

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CCP FUND III, LLC,

Case No: CACE-25-012952

Petitioner,

v.

CITY OF POMPANO BEACH,

Respondent.

Dated: May 11, 2026.

Petition for Writ of Certiorari from CCP FUND III, LLC

Scott M. Zaslav, Esq., Zaslav and Armbruster, P.A. Coral Springs, Florida, for Petitioner

Mark E. Berman, Esq., City Attorney, Pompano Beach, Florida, for Respondent

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

PER CURIAM.

This cause is before the Court for consideration on Petitioner, CCP FUND III, LLC/EDGE EXPRESS CAR WASH'S Petition for Writ of Certiorari. Having carefully considered the Petition for Writ of Certiorari, the Response, the Reply, the record, and the applicable law, and being otherwise duly advised, this Court dispenses with oral argument, and the Petition for Writ of Certiorari is hereby **GRANTED**.

JURISDICTION

This Court has jurisdiction pursuant to Rule 9.030(c)(3) and Rule 9.100(c) of the Florida Rules of Appellate Procedure, as this is a proceeding to review a quasi-judicial action of a board of a local government, which action is not otherwise directly appealable under any other provision of general law and as such is subject to review by certiorari in the circuit court.

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.” *City of Deerfield Bch. v. Vaillant*, 419 So. 2d 624 (Fla. 1982).

BACKGROUND AND PROCEDURAL HISTORY

This matter is before the Court on a Petition for Writ of Certiorari challenging a July 31, 2025, City of Pompano Beach (“Respondent”) Zoning Board of Appeal Order denying Petitioner’s application for Special Exception.

On or about June 10, 2025, Petitioner, EDGE EXPRESS CAR WASH (hereinafter “Petitioner”) applied to the City of Pompano Beach Zoning Board of Appeals (hereinafter “Board”) for a Special Exception. The public hearing before the Board was held on July 17, 2025. The property is located on the southwest corner of North Federal Highway and Northeast 54th Street in the City of Pompano Beach, Broward County, Florida, and the property currently contains an automotive repair shop, a gas station, and a convenience store. The property is located within a B-3 zoning district. Pursuant to Pompano Beach Land Use and Zoning Code (“ZC”) §155.4219(H), a car wash establishment in a B-3 Zoning District is a permitted Special Exception Use, provided that the criteria set forth in ZC §155.2406(D) “Special Exceptions” is met by Petitioner.

During the July 17, 2025, hearing, Petitioner presented its application to the Board through the testimony of Ms. Christina Bilenki, counsel for the Petitioner. Petitioner submitted documentary evidence addressing each of the thirteen criteria for Special Exceptions associated with ZC §155.2406(D) and additional oral testimony relating to each of the thirteen subsections contained therein. The application included a provisional site plan that demonstrated that the redevelopment of the property would include the closing off of two ingress/egress access points on Federal Highway and the addition of two access points along Northeast 54th street for entry and exit into and from the property. Northeast 54th street is a roadway that provides access to and from Federal Highway for an adjacent residential neighborhood. Included within the documentary evidence submitted to the Board was a portion of a traffic study by a traffic engineer (commissioned by Petitioner) to illustrate that there would be no adverse increase in traffic on NE 54th street, and that the new access points would provide a safer ingress/egress on the property because it eliminated risks associated with entry and exit from slowing vehicles on Federal Highway.

Petitioner testified that in regard to the need to maintain safe and convenient ingress and egress “the [new] access points will result in significant improvements to the conditions from what exists today. And we did run a traffic analysis against the existing uses on the site, and actually, it was limited to the convenience store and gas station [uses]. We didn’t even factor in the automotive repair against the traffic counts that would be anticipated for the carwash facility. And it’s actually a reduction in trips, pretty significant, about 635 daily trips reduced from what currently is there today.” (Petitioner’s Appendix (hereinafter “PA”) at 79). Based on the traffic study, the traffic engineer estimated trips onto Northeast 54th street would be approximately 25-26 per hour during operating hours (PA at 87).

During the hearing, on behalf of the Respondent, City of Pompano Beach, Mr. Max Wemyss, Pompano Beach’s Principal Planner in Development Services, testified that the City did

not conduct any traffic study relating to the application for Special Exception and that the City did not require any traffic study from Petitioner in support of its application for Special Exception (PA at 88-89). He further testified that Petitioner had submitted its traffic study as evidence for the Special Exception, and “I do want to say that our code actually encourages the use of the side street rather than the access off of the arterial for primary access to all development, regardless of its automotive nature or resident – whatever the development may be.” (PA at 89). In response to questioning from Board member Katz regarding the requirement for additional access points based on traffic counts, Mr. Wemyss further testified that there wasn’t anything “in our code that says, when you are producing this many trips, then provide additional points of access. That would be something that the applicant would propose. But, in this context where they’re able to gain access off of the lower ranking street [NE 54th street], this is what our code would encourage.” (PA at 89).

The Zoning Board of Appeals denied Petitioner’s request for the Special Exception, and entered its written Order (PA at 64) that provided in pertinent part:

“9. While the reduction in access points may aid onsite circulation, the traffic conditions along NE 54th Street may be impaired when impacted by neighborhood traffic.

