

Gomes v. Pinellas County, Case No. 15-000057AP-88A (Fla. 6th Cir. Ct. May 12, 2016).

Unnecessary Hardship Dependent on Similar Land Uses

Recently one of the nine listed criteria considered for granting a variance, “unnecessary hardship,” was at issue during an appellate review. On appeal was the Pinellas County Board of Adjustment (“Board”) decision to grant a variance from setback requirements to allow the construction of a 150-foot telecommunication tower in a residential area. Adjacent landowners challenged the variance and argued that there was no evidence of an “unnecessary hardship.”

The term “unnecessary hardship” has been defined by Florida courts as “a non-self created characteristic of the property in question which renders it virtually impossible to use the land for the purpose or in the manner for which it is zoned.” The applicants argued that the setback requirements created an unnecessary hardship because the setback requirements were not necessary. The applicants pointed out that the telecommunication tower was designed to collapse internally and did not present a danger to adjacent structures or property. Furthermore, the applicants argued that by not granting the variance, the tower would have to be placed in a highly visible barren lot adjacent to a street facing a church. The applicants claimed that the church would not be able to expand due to the tower’s proximity, and the tower would be aesthetically unpleasing in that area. The applicants argued the setback requirements constituted an unnecessary hardship on the applicants and deprived the applicant of a right commonly enjoyed by others in the same zoning district.

The court found that argument to be flawed because although residential homes are not subject to the setback requirements in the zoning district, property owners, in the same zoning district, are held to the same setback requirements for the construction of towers or antennas over seventy-five feet or more in height. The court also stated that future construction made by the church would not be subject to the same setback requirements as the communication tower and thus would be allowed. The court held that aesthetics alone do not constitute competent substantial evidence to show an unnecessary hardship. The court quashed the variance and ruled that the Board erred in finding that the “unnecessary hardship” criterion was met.