

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

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 2015-CA-009676

ROYAL PALM REAL ESTATE
HOLDINGS, LLC, ROYAL PALM
PROPERTIES, LLC, DAVID W. ROBERTS
Petitioners,

v.

CITY OF BOCA RATON, FLORIDA,
TJCV LAND TRUST, HARVEY
SCHNEIDER, TRUSTEE,
Respondents.

Opinion filed: JUN - 6 2016

Petition for Writ of Certiorari from the Boca Raton City Council.

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PER CURIAM.

In this petition for writ of certiorari Royal Palm Real Estate Holdings, LLC, Royal Palm Properties LLC, and David Roberts (collectively the “Petitioners”) seek certiorari review of a Boca Raton City Council (the “City”) resolution (the “Resolution”) affirming a Boca Raton Planning and Zoning Board (the “Zoning Board”) resolution approving a site plan and granting a technical deviation to TJC Land Trust (the “Applicant” and together with the City the “Respondents”) for a religious center (the “Chabad Religious Center”). Because we find the Resolution ignores applicable provisions of the Boca Raton City Code (“City Code”), we hold that the City departed from the essential requirements of the law.¹ Accordingly we grant the petition, quash the Resolution, and remand the matter back to the City for further proceedings consistent with this opinion.

Background

Applicant sought approval of a site plan and a technical deviation to build the Chabad Religious Center on a piece of property located on the corner of East Palmetto Park Road and Southeast Olive Way in Boca Raton, Florida. The Chabad Religious Center is designed to be a two-story, multi-use facility. The first floor of the center will house a sanctuary, chapel, social hall, children’s playroom, kitchen, and gift shop. The second floor consists of two building wings connected by an open covered plaza and an uncovered sculpture garden. The east wing will house the mezzanine level of the sanctuary. The west wing will house a nearly 6,000-square-foot museum entitled the “My Israel Center.”² Parking will be available via a surface lot and an underground parking structure. According to the City Code the center will be located in

¹ Because this issue is dispositive we decline to address Petitioners’ other arguments.

² There was some disagreement in the proceedings below about whether the “My Israel Center” is a museum. In its response the City concedes that the “My Israel Center” is a museum. As such, we will treat it as so.

the B-1 Local Business District. § 28-302, City Code. The City Code restricts what type of properties may be built in the B-1 Local Business District by stating “[n]o building or structure or part thereof shall be erected, altered or used, or premises used, in whole or in part, in B-1 districts for other than 1 or more of the following specific uses.” § 28-777, City Code. Among the listed permitted uses are “places of public assembly.” *Id.* “Places of public assembly” include

any area, building or structure where people assemble for a common purpose, such as social, cultural, recreational and/or religious purposes, whether owned and/or maintained by a for-profit or not-for-profit entity, and includes, but is not limited to, public assembly buildings such as auditoriums, theaters, halls, private clubs and fraternal lodges, assembly halls, exhibition halls, convention centers, and places of worship, or other areas, buildings or structures that are used for religious purposes or assembly by persons.

§ 28-2, City Code. The Zoning Board approved the combined site plan and technical deviation on May 7, 2015, based in part on a finding that the Chabad Religious Center was a place of public assembly. Pursuant to section 28-56 of the City Code, Petitioners appealed that decision to the City. The City held a hearing on the matter and—after hearing from Petitioners, Applicant, and various staff members—voted to affirm the Zoning Board’s approval of the site plan and technical deviation on the condition that the Applicant include an additional disabled parking space. A written resolution to that effect was signed and filed with the City’s clerk on July 28, 2015. On August 27, 2015, Petitioners filed the presently pending Petition.

Standard of Review

On certiorari review this Court asks only (1) whether procedural due process was accorded, (2) whether the essential requirements of the law have been observed, and (3) whether

the findings and decision are supported by competent, substantial evidence. *Miami-Dade Cnty. v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 199 (Fla. 2003).

Analysis and Legal Conclusions

A. Museums are not permitted in the B-1 Local Business District.

The “My Israel Center” portion of the proposed Chabad Religious Center is at issue here. Petitioners argue that the City departed from the essential requirements of the law because the “My Israel Center” is a museum and is not permitted in the B-1 Local Business District. As mentioned above, in its response the City concedes that the “My Israel Center” is a museum, but contends that it nevertheless permitted in the B-1 Local Business District because a museum is a place of public assembly under the City Code and a place of public assembly is permitted within that district.

As previously discussed, the City Code restricts the type of properties that may be built in the B-1 Local Business District by stating “[n]o building or structure or part thereof shall be erected, altered or used, or premises used, in whole or in part, in B-1 districts for other than 1 or more of the following specific uses.” § 28-777, City Code. Section 28-777 then goes on to list all of the uses permitted in the B-1 Local Business District. *See id.* The list ranges from business offices, to banks, to helistops. *Id.* Museums are not included in the list of permitted uses. *See id.* “Places of public assembly,” however, are included. *Id.* The City Code defines “places of public assembly” to include

any area, building or structure where people assemble for a common purpose, such as social, cultural, recreational and/or religious purposes, whether owned and/or maintained by a for-profit or not-for-profit entity, and includes, but is not limited to, public assembly buildings such as auditoriums, theaters, halls, private clubs and fraternal lodges, assembly halls, exhibition halls, convention centers, and places of worship, or other areas, buildings or structures that are used for religious purposes or assembly by persons.

