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**ORDER DENYING APPLICATION
FOR PERMISSION TO APPEAL,
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(MARCH 6, 2024)**

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

RAMA INC. d/b/a DISCOUNT LIQUOR

v.

CITY OF CHATTANOOGA,
TENNESSEE, CITY COUNCIL

No. E2022-01506-SC-R11-CV

Chancery Court for Hamilton County
No. 22-0146

ORDER

Upon consideration of the application for permission to appeal of the City of Chattanooga and the record before us, the application is denied.

The opinion of the Court of Appeals is designated “Not For Citation” in accordance with Supreme Court Rule 4, § E.

PER CURIAM

**OPINION REVERSING AND DIRECTING
APPROVAL OF LICENSE, COURT OF
APPEALS OF TENNESSEE
(OCTOBER 6, 2023)**

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

RAMA, INC. d/b/a DISCOUNT LIQUOR

v.

CITY OF CHATTANOOGA,
TENNESSEE, CITY COUNCIL

No. E2022-01506-COA-R3-CV

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

Before: Kristi M. DAVIS, J., Andy D. BENNETT, J.,
and J. Steven STAFFORD, P.J., W.S.

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

¹ "This Court has previously referenced beer permit cases[.]" including *Harvey* specifically, "when dealing with zoning special

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 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 manda-

exception permit cases.” *Venture Holdings, LLC*, 585 S.W.3d at 423 (collecting cases).

tory 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

**ORDER DENYING
PETITION FOR WRIT OF CERTIORARI,
CHANCERY COURT FOR THE ELEVENTH
JUDICIAL DISTRICT OF TENNESSEE
(SEPTEMBER 26, 2022)**

IN THE CHANCERY COURT FOR THE ELEVENTH
JUDICIAL DISTRICT OF TENNESSEE

RAMA, INC. d/b/a DISCOUNT LIQUOR

Petitioner,

v.

CITY OF CHATTANOOGA,
TENNESSEE, CITY COUNCIL

Respondent.

No. 22-0146
PART 1

Before: Pamela A. FLEENOR, Chancellor – Part 1

ORDER

This cause came on for hearing on August 10, 2022, upon the Petition for Writ of Certiorari pursuant to T.C.A. 27-9-101 filed by Rama, Inc., d/b/a Discount Liquor (Petitioner/Rama) seeking judicial review of the action by the Chattanooga City Council (City) denying its application for a Special Exceptions Permit for a liquor license for Rama, Inc.

CREDIBILITY

The Court heard from Mr. Mayuresh (Michael) Patel, Mrs. Mittalkumari Patel, and Sgt. Jason Wood with the Chattanooga Police Department. The Court found inconsistencies in the Petitioner's proof, thus making the testimony of Mr. Patel less than persuasive.

LEGAL STANDARD OF REVIEW

This case was filed as a petition for judicial review pursuant to T.C.A. 27-9-101 from a denial by the City of a Special Exceptions Permit for a liquor license for Rama, Inc. T.C.A. 27-9-101 provides for court review of actions by boards or commissions. T.C.A. 27-9-102 then provides that in these such cases, the petitioner shall file a petition for certiorari in chancery court. A writ of cert is an order from a superior court to an inferior tribunal to send up the record for review. *State v. Farris*, 562 S.W.3d 432 (Tenn. Ct. App. 2018).

The threshold question in determining whether an administrative decision is subject to judicial review by common law writ of certiorari is whether the administrative body performed a legislative or a quasi-judicial function. *McFarland v. Pemberton*, 530 S.W.3d 76 (Tenn. 2017). Petitioner asserts the City was performing an administrative function. The City asserts that it was performing a legislative function.

