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

NEIGHBORHOOD ALLIANCE OF PALM BEACH, INC., PALM BEACH PRESERVATION ALLIANCE, LLC, ANNE PEPPER, and WILLIAM O.COOLEY,
Petitioners,

v.

TOWN OF PALM BEACH and T3 FAMILY INVESTMENTS, LLC,
Respondents.
_____/

APPELLATE DIVISION (CIVIL): AY
CASE NO: 2015-CA-006598

Opinion filed: MAR - 3 2016
Petition for Writ of Certiorari from the Town of Palm Beach Town Council.

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PER CURIAM.

Petitioners, Neighborhood Alliance of Palm Beach, Inc. ("NAPB"), Palm Beach Preservation Alliance, LLC ("PBPA"), Anne Pepper, and William O. Cooley, filed a Petition for Writ of Certiorari seeking review of a decision by the Town of Palm Beach Town Council, in which the Town Council approved six zoning variances and four special exceptions requested by Respondent T3 Family Investments, LLC ("T3"). This Court has jurisdiction to conduct first-tier certiorari review of the Town Council's decision. Fla. R. App. P. 9.100(f) and 9.190(b)(3); *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). The Court does not reach the merits of the underlying case because Petitioners do not have standing to challenge the Town Council's decision through the instant Petition for Writ of Certiorari.

Factual Background

In January 2013, T3 purchased the property (the "Property") that is the subject of this litigation. The Property is a mixed-use property, which includes restaurant, retail, office, and residential space. The Property is a grandfathered non-conforming use located in the Town of Palm Beach's C-TS zoning district.

T3 sought to redevelop the Property and proposed to demolish the existing structures and building six independent buildings. The proposed plan would (1) reduce the size of the existing restaurant, (2) reduce the amount of space dedicated to retail, (3) increase the amount of residential units from three to six dwellings, (4) eliminate office space entirely, and (5) build an underground parking garage. T3 sought six variances from the Town Council relating to parking and open-space requirements. T3 also sought four special exceptions to accommodate the restaurant and residential units.

The Town Council held a public hearing on the issue of the proposed variances and special exceptions on May 13, 2015. T3's attorney presented the developer's plan and offered

testimony from its architect and engineers. The Town's zoning administrator also testified. Petitioners Anne Pepper and William O. Cooley, as well as an attorney for NAPB, spoke in opposition of the variances and special exceptions and introduced exhibits during the public comment portion of the hearing. At the close of the hearing, the Council approved the special exceptions and the variances.

Analysis and Ruling

Petitioners raise several arguments in the Petition for Writ of Certiorari. However, a threshold issue for this Court to consider is whether Petitioners have standing to challenge the Town Council's decision to grant the variances and special exceptions. The Court finds that Petitioners do not have standing.

The well established rule of law governing certiorari proceedings is that the reviewing court's consideration of standing "shall be confined strictly and solely to the record of proceedings by the agency or board on which the questioned order is based." *City of Ft. Myers v. Splitt*, 988 So. 2d 28, 32 (Fla. 2d DCA 2008) (quoting *Dade County v. Marca, S.A.*, 326 So. 2d 183, 184 (Fla. 1976)); *see Battaglia Fruit Co. v. City of Maitland*, 530 So. 2d 940, 943 (Fla. 5th DCA 1988). Therefore, unless Petitioners established standing on the record of the Town Council hearing, this Court must dismiss the Petition for lack of standing.

Abutting and neighboring property owners have standing to sue to challenge the propriety, authority for, and validity of an ordinance granting a variance. *Elwyn v. City of Miami*, 113 So. 2d 849, 851 (Fla. 3d DCA 1959); *see also City of St. Petersburg, Bd. of Adjustment v. Marelli*, 728 So. 2d 1197 (Fla. 2d DCA 1999); *Carlos Estates v. Dade County*, 426 So. 2d 1167 (Fla. 3d DCA 1983) (individual who lived within 700 feet of subject property had standing to challenge award of special exception in favor of developer); *Exchange Investments,*

Inc. v. Alachua County, 481 So. 2d 1223 (Fla. 1st DCA 1985) (property owners within one mile of subject property sufficiently pled standing to challenge parking variance in favor of developer where lack of parking could affect property owners' legally recognizable interest in off-street parking).

Non-neighboring or abutting property owners seeking to enforce a zoning ordinance must establish standing under the "special injury" test set forth in *Renard v. Dade County*, 261 So. 2d 832 (Fla. 1972). *See Splitt,* 988 So. 2d at 31-33. Under this test, the party seeking to enforce a valid zoning ordinance must show special damages particular to the party that differ in kind (as opposed to degree) from the damages suffered by the community as a whole. *Id.* at 32; *Renard*, 261 So. 2d at 835. Standing under the *Renard* special damages test is "typically based on some impact on the litigant's interest as an owner of property." *Splitt*, 988 So. 2d at 33.

There are four Petitioners in the instant case: (1) Pepper, the secretary/treasurer of NAPB, (2) Cooley, the director of PBPA, (3) NAPB, and (4) PBPA. Petitioners essentially alleged that they have standing because (1) NAPB and PBPA members live in the north end of Palm Beach, (2) NAPB and PBPA maintain office space in the same block as the proposed development, and (3) Petitioners have an interest in the proposed development that exceeds that of other community members. Each of Petitioners' claims will be addressed in turn.

1. Petitioners Do Not Have Standing Based on Residential Proximity

With respect to Petitioners' claim that they have standing because NAPB and PBPA members live and work in the "north part of Town" and frequently drive past the Property, this is not a sufficient basis for standing under either the *Renard* special injury test or the neighboring or abutting property owners test. Under the special injury test, Petitioners have not alleged an adversely affected interest different in kind, rather than degree, than that of the community at

large. Petitioners' claim that they live in the area may affect the *degree* of the harm, but it is not a different *kind* of harm than that suffered by all members of the community.

