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Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 1, 2023

**RAMA, INC. d/b/a DISCOUNT LIQUOR v. CITY OF CHATTANOOGA,
TENNESSEE, CITY COUNCIL**

**Appeal from the Chancery Court for Hamilton County
No. 22-0146 Pamela A. Fleenor, Chancellor**

No. E2022-01506-COA-R3-CV

The appellant applied for a special exception permit allowing it to operate a liquor store in a location designated as a C-2 Convenience Commercial Zone. The appellee, City Council for the City of Chattanooga, denied the application based upon a councilmember's statements that "the City is turning that area around to meet some different purposes." The appellant sought review from the Chancery Court for Hamilton County, which upheld the decision of City Council. Following careful review, we reverse.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed;
Case Remanded**

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which ANDY D. BENNETT, J., and J. STEVEN STAFFORD, P.J., W.S., joined.

Joshua E. Hixson, Dayton, Tennessee, for the appellant, Rama, Inc. d/b/a Discount Liquor.

Phillip A. Noblett, City Attorney, and Kathryn C. McDonald and David Schmidt, Assistant City Attorneys, Chattanooga, Tennessee, for the appellee, City of Chattanooga, Tennessee, City Council.

OPINION

Discount Liquor has operated at 7703 Lee Highway in Chattanooga, Tennessee since 1985. Prior to November 10, 2021, Discount Liquor was owned and operated by Jai Shiva, Inc. ("Jai Shiva"). Jai Shiva d/b/a Discount Liquor held a license issued by the Tennessee Alcoholic Beverage Commission ("TABC") that allowed it to sell liquor, wine, and beer. Jai Shiva's liquor license expired September 9, 2021, and TABC notified Jai Shiva that it must complete the renewal process by November 5, 2021, to maintain the

license. Jai Shiva did not successfully renew the license, and TABC closed the license effective November 8, 2021. As a result, Discount Liquor could no longer lawfully sell, serve, or store alcoholic beverages.

On or about November 10, 2021, Rama, Inc. (“Rama”) purchased the assets of Jai Shiva, including Discount Liquor. In order to obtain a new liquor license from TABC, Rama was required to obtain a certificate from City Council for the City of Chattanooga (“City Council”) stating that Rama had secured a location for its business and that such location complies with all duly adopted local laws, ordinances, and resolutions. Discount Liquor is located in an area designated as a C-2 Convenience Commercial Zone. Section 38-185 of the Code of Ordinances for the City of Chattanooga (“City Code”) provides that liquor stores may be permitted to operate in C-2 zones “as special exceptions by the City Council as authorized by Tennessee Code Annotated, 57-3-208 and Chattanooga City Code, Part II, Sections 5-101 through 5-126.” On December 1, 2021, Rama filed a “Corporate Application for Certificate for Liquor License” (the “application”) with City Council.

At its January 18, 2022 meeting, City Council considered the application. While introducing the resolution, City Council Chairman Chip Henderson noted that it was his understanding from Councilwoman Carol Berz that “there is opposition to this case[.]” Pursuant to City Code sections 5-109(b) and (c), the Chattanooga-Hamilton County Regional Planning Agency (“RPA”) conducted an analysis of the proposed location and submitted its findings to City Council at the January 18 meeting. Specifically, RPA Deputy Director Karen Rennich stated that the location had been historically used for the operation of a liquor store and satisfies City Code zoning requirements that prohibit a liquor store from being located within 500 feet of a recreational park, place of worship, school, daycare center, or other liquor store. Ms. Rennich also noted that the location is approximately 615 feet from a hotel that, on October 26, 2021, City Council approved the City of Chattanooga (“City”) to purchase “to turn into supportive hous[ing] to help people who are housing insecure[.]” Other than the parking lot needing to be reconfigured to meet City Code requirements related to the minimum number of parking spots for a retail store, the RPA noted no deficiencies with Rama’s application and suggested no requirements be imposed upon Rama in order to qualify it for the special exceptions permit. Ms. Rennich also stated that RPA had received photos from Rama showing that the parking lot had been re-striped, and the RPA provided these photos to City Council along with an updated report reflecting the same.

