ROWE, SMALL, and SHEPHERD, JJ., concur.