

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EDGEWATER DRIVE NEIGHBORHOOD
ASSOCIATION, INC.,

Appellant,

vs.

Case No. 19-3976

EDGEWATER VALOR CAPITAL, LLC;
COMMUNITY DEVELOPMENT BOARD;
AND CITY OF CLEARWATER,

Appellees.

FINAL ORDER

Appellant, Edgewater Drive Neighborhood Association, Inc. (EDNA), appeals a development order rendered by the City of Clearwater Community Development Board (Board) on July 1, 2019. The Division of Administrative Hearings (DOAH), by contract with the City of Clearwater (City) and pursuant to section 4-505 of the Community Development Code, assigned Administrative Law Judge Francine M. Ffolkes to serve as Hearing Officer for the appeal. Oral argument was presented on August 27, 2019, and the parties submitted proposed final orders on September 19, 2019.

APPEARANCES

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For Appellee Edgewater Valor Capital, LLC (Edgewater Valor):

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STATEMENT OF THE ISSUES

The issues to be determined in this appeal are whether the decision of the Board to approve Flexible Development Application FLD2019-01002 (Application) filed by Edgewater Valor cannot be sustained by substantial competent evidence before the Board, or that the decision of the Board departed from the essential requirements of law.

PRELIMINARY STATEMENT

On June 25, 2019, the Board approved the Application, which was filed on April 12, 2019, by Edgewater Valor. The Board's decision was rendered by written development order on July 1, 2019 (Order). The Order approved an 80-unit attached dwelling development in the Tourist (T) and Medium Density Residential (MDR) zoning districts for properties located at 1026 Sunset Point Road and 1919 Edgewater Drive, in Clearwater, Florida. The

City Planning and Development Department's Board Staff Report (Staff Report) was issued on May 21, 2019. The Staff Report included a recommendation for approval of the Application. The Staff Report was revised on June 24, 2019 (Revised Staff Report).

On June 25, 2019, the Board conducted the duly-noticed quasi-judicial public hearing on the Application. At the hearing, expert testimony was received from Ella Crandall, AICP, who was the City's development review manager; Wayne M. Wells, AICP, for Edgewater Valor; Robert Pergolizzi, AICP, PTP, who conducted the traffic impact study for Edgewater Valor; Alan McDonnell, architect for Edgewater Valor; and Patricia Ortiz, AICP, for EDNA. The Board also heard presentations and testimony from Brian Aungst, Jr., attorney for Edgewater Valor; Mary Kate Belniak, president of EDNA; Gina Clayton, planning director for the City; and Hector Hernandez, an engineer for the City.

Individuals and entities were granted party status and allowed to present witness testimony, introduce evidence, and to cross-examine witnesses. Those granted party status included, Dean Falk; the Clearwater Neighborhood Coalition by and through Karen Cunningham and William C. Jonson; Karl Balducci; Paul Tracy Spikes, Kim L. Kaszuba, and Reid Ragsdale by and through Jeremy Reynolds; Mariane Ortenzio; Debra Adam Chase; Lisa Lynn; and Thomas Generalli by and through Carlton Ward, Esquire.

Thirty-five members of the public also addressed the Board. The hearing lasted over seven hours, and at its conclusion and after discussion, the Board approved the Application based on the contents of the Application, the expert testimony and evidence presented at the hearing, and the Staff Report. On July 1, 2019, the City rendered the Order, which included findings of fact, conclusions of law, and conditions of approval.

On July 8, 2019, EDNA filed an appeal of the Order (Appeal Application). The City transmitted the Appeal Application and record before the Board to DOAH for assignment of a Hearing Officer. The record before the Board and the hearing Transcript were uploaded to the DOAH docket. The assigned Hearing Officer conducted oral argument on August 27, 2019. Thereafter, Appellant and Appellees submitted proposed final orders, which were considered in the preparation of this Final Order.

FINDINGS OF FACT

1. Edgewater Valor proposes to develop an 80-unit attached dwelling with 164 associated off-street parking spaces on 2.931 acres of property it owns. The property is located at 1026 Sunset Point Road and 1919 Edgewater Drive in Clearwater, Florida.