City Council next heard from Mr. Mayuresh “Mike” Patel, an agent of Rama, who spoke in support of the application. Mr. Patel stated that the parking lot had been reconfigured to meet the City Code requirements. Mr. Patel also noted that Discount Liquor was already operating at the same location at the time City Council approved the City to purchase the hotel to serve housing insecure people, so he was not sure why there

was opposition to the operation of a liquor store at that location. No one appeared at the meeting to speak in opposition to the application. Following Mr. Patel's presentation, the following discussion occurred:

MS. BERZ: Oh, okay. So, I wish that you had contacted me before you got into this and we could have really had some good conversations.

As you know, the City is turning that area around to meet some different purposes and there been [sic] a consortium meeting with the Silverdale Church, the other churches, and I thought I heard you say that something about one of the motel owners? I couldn't hear you.

Let me tell you I've been contacted by the motel owner facing your store to the left of you, plus people from other districts that are working hard to turn this area around. As you know, this is a permissive action and we can either approve or deny the exception.

Were you aware that there were people that didn't want the liquor store to come back again?

MR. PATEL: No, ma'am.

MS. BERZ: Okay. It's always a word to the wise when you're doing something like this to contact whoever the council person is in the area so that we can work together. Because so much effort is going into this area and there's an area much larger than just your area involved. Very respectfully and regretfully, I'm going to move to deny.

MR. HENDERSON: Okay. Before we make any motions, let me make sure we don't have any other questions or comments and dismiss our applicants.

Were there any other questions for the applicants at this time? Okay. All right. Thank you, sir and ma'am.

Okay. Councilman Berz.

MS. BERZ: I think I've said what I think is important to understand and if there are no other questions, I respectfully move to deny.

MR. HENDERSON: Very well. We have a motion on the floor to deny. Do we have a second? With a proper second. Are there any questions or comments before we vote on the motion to deny?

All right. I[n] favor of the motion to deny, aye. Any opposed, no.
The motion to deny carries.

Rama filed a Petition for Writ of Certiorari with the Chancery Court for Hamilton County seeking judicial review of City Council's denial of the application, averring that the denial "was illegal, arbitrary, and/or capricious in that there was no evidence to justify its decision." At an evidentiary hearing on Rama's Petition, the Chancery Court heard testimony from Mr. Patel, Ms. Mittalkumari Patel, and Sergeant Jason Wood of the Chattanooga Police Department. Most of this testimony centered around the ownership history of Discount Liquor and Rama's "vested interest" theory that it raised for the first time in its opening statement at the hearing and raises as its second issue in this appeal. However, there was no evidence presented to the Chancery Court regarding why the location was not appropriate for a liquor store. The Chancery Court took the matter under advisement and ultimately entered an Order dismissing Rama's Petition with prejudice. As relevant to this appeal, the Order stated:

This Court concludes that the City Council was performing an administrative function rather than a legislative one by denying the Special Exceptions Permit, because it applied existing law rather than making new law, and this Court has a record of the evidence from the proceedings below to review.

* * *

At the hearing on Rama's application for a Special Exceptions Permit, Councilmember Berz stated the City is turning that area around to meet some different purposes. As the site is in her district, she has met with a consortium of people in the neighborhood who, she said, do not want the liquor store to return to the neighborhood. She further advised that much effort is going into this area, and the larger surrounding area, to turn it around.

Council chair Henderson noted that although there was no opposition present at the meeting, there was opposition to the case. [Citation to record omitted.]

The City Council stated the reason for its denial of the special permit was because the neighborhood was changing.

This Court does not scrutinize the intrinsic correctness of the City Council's decision, nor does it reweigh the evidence, nor does it substitute its judgment for that of the Council. This Court concludes as a matter of law that the record contains more than a scintilla of relevant material evidence that the City is attempting to effectuate a change in the neighborhood which,

in turn, supports the City's denial of the Special Exceptions Permit to Rama to operate a liquor store in the C2 Convenience Commercial Zone.