Owning property within close proximity can be sufficient to challenge the propriety, authority for, or granting of a variance. *Elwyn*, 113 So. 3d at 851; *Marelli*, 728 So. 2d 1197 (neighboring property owner can challenge award of parking variance); *Carlos Estates*, 426 So. 2d at1169 (individual who lived within 700 feet of subject property had standing to challenge special exception). However, Petitioners have not claimed that they, or that any of the members of NAPB and PBPA, are abutting neighbors of the Property or that they live within the immediate proximity of the Property. Therefore, Petitioners have not pled standing on the basis of their conclusory claim that the individual Petitioners and the members of PBPA and NAPB live on the north end of Palm Beach.

2. Petitioners Do Not Have Standing Based on Off-Street Parking Concerns

Petitioners allege that they have standing because PBPA and NAPB "maintain" office space on the same block as the Property. Petitioners claim that their use of the office property will suffer from the increased congestion and decreased availability of parking caused by the proposed development. While increased congestion and traffic is typically "a matter of general concern and does not grant standing in zoning matters, property owners do have a legal interest in their own off-street parking facilities."[1] *Exchange Investments*, 481 So. 2d at 1225.

In *Exchange Investments*, property owners within one mile of a proposed development challenged a parking variance allowing the developer to build fewer parking spaces than required

[1] Even if this Court were to consider Petitioners' claims that they will be adversely affected by traffic and congestion, Petitioners did not refute the evidence presented at the Town Council hearing that the proposed development will not increase traffic in the area. T3 offered testimony from its professional engineer about its traffic impact study, which compared the existing use of the Property with the proposed development. The engineer testified that the traffic impact study showed a reduction in both morning and evening peak-hour net new trips. Accordingly, Petitioners would not have standing on this ground either.

by the zoning ordinance. 481 So. 2d 1223 (Fla. 1st DCA 1985). The First District Court of Appeal held that the property owners had sufficiently pled standing because off-street parking is a legally recognizable interest, and the property owners claimed that they would be adversely affected by parking overflow. *Id.* at 1226-27 (reversing trial court's dismissal of the case on standing grounds and noting that plaintiffs may not be able to *prove* standing even though they have sufficiently *pled* it).

Petitioners may have sufficiently pled standing as a result of their interest in their own off-street parking and their claim that they would be adversely affected by overflow parking. However, even if Petitioners have pled standing, Petitioners have not proved standing by showing that their interest in off-street parking will be adversely affected. Petitioners failed to present any evidence at the Town Council hearing indicating that NAPB and PBPA's off-street parking interests would be adversely affected by the proposed development. Rather, the evidence presented at the hearing indicated that the proposed development would reduce the commercial impact of the property and increase the availability of parking. Accordingly, Petitioners have not sufficiently demonstrated their standing on this ground.

3. Petitioners Do Not Have Standing Based on an Interest Exceeding That of Other Community Members

Petitioners raise a third ground for standing based on their past efforts to prevent the overdevelopment of the block at issue in this case. Petitioners claim that their interest in the adverse impacts of overdevelopment of the block is not a generalized interest shared by all residents of the town.

Petitioners rely on *Putnam County Environmental Council v. Board of Commissioners*, 757 So. 2d 590 (Fla. 5th DCA 2000), in which the Fifth District Court of Appeal found that an environmental group had standing to challenge an order approving an exception to the county's

comprehensive land use plan. *Putnam* is inapposite to the instant case, which does not involve a party seeking to enforce a local comprehensive plan. In *Putnam*, the court recognized that section 163.3215, Florida Statutes, liberalized the common law standing requirements in a zoning action, which required a party to possess a legally recognized right that would be adversely affected by the decision. *Id.* at 592-93. Section 163.3215 provides that any aggrieved party may enforce a comprehensive land plan and that the "alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in community good shared by all persons." *Id.* at 591. Under the liberalized standing test of 163.3215, the court found that an environmental group had standing to challenge an order approving a special exception to county's comprehensive land use plan:

> [H]ere PCEC's complaint alleged specific injuries that PCEC would suffer if a middle school complex was constructed on Roberts' property, including the destruction of the habitat of species being studied by PCEC members and the elimination of PCEC members' access to the forest and the forest's creatures by the overgrowth of the forest. The diminution of species being studied by the group is a harm particular to PCEC, making PCEC more than just a group with amorphous "environmental concerns." Accordingly, the allegations set forth in PCEC's complaint are sufficient to demonstrate the requisite level of interest. *Under the liberalized standing test, PCEC possesses standing to challenge the order.*

Id. at 593-94 (emphasis added).

The instant case is not a suit to enforce a comprehensive land plan. Accordingly, the liberalized standing test does not apply. Petitioners have not asserted special injury particular to them as a result of the granting of variances and special exceptions. Rather, Petitioners have only claimed a difference in degree of interest in the development of the block rather than a difference in kind. Further, Petitioners have not demonstrated that the proposed development would adversely affect one or more of their legally recognized rights. Therefore Petitioners have not demonstrated standing on this ground.

Conclusion

Petitioners have not demonstrated standing to bring the instant Petition for Writ of Certiorari. Accordingly, this Court must dismiss the Petition for lack of standing. *See Battaglia Fruit Co. v. City of Maitland*, 530 So. 2d 940, 943 (Fla. 5th DCA 1988) (circuit court departed from the essential requirements of law in not dismissing the city's petition for lack of standing). Accordingly, we DISMISS the Petition for Writ of Certiorari.

ARTAU, G. KEYSER, and BARKDULL, JJ., concur.