

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

MARY ANN STANDISH,
Petitioner,

v.

TOWN OF REDINGTON BEACH FLORIDA
and MARCIA B. MCCLURE,
Respondents.

Ref. No.: 16-000026-AP-88B
UCN: 522016AP000026XXXXCI

ORDER AND OPINION

Petitioner petitions this Court to issue a writ of certiorari to review a final order of Respondent, Town of Redington Beach ("Town"), which granted Respondent McClure's application for several variances under the Town's Code of Ordinances. Petitioner contends that the Town's Board of Adjustment ("Board") failed to properly exercise its powers in accordance with the essential requirements of law because the Board granted the variance request when it did not have competent substantial evidence to support its finding that the standards required to grant variances were met. For the reasons set forth below, the Petition for Writ of Certiorari is granted and this action remanded for further proceedings.

Facts and Procedural History

On March 21, 2016, McClure filed an application with the Board, which requested four variances from the Town's building code. All of the variances result from McClure's plan to elevate her home in conjunction with a Federal Emergency Management Agency grant. The elevation itself does not require a variance. Three of the requests sought variances from setback requirements; the fourth request sought a variance from the allowable percentage of impervious surface area on her lot. In the application, McClure discussed her request for the variances in terms of five "review standards" set forth in the Town's Board of Adjustment Application.

On March 21, 2016, the Deputy Town Clerk disseminated a Notice of Public Hearing regarding McClure's application, alerting McClure's neighbors that a hearing on her variance application would be held on April 21, 2016. On April 21, 2016, Petitioner submitted to the Deputy Town Clerk her written objection to McClure's application and also verbally objected at

the Board hearing. After the hearing, the Board entered a final order granting McClure's variances. Thereafter, Petitioner filed the instant Petition for Writ of Certiorari.

Standard of Review

"Where a party is entitled as a matter of right to seek review in the circuit court from administrative action, the circuit court must determine whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence." *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

Discussion

Petitioner contends that the Board failed to comply with the essential requirements of law because it granted McClure's application for variances without competent substantial evidence to support its findings. Respondents¹ contend that Petitioner failed to preserve her arguments and therefore, is unable to raise them for the first time on appeal. However, the Court need not address these arguments because the Board's final order is fundamentally erroneous on its face.

Fundamental error "is error which goes to the foundation of the case or goes to the merits of the cause of action." *Stevens v. Allegro Leasing, Inc.*, 562 So. 2d 380, 381 (Fla. 4th DCA 1990). "[T]he absence of the required findings in the written order renders the order fundamentally erroneous on its face. . . ." *Peacock v. Ace*, 24 So. 3d 750, 751 (Fla. 2d DCA 2009). Here, the Board's final order is fundamentally erroneous on its face because it does not contain the findings required by ordinance. Chapter 6, Article XI of the Town's Code of Ordinances ("Code") establishes and governs the Town's board of adjustment.² See §§ 6-288-6-294, Code. The board of adjustment has the power

[t]o consider written applications for a special exception/variance when it demonstrates that: (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district; (2) A literal interpretation of the provisions [of the buildings and building regulations] would deprive the applicant rights commonly enjoyed by other properties in the same district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.

¹ The Town joins and adopts McClure's Amended/Supplemental Response to Petition for Writ of Certiorari.

² Interestingly, none of the parties refer to Chapter 6 in their discussion of variances. Instead, the parties seem to be operating under the presumption that the five "review standards" set forth in the Board of Adjustment Application govern the Board's ability to grant or deny a variance. The genesis of these "review standards," and whether they have any effect under the law, is unclear and the Court does not address this issue.

§ 6-289(b), Code. When an application for a variance is submitted, the board is required to make certain findings, including “whether the requirements as forth in section 6-289[(b)] have been met by the applicant,” “whether the reasons set forth in the application justify the granting of the special exception/variance, and whether the special exception/variance is the minimum special exception/variance that will make possible the reasonable use of the land, building, or structure of the applicant,” and “that the granting of the special exception/variance will be in harmony with the general purpose and intent of [the buildings and building regulations], and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.” § 6-290(c)-(e), Code. Since the Board failed to comply with the Code by failing to make these required findings, the final order is fundamentally erroneous on its face and the Petition must be granted and the case remanded to the Board for further proceedings.

Conclusion

Because the final order is fundamentally erroneous on its face for its lack of required findings, it is

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is **GRANTED**.

This action is remanded to the Board for further proceedings consist^{text} with this Order.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this 25th day of October, 2016.

Original Order entered on October 25, 2016, by Circuit Judges Jack Day, Pamela A.M. Campbell, and Amy M. Williams.

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