* * *

Rama had notice and an opportunity to be heard by the City on its application for a Special Exceptions Permit for a liquor license. Thus constitutional minimum standards of due process were met. This was Rama's initial application for a Special Exceptions Permit. The Court concludes that the City did not exceed its jurisdiction, nor did it act fraudulently or arbitrarily when it denied Rama the Special Exceptions Permit. The Court concludes there is evidence in the record of the City seeking to effectuate a change to the area where Discount Liquor is located. The Court does not find the denial was an arbitrary decision to "champion Councilmember Berz's low income housing project" as argued by Mr. Patel. Councilmember Berz did not purchase the hotel for the homeless. Rather the City purchased the hotel for the housing insecure. Thus the City is seeking to effectuate a change to the area, not just Councilmember Berz. The denial of the Special Exceptions Permit was by a unanimous vote of the City Council. The Court further concludes that the City's denial of the Special Exceptions Permit does not unreasonably restrict the availability of alcoholic beverages as Mr. Patel testified there are three other liquor stores in the area.

* * *

In recognition of the policy that favors permitting the community decision makers closest to the events to make the decision, courts refrain from substituting their judgments for the broad discretionary power of the local governmental body. *McCallen v. City of Memphis*, 786 S.W.2d 633, 641-642 (Tenn. 1990). This Court likewise refrains from substituting its judgment for the broad discretionary power of the City Council to deny a Special Exceptions Permit to Rama for a liquor license, as a possible reason exists justifying the City's denial in that the City is changing that area of town to meet different purposes.

At the conclusion of [Rama]'s case, the City made a T.R.C.P. 41.02 motion for involuntary dismissal. The Court deferred ruling until the end of the proof.

It is hereby **ORDERED**

The petition for writ certiorari is **DISMISSED** with prejudice.

Costs taxed to [Rama].

This appeal followed.

ISSUES

Rama raises the following issues on appeal:

1. Whether the [Chancery] Court erred in holding that the decision of the Chattanooga City Council to deny a Special Exceptions Permit to [Rama] was not arbitrary or capricious or the result of some ulterior motive, and/or that the Chattanooga City Council acted without material evidence to support its decision.
2. Whether [Rama] had a vested interest in the special exceptions permit based upon the City of Chattanooga approving the Special Exceptions Permit for a period of approximately forty (40) years.

STANDARD OF REVIEW

When reviewing Rama’s application, City Council was acting in an administrative capacity. *Mullins v. City of Knoxville*, 665 S.W.2d 393, 395–96 (Tenn. Ct. App. 1983). “It exercised [its legislative] function . . . when it passed the ordinance.” *Id.* at 396. “It is now exercising the administrative function of determining whether or not [the application] meets the standards of the ordinance.” *Id.*

Administrative zoning decisions are reviewed through the common law writ of certiorari. *Venture Holdings, LLC v. Metro. Gov’t of Nashville & Davidson Cnty. by & through Metro. Bd. of Zoning Appeals*, 585 S.W.3d 409, 416 (Tenn. Ct. App. 2019) (quoting *Gulley v. Robertson Cnty. Planning & Zoning Comm’n*, No. M2015-00734-COA-R3-CV, 2016 WL 2898478, at *2 (Tenn. Ct. App. May 12, 2016)). “Under the common law writ of certiorari, the reviewing court must examine whether the [decisionmaker] acted illegally, arbitrarily, fraudulently, or in excess of its jurisdiction.” *Id.* “In doing so, the court determines ‘whether there is any material evidence that supports the action of the [decisionmaker].’” *Id.* (quoting *Laidlaw Envtl. Servs. of Nashville, Inc. v. Metro. Bd. of Health for Nashville & Davidson Cnty.*, 934 S.W.2d 40, 49 (Tenn. Ct. App. 1996)). “Courts must not ‘reweigh the evidence’ or ‘scrutinize the intrinsic correctness of the decision,’ but independently review the record to ‘determine whether it contains such relevant evidence that a reasonable mind might accept as adequate to support a rational conclusion.’” *Id.* (quoting *Lafferty v. City of Winchester*, 46 S.W.3d 752, 759 (Tenn. Ct. App. 2000) (internal quotations omitted)). “If no evidence supports the action of the administrative board, then that action is arbitrary.” *Harding Acad. v. Metro. Gov’t of Nashville & Davidson Cnty.*, 222 S.W.3d 359, 363 (Tenn. 2007) (citing *Demonbreun v. Metro. Bd. of Zoning Appeals*, 206 S.W.3d 42, 46 (Tenn. Ct. App. 2005)). ““A denial of a zoning permit which meets all the requirements of the ordinance when there is no valid