2. The proposal consists of three buildings and a structured parking platform with a pool and deck on the west side of the parking platform. Sixty percent of the 164 parking spaces

is garage parking, with the rest as exposed surface parking. Two of the buildings, both in the T district, are proposed at a height of 86 feet measured from base flood elevation. The third building, in the MDR district, is proposed at a height of 38 feet measured from base flood elevation. The buildings in the T district are set back 152 feet from the east property line. The building in the MDR district is set back 75 feet from the east property line. The proposal includes landscaping and setbacks that exceed the Board's requirements for approval.

3. The Application requests Level Two approval of flexibility for a building height of 86 feet from base flood elevation in the T zoning district. A Level One approval allows a building height of up to 50 feet, and up to 100 feet as a Level Two approval.

4. The Application also requests Level Two approval of flexibility for an attached dwelling use in the MDR zoning district. The attached dwelling has a building height of 38 feet from base flood elevation, where up to 40 feet is allowed as a Level Two approval and flexibility from lot width in the MDR zoning district.

5. Edgewater Valor owns 2.437 acres of the property which is zoned T with an underlying Comprehensive Plan Future Land Use category of Resort Facilities High (RFH). The remaining

0.494 acres is zoned MDR with an underlying Comprehensive Plan Future Land Use category of Residential Medium (RM).

6. The property to the north of the proposed development is zoned T and is currently developed as a Comfort Suites hotel. The property to the south is zoned Office (O), MDR, and Preservation (P). There is a vacant automobile service station adjacent to the proposed development to the southwest, and a multi-family development to the south across Sunset Point Road. The property to the east is zoned MDR and P with single-family detached dwellings and attached dwellings further east along Sunset Point Road. The property to the west is zoned Commercial (C) and P.

7. EDNA's boundaries are Sunset Point Road north to Union Street, and Edgewater Drive east to Pinellas Trail. The neighborhood consists of 400 homes that are mostly single-family, single-story detached dwellings. The proposed development would be located in the southwest corner of the neighborhood at the intersection of Edgewater Drive and Sunnydale Drive. The Comfort Suites hotel is located directly across from the proposed development on the opposite corner of Sunnydale Drive and Edgewater Drive. Sunnydale Drive travels east away from Edgewater Drive and dead-ends as a cul-de-sac with mostly single-family detached dwellings.

CONCLUSIONS OF LAW

8. In this appeal, EDNA has the burden to demonstrate that the decision of the Board cannot be sustained by substantial competent evidence before the Board, or that the decision departs from the essential requirements of the law. See § 4-505.C., Clearwater Cmty. Dev. Code.

9. While section 4-206.D.4 of the Community Development Code provides that "[t]he burden of proof is upon the applicant [at the quasi-judicial Board hearing] to show by substantial competent evidence that he is entitled to the approval requested," this provision refers to the standard of proof at the quasi-judicial hearing and not the standard of review for appeals under section 4-505.

10. The Hearing Officer, acting in an appellate capacity, cannot reweigh conflicting evidence presented to the Board or substitute her judgment for that of the Board on the issue of credibility of witnesses. See Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995).

11. Competent substantial evidence has been construed to be "legally sufficient evidence" or "evidence that is sufficiently relevant and material that a reasonable mind would accept it to support the conclusion reached." Degroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957).

12. The issue of whether the Board's decision "depart[ed] from the essential requirements of the law" is synonymous with whether the Board "applied the correct law." See Heggs, 658 So. 2d at 530.

13. Pursuant to the Community Development Code, there are three levels of development approval in the City. Level One approvals are staff level approvals and require the applicant to comply with the minimum development standards and the general applicability criteria set forth in section 3-914.A. of the Community Development Code. Level Two approvals require a quasi-judicial public hearing before the Board to approve available flexibility from the minimum development standards. Level Two approvals must meet both the general applicability criteria and the flexibility criteria. Level Three approvals are heard by the City Council and are reserved for development agreements, text amendments, zoning atlas amendments, comprehensive plan amendments, annexations, developments of regional impact, historic designations, neighborhood conservation overlay districts, determinations of vested development rights, and actions affecting mobile home owners.

EDNA's Issues on Appeal

14. EDNA's proposed final order sets forth the issues raised and argued by it in this appeal. EDNA asserted that Edgewater Valor failed to present substantial competent evidence

that it met each and every one of the general applicability criteria in section 3-914.A., and more specifically, subsections 1, 2, 4, 5, and 6 of that section. EDNA also asserted that the Board departed from the essential requirements of the law by finding that Edgewater Valor met its burden of proof for approval.

