NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION,
AND, IF FILED, DISPOSED OF

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

APPELLATE DIVISION

CASE NUMBER: 16-091 AP

CASE BELOW: Ordinance No.
2015-38 & Resolution No. 2015-316

2016 OCT 18 PM 3:26

ANTONIO FRIGULS, STUART RICH,
& IRA SILVER,

Petitioners,

v.

THE CITY OF CORAL GABLES, NP INTERNATIONAL
USA, LLC, & CORAL PARK INN, LLC,

Respondents.
_____/

approved: 10/18/16
10/18/16
10/18/16

Opinion filed: _____, 2016. Panel Date: November 9, 2016.

On certiorari review from an ordinance and resolution rendered by the City Commission for Coral Gables, Fl.

W. Tucker Gibbs, from W. Tucker Gibbs, P.A., for the Petitioners.

Frances G. De La Guardia from Holland & Knight, LLP and Craig H. Coller from Craig H. Coller, P.A. for the City of Coral Gables. Jeffrey S. Bass and Katherine R. Maxwell from Shubin & Bass, P.A. for NP International USA, LLC and Coral Park Inn, LLC.

Before BAILEY, HENDON, & THORNTON, Judges.

Per Curiam.

NP International USA, LLC ("Applicant") filed a development application with the Coral Gables Planning and Zoning Board. Antonio Friguls, Stuart Rich, and Ira Silver ("Petitioners") live within 1,000 feet of the proposed project and oppose the application. Despite the opposition from Petitioners and others, the Coral Gables Commission ("city commission" or "commission") approved the development application subject to conditions

and inscribed its decision into Ordinance No. 2015-38 and Resolution No. 2015-316. The Petitioners request that we quash the Ordinance and Resolution.

The City of Coral Gables ("City") argues that the Petitioners lack standing because they assert "generalized complaints about protecting" Coral Gables, such as the project is oversized, the project will affect Coral Gables' unique look, and the project's height will impact the view from the park. The Applicant[1] asserts that the Petitioners fail to demonstrate any injury, which "differs in kind from the impact to the community as a whole."

We must resolve standing as a "threshold issue" before deciding the merits. *Solares v. City of Miami*, 166 So. 3d 887, 888 (Fla. 3d DCA 2015). An aggrieved person "having standing to sue is a person who has a legally recognizable interest which is or will be affected by" the zoning action. *Renard v. Dade County*, 261 So. 2d 832, 837 (Fla. 1972). "An individual having standing must have a definite interest exceeding the general interest in community good share in common with all citizens." *Id.* Even when "a person has sufficient standing to challenge" a zoning decision, the litigant must still prove that the zoning authority's decision "was not fairly debatable." *Id.* (footnote removed).

The Petitioners contend that they "are aggrieved parties pursuant to" section 3-607, Zoning Code, and that they possess legally cognizable interests impacted by the zoning decision.[2] According to the Coral Gables Zoning Code: "An action to review any decision of the City Commission under these regulations may be taken by *any person or persons*, jointly or separately, *aggrieved by such decision* by presenting" a certiorari petition to the circuit court. § 3-607(A), Zoning Code (2016). Although section 3-607(A) confers standing upon any aggrieved "persons" to challenge a zoning decision, the Florida Supreme Court articulated factors regarding the special injury necessary for standing in a zoning case: "the proximity of his [or her] property to the property to be zoned or rezoned, the character of the

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[1] Coral Park Inn, LLC also joined NP International USA, LLC's response to the Petition. We refer to them collectively as the "Applicant."

[2] The Petitioners also argue that section 3-603, Zoning Code, "acknowledges that aggrieved individuals" who "have a right to mail notice have an interest in the noticed zoning matter that is different, distinct and greater than the members of the community at large" who "receive no such notice." We interpret section 3-603 as authorizing a litigant's standing to present a negative concurrency issue *to the city commission*. Section 3-603 does not authorize a party's standing to challenge an ordinance in a circuit court. We find the Petitioners' section 3-603 argument unpersuasive.

neighborhood, including the existence of common restrictive covenants and set-back requirements, and the type of change proposed are considerations." *Renard*, 261 So. 2d at 837.[3] Although the instant Petitioners received notice regarding the hearing because they live within a 1,000 foot distance from the project, (Pet. Reply App. Tab A), "notice requirements are not controlling on the question of who has standing." *Renard*, 261 So. 2d at 837. Though Florida law distinguishes standing under *Renard* from section 163.3215, Florida Statutes, standing, *City of Ft. Myers v. Splitt*, 988 So. 2d 28, 32 (Fla. 2d DCA 2008), section 163.3215 cases provide examples as to interests conferring standing. *Pichette v. City of N. Miami*, 642 So. 2d 1165, 1166 (Fla. 3d DCA 1994). When analyzing a petitioner's standing to pursue certiorari relief, we determine standing based upon the evidence received by the administrative tribunal, not the allegations in the petition. *Splitt*, 988 So. 2d at 32.