ground for denial is arbitrary and unreasonable.” *Id.* (quoting *Merritt v. Wilson Cnty. Bd. of Zoning Appeals*, 656 S.W.2d 846, 854 (Tenn. Ct. App. 1983)).

“A challenge to the evidentiary foundation for a local zoning decision presents a question of law, which we review *de novo* with no presumption of correctness.” *Venture Holdings, LLC*, 585 S.W.3d at 417 (quoting *Gulley*, 2016 WL 2898478, at *2). This Court’s review of the evidence on appeal is no broader or more comprehensive than the trial court’s review. *Id.* However, “[i]n reviewing a zoning action, an appellate court must do so with the recognition that ‘the discretionary authority of the government body must be exercised within existing standards and guidelines.’” *Wilson Cnty. Youth Emergency Shelter, Inc. v. Wilson Cnty.*, 13 S.W.3d 338, 342 (Tenn. Ct. App. 1999) (quoting *McCallen*, 786 S.W.2d at 639).

ANALYSIS

“Zoning laws, being in derogation of the common law and tending to deprive a property owner of a use of its property that would otherwise be lawful, ‘are to be strictly construed by the courts in favor of the property owner.’” *Wilson Cnty. Youth Emergency Shelter, Inc.*, 13 S.W.3d at 341 (quoting *State ex rel. Browning–Ferris Indus. of Tenn., Inc. v. Bd. of Comm’rs of Knox Cnty.*, 806 S.W.2d 181, 187 (Tenn. Ct. App. 1990)).

“A special exception,[] unlike a variance, is not an exception to a zoning ordinance.” *Demonbreun v. Metro. Bd. of Zoning Appeals*, No. M2009-00557-COA-R3-CV, 2011 WL 2416722, at *6 (Tenn. Ct. App. June 10, 2011). “Instead, it is a use that is expressly permitted.” *Id.* “‘Special exception’ is clearly a misnomer.” *Id.* (quoting *Rathkopf’s The Law of Zoning and Planning* § 61:9 (4th ed.)). “Since *the use is specifically provided for in the ordinance as one to be permitted* where the conditions legislatively prescribed are found, no exception to the ordinance is being made.” *Id.* “The inclusion of the particular use in the ordinance as one that is permitted under certain conditions, is equivalent to a *legislative finding that the prescribed use is one which is in harmony with the other uses permitted in the district, and while a variance can be granted only with respect to particular property as to which unnecessary hardship is found, the special exception permit must be granted to any and all property that meets the conditions specified.*” *Id.* (quoting *Rathkopf’s, supra*, § 61:11). Just as a body making an administrative zoning decision “is without power to grant a special permit not expressly authorized by the zoning ordinance; *it is equally without power to deny a permit on grounds not expressly stated in the ordinance.*” *Id.* (quoting 3 Kenneth H. Young, *Anderson’s American Law of Zoning* § 21.19 (4th ed. 1996)).