In sum, Applicant failed to present competent, substantial evidence to satisfy the Special Exception review standards for granting a Special Exception in order to utilize the subject property as a Car Wash. Therefore, the Applicant’s request for the above Special Exception is **DENIED.**”

Petitioner thereafter filed its timely Petition for Writ of Certiorari.

LEGAL ANALYSIS

The approval of a Special Exception in Pompano Beach is governed by ZC §155.2406(D). (PA at 19, Pompano Beach’s Principal Planning and Development Services Staff Report).

ZC §155.2406(D) provides in pertinent part:

A Special Exception shall be approved only on a finding that there is competent substantial evidence in the record that the Special Exception, as proposed:

(4) “[a]voids overburdening the available capacity of existing public facilities and services, including but not limited to, streets” ..., and

(9) “[m]aintains safe and convenient ingress and egress and traffic flow onto and through the site by vehicles ... and safe road conditions around the site and neighborhood.”

Petitioner challenges the Board’s Order and alleges that 1) the Board departed from the essential requirements of law as it directly contravened ZC §155.2406(D) when there was competent substantial evidence in the record in support of all thirteen criteria listed in ZC

§155.2406(D); 2) the Order violates Fla. Stat. § 166.033(1) and ZC §155.2406(D) by failing to sufficiently specify adequate findings of fact and law upon which the Order of denial is based; and 3) once Petitioner met the initial evidentiary burden for approval of the Special Exception, the burden then shifted to the Respondent to demonstrate through competent substantial evidence that the application did not meet the criteria; which the opposition failed to do, and that the Board failed to identify any such specific evidence in the record which would be sufficient to support the findings in the Order.

Respondent, the City of Pompano Beach, provides “The question before this Court, therefore, is not whether review of the evidence demonstrates substantial competent evidence to support a position contrary to that reached by the [Board], *see City of West Palm Beach Zoning Board of Appeals v. Education Development Center, Inc.*, 504 So. 2d 1385 (Fla.4th DCA 1987); **Rather, the question is whether substantial evidence exists to support the decision made by the [Board]”?** (Response at 10)(emphasis added).

In *Irvine v. Duval County Planning Comm.*, 495 So. 2d 197 (Fla. 1986), the Florida Supreme Court reversed the Florida First District Court of Appeal in *Irvine v. Duval County Planning Comm.*, 466 So. 2d 357 (Fla. 1st DCA 1985)(reversed), and adopted the dissenting opinion of Judge Zehmer in the case. The Florida Supreme Court found that “**once the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, “the burden was [shifted to] the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the (special) exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.”** *Id.* at 364 (emphasis added).

In its July 31, 2025, written Order denying Petitioner’s application for Special Exception, as the basis for its decision, the Pompano Beach Zoning Board of Appeal Order provided only that “the traffic conditions along Northeast 54th Street may be impaired when impacted by neighborhood traffic.” The language “may be impaired” is purely speculative. No competent substantial evidence was submitted by Respondent at the hearing that would suggest that traffic conditions along Northeast 54th Street would be or may be impaired by the approval of the Special Exception. To the contrary, all of the evidence submitted during the hearing suggested that the traffic situation along Northeast 54th Street and Federal Highway would be improved by moving the access points off of Federal Highway and onto Northeast 54th Street.

Judge Zehmer, in his dissenting opinion, now adopted by the Florida Supreme Court, provided, *inter alia*, that

It seems abundantly clear to me that the Planning Commission and the circuit court departed from the essential requirements of law in that the record before the circuit court affirmatively showed that the Planning Commission order failed to make any detailed findings of fact explaining its denial of the application, the commission failed to include in the record of its proceedings competent evidence sufficient to support its denial of the

application, and the commission's attempted justification of its denial by merely reciting that petitioner had failed to carry his burden of proof is not in accord with the applicable rule of law. All administrative agency orders must contain detailed findings of fact that are legally sufficient to support the decision

Id. at 365.

Petitioner met its initial burden by presenting competent substantial evidence for the criteria identified in ZC §155.2406(D)(4),(9), therefore, the Board could only deny the Special Exception if there was competent substantial evidence supporting the Board's Order finding that the evidence does not meet the applicable Special Exception criteria. A reviewing board and its board members do not have unbridled discretion where there is a lack of competent substantial evidence in support of its decision. *Effie, Inc. v. Ocala*, 438 So. 2d 506, 508 (Fla. 5th DCA 1983), *ABC Liquors, Inc. v. City of Ocala*, 366 So.2d 146 (Fla. 1st DCA 1979), *Village. Of Palmetto Bay v. Palmer Trinity Private Sch., Inc.*, 128 So. 3d 19, 20 (Fla. 3d DCA 2012) and *Flowers Baking Co. v. Melbourne*, 537 So. 2d 1040 (Fla. 5th DCA 1989).

There is no competent substantial evidence in the record to support the decision made by the City of Pompano Beach Zoning Board of Appeal to deny the Special Exception.

Accordingly, the Petition for Writ of Certiorari is **GRANTED**. The City of Pompano Beach Zoning Board of Appeal's Order denying Petitioner's application for Special Exception departs from the essential requirements of law, and said Order is hereby **QUASHED**.

JUDGES J. BOWMAN, E. CARBUCCIA, and G. ODOM, Jr., concur.

NOT FINAL UNTIL DISPOSITION OF TIMELY FILED MOTION FOR REHEARING

Copies furnished to:
Counsel of record.