On September 16, 2015, Petitioner Rich attended a zoning board hearing and spoke about the project's "visual obstruction" impacting visitors to Jaycee Park and suggested that the City should authorize "a building in reasonable proportion to the area" as opposed to a "grossly oversized project" (Pet. App., Tab 14 at 32-33). Petitioner Rich also spoke at the October 12, 2015 commission hearing during which he stated that a tree would hide the project's upper floors, park visitors currently can see "the Holiday Inn [near or at the site of the project]" from the park, and that the project "is not low density and low volume." *Id.* at 287-289. During the December 8, 2015 commission hearing, he challenged the project supporters' credibility. *Id.* at Tab 46 at 154. Although he did not clarify whether he complained about a neon sign on a "UM building" or a future sign on the project, Petitioner

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[3] Regarding municipal legislation's influence upon the special injury factor, a district court held that a circuit appellate court "incorrectly ruled" that a county commission lacked standing to pursue certiorari relief and reasoned that zoning *regulations* "gave the Commission and any officer or department of the county the right to seek certiorari review of Zoning Board actions in the circuit court, regardless of whether the entity seeking review appeared in the proceeding before the Zoning Board, *without the necessity for showing of special injury or aggrievement*." *Bd. of County Com'rs of Sarasota County v. Bd. of Zoning Appeal of Sarasota County*, 761 So. 2d 1217, 1218 (Fla. 2d DCA 2000) (emphasis added). *But cf. Solares v. City of Miami*, 166 So. 3d 887, 889 (Fla. 3d DCA 2015) (a "city charter *cannot expand or contract the principle of standing* which ultimately sounds in the express separation of powers provision of Article II, Section 3 of the Florida Constitution") (emphasis added). Although the second district implies that municipal legislation alone may confer standing without requiring a petitioner to demonstrate a special injury, *Renard* controls this case since the Petitioners do not pursue relief as municipal officers.

Rich complained about a "neon sign...on from dusk to dawn." *Id.* at 154-155.[4] Based upon Petitioner Rich's comments at the zoning board and the commission hearings, we find that he did not demonstrate how this project will impact him more negatively than the impact upon the general community. Thus, he does not possess standing. *Messett v. Cohen*, 741 So. 2d 619, 622 (Fla. 5th DCA 1999); *Kagan v. West*, 677 So. 2d 905, 907 (Fla. 4th DCA 1996).

On October 22, 2015, Petitioner Friguls spoke at a commission hearing and stated that the project "is three times the size permitted by the current zoning" (Pet. App., Tab 28 at 233-234). Petitioner Friguls stated that the "Zoning Code does not permit the project as presented" and commented upon the code's historic impact upon Coral Gables' appearance. *Id.* at 234-235. Case law provides guidance here. A district court considered a case where the appellants alleged that a cabana violated an easement and building height restrictions, limited the challengers' ability to walk to a canal, and blocked their river view. *Kagan*, 677 So. 2d at 906-907. The district court stated that the appellants, "who share the private road" with the appellees, had "standing to enforce the building code." *Id.* at 908. Unlike *Kagan*, Petitioner Friguls did not assert any easement, covenant, or other property interest impacted by this project. Therefore, we hold that he lacks standing since he did not demonstrate how the project will impact him more negatively than the impact upon the general community.

On December 8, 2015, the commission conducted a hearing at which Petitioner Silver stated he would bring future political opposition against the current commissioners (Pet. App., Tab 8 at 125). Petitioner Silver did not articulate any noise impact, traffic impact, or land value diminution, *Pichette*, 642 So. 2d at 1166, thus failing to demonstrate how the project will impact him more negatively than the general community.

Because the Petitioners lack standing, we "dispense with oral argument," Fla. R. App. P. 9.320, scheduled for November 9, 2016 and dismiss this certiorari petition. *Penabad v. A.G. Gladstone Assocs., Inc.*, 823 So. 2d 146, 147 (Fla. 3d DCA 2002).

PETITION DISMISSED.

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[4] In the Ordinance, the commission directed that "No signs or building lights shall be permitted above the third floor along" Madruga Avenue (Pet. App., Tab 1 at 6).