Once an applicant who seeks a special exception shows that the proposed use is allowable under the terms of the ordinance permitting the special exception, “there is no burden on the [applicant] to show that the use would not damage the health, safety and

morals of the community.” *Merritt*, 656 S.W.2d at 854 (quoting *Lower Merion Twp. v. Enokay, Inc.*, 233 A.2d 883, 885 (Pa. 1967)). See *Wilson Cnty. Youth Emergency Shelter, Inc.*, 13 S.W.3d at 342 (“ . . . once the applicant [for a special exception permit] goes through the process and the requested use satisfies all other pertinent regulations of the local zoning regulations, it must be granted.”); see also *Father Ryan High Sch., Inc. v. City of Oak Hill By & Through Oak Hill Bd. of Zoning Appeals*, 774 S.W.2d 184, 190 (Tenn. Ct. App. 1988) (quoting *Harrell v. Hamblen Cnty. Quarterly Court*, 526 S.W.2d 505, 508–509 (Tenn. Ct. App. 1975)) (“So long as the application is in order and the proposed use of the property complies with applicable municipal ordinances . . . the applicant is entitled to a permit, and it is the duty of the administrative officer to issue him one.”)).

In this case, there is evidence that the proposed use is allowable under the terms of the ordinance permitting the special exception and is compatible with uses in the area. The RPA approved the application and City Council had earlier approved an application for a liquor store to operate at this very location. Despite this, Appellee argues:

Sufficient evidence in the record exists to support the City Council’s decision to deny the Special Exceptions Permit. The reasons given in this record are not arbitrary, capricious, or fraudulent. During the January 18, 2022 hearing, two council members expressed opposition to the new liquor store. Councilman Henderson stated that although there was no opposition present at the meeting, there was opposition to the case. Councilwoman Berz stated that the City is attempting to turn the area around for different purposes. [Citation to record omitted.] The City Council’s reasoning to deny the permit was clear and unambiguous.

However, these conclusory statements made by members of the very body considering the application do not constitute evidence that the proposed use does not satisfy the requirements to obtain a special exception permit. “Mere beliefs, opinions and fears of neighborhood residents do not constitute material evidence[.]” *Mullins*, 665 S.W.2d at 396, and “it is not a function of the [decisionmaker] to conduct a referendum on public attitudes relative to [a] petition.” *Wilson Cnty. Youth Emergency Shelter, Inc.*, 13 S.W.3d at 342.

This case is similar to *Harvey v. Rhea Cnty. Beer Bd.*, 563 S.W.2d 790 (Tenn. 1978).¹ The applicant in *Harvey* applied for a permit to sell beer in a proposed store adjacent to his existing grocery-service station. *Harvey*, 563 S.W.2d at 791. It was undisputed that the applicant met all of the conditions and provisions of the controlling statute, except a provision providing “that no such beverages will be sold except at places

¹ “This Court has previously referenced beer permit cases[.]” including *Harvey* specifically, “when dealing with zoning special exception permit cases.” *Venture Holdings, LLC*, 585 S.W.3d at 423 (collecting cases).

where such sale will not cause congestion of traffic or interference with schools, churches, or other places of public gathering, or otherwise interfere with public health, safety and morals[.]” *Id.* The record included “a petition signed by several residents of the community protesting the proposed package store, expressing opposition to making the purchase of beer more convenient for students of the high school who are accustomed to stopping at the applicant’s grocery, and also expressing their opinion as church members that the proposed package store would be detrimental to the welfare of the community.” *Id.* The county beer board denied the application, and the trial court upheld the denial “finding that (1) the proposed package store would cause a traffic hazard and (2) the store would interfere with the public health, safety and morals of the community because of its proximity, 2250 feet, to a high school.” *Id.* In addition to the evidence presented to the beer board, the trial court considered testimony from two ministers from local churches, a nearby business owner, and the secretary of the county beer board who testified during the hearing on the applicant’s petition for writ of certiorari. *Id.* at 791–92. The Supreme Court of Tennessee reversed the judgment of the trial court, holding that the applicant was entitled to a beer permit because he had complied with all of the mandatory provisions of the governing statute, and “no particularized harm to the public health, safety or morals has been demonstrated[.]” *Id.* at 792.