15. EDNA explained that its only actual dispute was with the flexibility approval that allowed the buildings in the T zoning district to exceed 50 feet in height, specifically 86 feet above base flood elevation. Each of EDNA's arguments regarding the five criteria in section 3-914.A. were framed by detailing Edgewater Valor and the City's evidence versus EDNA and the other parties' evidence. EDNA then argued that for each disputed criterion, the overwhelming evidence was against approval.

16. Thus, EDNA's arguments urged the undersigned to violate the applicable appellate standard of review by reweighing the conflicting evidence and substituting her judgment for that of the Board regarding the credibility of witnesses. See Collier Med. Ctr., Inc. v. Dep't of Health & Rehab. Servs., 462 So. 2d 83, 85 (Fla. 1st DCA 1985). The question on appeal is not whether the record contains evidence supporting the contrary view of EDNA, but whether there is evidence to support the Board's decision. See Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Comm'rs,

794 So. 2d 1270, 1276 (Fla. 2001)(holding that as long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful).

17. Upon review of the record evidence, the undersigned finds that the record before the Board contained substantial competent evidence to support the Board's decision that Edgewater Valor's Application met the criteria in section 3-914.A., including the five criteria specifically contested by EDNA.

18. Woven into its evidence argument, was EDNA's assertion that the City's interpretation and application of certain terms in the general applicability criteria amounted to an unreasonable interpretation, or was clearly erroneous. See Las Olas Tower Co. v. City of Ft. Lauderdale, 742 So. 2d 308 (Fla. 4th DCA 1999). EDNA pointed out that the terms "harmony" and "community character" were not defined in the Community Development Code, and that the City's staff testified that these terms could be subjective.

19. EDNA conceded, however, that Edgewater Valor's reference in its Application to "'use' as being compatible and consistent with the neighborhood[,] is not in dispute." EDNA also conceded that "harmony" is included in the dictionary definition of "compatible."

20. The City and Edgewater Valor's interpretation of the general applicability criteria was reasonable. Therefore, the

Board's application of those criteria to the record evidence before the Board was not a departure from the essential requirements of the law. See Las Olas Tower Co., 742 So. 2d at 308, 312 (holding that interpretation of word in city code by the agency responsible for its administration was a reasonable interpretation, and therefore, lower court applied correct law in determining that agency did not depart from essential requirements of law).

21. In addition, EDNA's argument that the Board departed from the essential requirements of the law by finding that Edgewater Valor met its burden of proof for approval is not subject to review in this type of appeal. As outlined above, the standard of proof at the quasi-judicial hearing is not the standard of review for appeals under section 4-505. See Dusseau, 794 So. 2d at 1275-1276; Heggs, 658 So. 2d at 530.

22. EDNA also asserted that the Board departed from the essential requirements of the law by failing to afford due process in two areas. First, the Board allegedly failed to allow certain persons to admit relevant evidence, and second, failed to consider as relevant certain testimony of the residents related to traffic congestion.

23. Although EDNA characterized these alleged failures as due process violations, neither one presented a procedural due process issue. EDNA's argument conflated the two issues into a

weight of the evidence argument regarding conflicting testimony about traffic congestion. Thus, EDNA's argument again urged the undersigned to violate the applicable appellate standard of review by reweighing the conflicting evidence and substituting her judgment for that of the Board regarding the credibility of witnesses. See Collier Med. Ctr., Inc., 462 So. 2d at 85.

24. EDNA did not meet its burden to show that the Board's decision was not supported by substantial competent evidence before the Board, or that the decision departed from the essential requirements of the law.

DETERMINATION

Based on the foregoing Findings of Fact and Conclusions of Law, the decision of the Community Development Board is AFFIRMED.

DONE AND ORDERED this 17th day of October, 2019, in Tallahassee, Leon County, Florida.



FRANCINE M. FFOLKES
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Filed with the Clerk of the
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NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Article 4, Division 5, Section 4-505.D of the Community Development Code, this decision shall be final, subject to judicial review by common law certiorari to the circuit court.