§ 28-2, City Code. While museums aren't one of the listed permitted uses in the B-1 Local Business District, they are listed as a permitted use in the VC Village Center District. § 28-1242(1)(g), City Code. "Places of public assembly" are also permitted in that district. § 28-1242(1)(h). Section 28-1242 even distinguishes between museums and places of public assembly by listing them in different subsections. *Compare* § 28-1242(1)(g), *with* § 28-1242(1)(h), *and* § 28-1242(2)(g), *with* § 28-1242(2)(e). The City Code also differentiates between museums and places of public assembly for the purposes of parking and allows museums to have considerably fewer parking spaces than places of public assembly. *Compare* § 28-1655(1)(gg), City Code, *with* § 28-1655(1)(h).

Comparing the list of permitted uses in the B-1 Local Business District under section 28-777 to the list of permitted uses in the VC Village Center District under section 28-1242 coupled with the fact that the City Code treats museums and places of public assembly differently for the purposes of parking illustrates the fallacy inherent in the City's argument. The City argues that even though section 28-777 does not list museums as one of the permitted uses in the B-1 Local Business District, the "My Israel Center" museum is nevertheless permitted in that district because it is a place of public assembly under the City Code. Essentially, the City is arguing that the term "museum" is subsumed in the term "places of public assembly." This is not what the plain language of the City Code indicates.

In section 28-1242 the City Code differentiates between museums on the one hand and places of public assembly on the other. That section allows for either museums or places of public assembly in the VC Village Center District. Section 28-777 includes places of public assembly but omits museums from the list of permitted uses in the B-1 Local Business District.

To read the term “places of public assembly” in section 28-777 to include the term “museums” would read out the distinction between museums and places of public assembly in section 28-1242. Furthermore, section 28-1655 makes a clear distinction between museums and places of public assembly for the purposes of parking. That section mandates one amount of off-street parking for museums and a different amount of off-street parking for places of public assembly. *Compare* § 28-1655(1)(gg), *with* § 28-1655(1)(h). Again, to read the term “places of public assembly” in section 28-777 to include the term “museums” ignores section 28-1655’s distinction between the two types of buildings. The plain language of these sections indicates that the City Code treats museums and places of public assembly as two distinct uses.

The City’s argument—that museums are places of public assembly and thus are permitted in the B-1 Local Business District—essentially asks this Court to read section 28-777 in isolation and ignore that the City Code clearly differentiates museums from places of public assembly. But “[a] subsection of a statute cannot be read in isolation; instead it must be read ‘within the context of the entire section’ . . . and each statute ‘must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts.’” *Lamar Outdoor Advertising.-Lakeland v. Fla. Dep’t of Transp.*, 17 So. 3d 799, 802 (Fla. 1st DCA 2009) (quoting *Fla. Dep’t of Env’tl. Prot. v. ContractPoint Fla. Parks, LLC*, 986 So. 2d 1260, 1265 (Fla. 2008)). To the extent that the City Code is at all ambiguous on this point, the City’s interpretation—that the term “museum” is subsumed within the term “places of public assembly”—is clearly erroneous because the City Code differentiates between museums and places of public assembly in at least two different places.

Applicant argues that even if the City Code differentiates between museums and places

of public assembly, the “My Israel Center” is nevertheless permitted in the B-1 Local Business District as an accessory use of the sanctuary. Section 28-777(m) states “uses accessory to any of [the listed permitted uses] including living quarters for the owner or operator and outdoor storage of passenger cars, panel or pickup trucks used in the business or items otherwise provided for as a permitted use” are also permitted in the B-1 Local Business District. The City Code defines “accessory use” to mean “a use naturally and customarily incidental to, subordinate to, and devoted exclusively to the main use of the premises.” § 28-2, City Code. Applicant argues that because the “My Israel Center” is not a separate building and is related to the cultural purpose of the sanctuary portion of the Chabad Religious Center it is a permitted accessory use. Applicant, however, fails to give meaning to the first portion of the definition. An accessory use under the City Code must be one that is “naturally and customarily incidental to . . . the main use of the premises.” A museum is not naturally and customarily incidental to a sanctuary. In any event this argument was not raised below and the City did not take any evidence relating to whether the “My Israel Center” was an accessory use of the sanctuary.

B. Even if the “My Israel Center” was permitted in the B-1 Local Business District as a place of public assembly, it fails to comply with applicable parking requirements.

Even if we were to ignore the City’s concession that the “My Israel Center” is a museum and accept that it is permitted in the B-1 Local Business District as a place of public assembly, the City nevertheless departed from the essential requirements of the law because the site plan it approved fails to provide the minimum amount of parking required under the City Code for a place of public assembly.