Similarly, in *Waste Connections of Tenn., Inc. v. Metro. Gov’t of Nashville & Davidson Cnty.*, No. M2012-02290-COA-R3-CV, 2013 WL 1282011 (Tenn. Ct. App. Mar. 27, 2013), “[n]ot only were the factors and criteria [of the relevant ordinance] not discussed, no materials or evidence were introduced into the record prior to the vote on the Resolution.” 2013 WL 1282011 at *6. The applicant in that case applied to the Council of the Metropolitan Government of Nashville and Davidson County (“Metro Council”) for a special exception permit allowing the applicant to operate a waste transfer station. *Id.* at *1. Metro Council considered the application at a meeting that included “no discussion of any substantive issue or criteria, only very brief comments.” *Id.* at *5. At the meeting, two councilmembers reported that the public works committee and the planning, zoning, and historic committee had each unanimously voted to disapprove the application. *Id.* The sponsor of the resolution went on to say:

This process been a lot – a lot of sweat, a lot of tears, and for some of the constituents, a lot of blood. And I say that because at the end of the day, we’re all residents of Nashville, the greatest city in the United States, as far as I’m concerned. And right now I just wanted everyone to know that I’m moving for disapproval after several committee meet – community meetings and several other meetings in the district. It’s overwhelmingly clear that the district does not want this. And I’m going to support the people in my district by asking the whole body, please vote for disapproval of this facility. Thank you. And I move for disapproval with a machine vote.

Id. The resolution was disapproved by Metro Council by a vote of 37 to 1. *Id.* The applicant filed a petition for writ of certiorari, which the trial court dismissed, finding that there was sufficient evidence in the record to support Metro Council’s decision. *Id.* at *2. This Court reversed the judgment of the trial court, concluding that “Metro Council made its decision solely upon the concerns of the residents[,]” instead of upon the factors and criteria set forth in the city code, as it was required to do. *Id.* at *8.

Like in *Harvey* and *Waste Connections*, there is no dispute in this case that Rama met all of the relevant conditions and provisions set forth in the City Code. Furthermore, it is arbitrary for City Council to decide now that the location is not suitable for a liquor store when it previously granted the special exceptions permit for this very store, and Discount Liquors was operating in that location at the time City Council approved the City to purchase the nearby hotel to serve housing insecure people. To the extent City Council and the Chancery Court may have considered policy principles outside of those contemplated by City Code, “such considerations were improper.” *Venture Holdings, LLC*, 585 S.W.3d at 418 (citing *Cost Enters., LLC v. City of Lebanon*, No. M2008-00610-COA-R3-CV, 2009 WL 856643, at *7 (Tenn. Ct. App. Mar. 31, 2009)). Because Rama complied with all of the relevant conditions and provisions of the City Code, and no particularized harm to the public health, safety, or morals has been demonstrated, Rama was entitled to have its application approved. Therefore, City Council’s denial of the application was clearly illegal, arbitrary, and/or capricious.

Because Rama’s first issue raised on appeal is dispositive, its second issue is pretermitted. *See O’Dneal v. Baptist Mem’l Hosp.-Tipton*, 556 S.W.3d 759, 774 (Tenn. Ct. App. 2018) (quoting *In re Jamie B.*, No. M2016-01589-COA-R3-PT, 2017 WL 2829855, at *7 (Tenn. Ct. App. June 30, 2017)) (“[W]hen presented with multiple issues on appeal, one of which is dispositive, we have consistently found the remaining issues to be pretermitted.”)

CONCLUSION

The judgment of the Chancery Court is reversed. This matter is remanded to the Chancery Court for entry of an order directing City Council to approve Rama’s Corporate Application for Certificate for Liquor License. Costs on appeal are taxed to the Appellee, City of Chattanooga, Tennessee, City Council.

KRISTI M. DAVIS, JUDGE