Section 28-1655(1)(h) requires that a place of public assembly have “1 motor vehicle parking space for each 3 seats, plus 1 motor vehicle parking space for each 25 square feet of

additional, gross floor area provided for public assembly purposes.” That section goes on to state that:

if places of public assembly include accessory and/or related public assembly uses for which parking is required pursuant to this section 28-1655, parking shall be provided for all square footage including square footage utilized for accessory or additional uses on the parcel; provided, however, if such uses operate non-concurrently, minimum parking shall be determined based upon the maximum parking demand created by the non-concurrent use with the greater parking requirement.

Id. Section 28-1655(1)(gg) requires that a museum have

1 motor vehicle parking space for each 500 square feet of gross floor area up to 5,000 square feet, plus 1 motor vehicle parking space for each additional 1,000 square feet, plus 1 motor vehicle parking space for each employee at maximum shift, plus 1 motor vehicle parking space for each 175 square feet of floor area for any museum store greater than 1,000 square feet of customer service area.

According to the site plan, the “My Israel Center” portion of the Chabad Religious Center will have 5,967 square feet of gross floor area. The site plan for the Chabad Religious Center calculated parking for the “My Israel Center” as if it were a museum. Thus, applying section 28-1655(1)(gg), the subsection governing museums, the “My Israel Center” must have thirteen parking spaces. If parking for the “My Israel Center” were calculated under section 28-1655(1)(h), the subsection governing places of public assembly, a total of over 238 parking spaces would need to be allotted for the “My Israel Center” alone. The entire project calls for only eighty-one parking spaces based on a combination of the greatest number of parking spaces required for a non-concurrent use plus the number of parking spaces required for any concurrent uses.

The City argues that although it has classified the “My Israel Center” as a place of public assembly for the purposes of section 28-777, it is nevertheless free to classify it as a museum for

the purposes of section 28-1655. The City contends that section 28-1655, which deals with parking, has no relation to section 28-777, which deals with permitted uses in the B-1 Local Business District. As such, the City asserts, it is free to apply the more specific parking provision applicable to museums rather than the more general parking provision applicable to places of public assembly, notwithstanding the fact that it has classified the “My Israel Center” as a place of public assembly for the purposes of section 28-777.

Such an argument is not consistent with how the City previously designated the “My Israel Center.” If we accept the City’s contention that the “My Israel Center” is a place of public assembly and thus it is permitted in the B-1 Local Business District, then the necessary corollary is that all provisions applying to a place of public assembly must also be enforced. The City may not pick and choose which sections of the City Code will apply to the “My Israel Center.” Either the “My Israel Center” is a place of public assembly and the provisions applying to places of public assembly govern, or it is a museum and the provisions applying to museums govern. It cannot be classified as one for the purposes of permitted uses and one for the purposes of parking absent some express indication in the City Code allowing for such a maneuver. Although the City attempts to read the City Code in a disjointed manner, arguing that sections pertaining to permitted uses in certain districts have no bearing on the sections related to parking and vice versa, such a reading is unreasonable and clearly erroneous. As discussed above “[a] subsection of a statute cannot be read in isolation; instead it must be read ‘within the context of the entire section’ . . . and each statute ‘must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts.’” *Lamar Outdoor Adver.-Lakeland*, 17 So. 3d at 802. Thus, even if we were to accept the City’s

contention that even though the “My Israel Center” is a museum it is nevertheless permitted in the B-1 Local Business District as a place of public assembly, the City has still departed from the essential requirements of the law because it has failed to apply section 28-1655(1)(h).

Conclusion

In sum, to the extent that the City approved a site plan that calls for the construction of a museum in the B-1 Local Business District, it departed from the essential requirements of the law. The City Code differentiates between a museum and a place of public assembly on at least two different occasions. The plain language of the City Code indicates that the VC Village Center District allows for museums and places of public assembly while the B-1 Local Business District allows only for places of public assembly. To read the term places of public assembly to include museums would read out the distinction made in the section governing the VC Village Center District. Furthermore, the parking provisions of the City Code also clearly differentiate museums from places of public assembly. To read the term places of public assembly to include museums would read out this distinction. Simply put, if the City Code allowed museums in the B-1 Local Business District the section governing that district would have listed museums as one of the permitted uses. The inclusion of museums and places of public assembly in the section governing permitted uses in the VC Village Center District indicates that the City Code views these as different uses and not merely different expressions of the one same use. Furthermore, even if we were to accept the City’s contention that the “My Israel Center” is permitted in the B-1 Local Business District as a place of public assembly, notwithstanding the fact that it is a museum, it has still departed from the essential requirements of the law because it has ignored the section of the City Code mandating the minimum required off-street parking for a place of

public assembly.

Accordingly, the Petition for Writ of Certiorari is GRANTED, the Resolution is QUASHED, and the matter is remanded back to the City for further proceedings consistent with this opinion.

SASSER, SMALL, and BOORAS, JJ. concur.