A crucial test in distinguishing legislative from administrative acts is whether the action taken makes a new law or executes one already in existence. *McCallen v. City of Memphis*, 786 S.W.2d 633, 638 (Tenn. 1990). Where a municipal legislative body reserves to itself the power to grant or deny licenses or permits, by an ordinance containing a rule or standard to govern

them, the decision whether to grant such permit is regarded as administrative rather than legislative. *Id.* Further common law writ of certiorari exists for review of a judicial or quasi-judicial proceeding that has a “record” of evidence that is available for certification to the reviewing court. *Fallin v. Knox County Board of Commissioners*, 656 S.W. 2d 338 (Tenn. 1983). The decision to grant a building permit is considered an administrative act, reviewable through a common law writ of certiorari, even if made by a legislative body. *State v. Farris*, 562 S.W.3d at 443-444.

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.

T.C.A. 27-8-101 then addresses the procedure for common law writs of certiorari and provides:

The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy.

The standard of review for this Court for a common law writ of cert is set forth in *Harding Academy v. Metropolitan Government of Nashville*, 222 S.W.3d 359, 363 (Tenn. 2007) which provides that review under the common law writ of certiorari is limited to whether the inferior board or tribunal (1) has exceeded its jurisdiction, (2) followed an unlawful procedure, (3)

has acted illegally, arbitrarily, or fraudulently or (4) acted without material evidence to support its decision.

Further in proceedings involving a common law writ of certiorari, illegal, arbitrary, or fraudulent actions include: (1) the failure to follow the minimum standards of due process; (2) the misrepresentation or misapplication of legal standards; (3) basing a decision on ulterior motives; and (4) violating applicable constitutional standards. *Id.*

In the case of *Lafferty v. City of Winchester*, 46 S.W.3d 752 (Tenn. Ct. App 2000), Judge Koch noted that, when the evidentiary foundation for a local board decision is challenged using the common-law writ, the sufficiency of the evidence is a question of law. “Hence, the courts must review the record de novo without presuming that the board’s finding is correct . . . This review does not permit the courts to reweigh the evidence . . . or to scrutinize the intrinsic correctness of the decision . . . It envisions that the court will review the record independently to determine whether it contains such relevant evidence that a reasonable mind might accept as adequate to support a rational conclusion.” *Id.* (inner citations omitted) A decision by a local board will be considered arbitrary only when there is no evidence to support it. *Id.*

The amount of material evidence required to support a board’s or agency’s decision must exceed a scintilla of evidence but may be less than a preponderance of the evidence. *Bacardi v. Tenn. Bd. of Registration in Podiatry*, 124 S.W.3d 553, 561 (Tenn. Ct. App. 2003).

In *McCallen v. City of Memphis*, 786 S.W.2d 633 (Tenn. 1990) Justice Wade opined that under the illegal, arbitrary and capricious standard for review for administrative acts

the court's primary resolve is to refrain from substituting its judgment for that of the local government body. An action will be invalidated only if it constitutes an abuse of discretion. If "any possible reason" exists justifying the action, it will be upheld. Both legislative and administrative decisions are presumed to be valid and a heavy burden of proof rests upon the shoulders of the party who challenges the action.

LEGAL ANALYSIS

Mrs. Mittalkumari Patel is the owner of Rama, Inc. d/b/a Discount Liquor (Rama). Discount Liquor is located at 7703 Lee Highway in Chattanooga, TN. On December 1, 2021 Mrs. Patel as President of Rama submitted a Corporate Application for Certification for Liquor License to the City Treasurer. On January 18, 2022, her husband, Mr. Patel, attended the hearing on Rama's application for a Special Exceptions Permit before the City Council. The findings of the Chattanooga-Hamilton County Regional Planning Agency (RPA) were presented at the hearing. The RPA findings demonstrated that the site is zoned C2 Convenience Commercial Zone. Liquor stores are listed as a use permitted in zone C2 as Special Exceptions by the City Council.

Previously on October 26, 2021, the City Council had acted to approve the purchase of a hotel, the former Airport Inn, located at 7725 Lee Highway. The hotel was purchased to help people who are housing insecure

and is located within 615 feet from the proposed liquor store. Silverdale Cumberland Presbyterian Church is located 626 feet to the west, just outside of the 500 feet buffer zone.

The site contained an offsite parking lot with 14 lined parking spaces. The building is 4300 square feet. CDOT noted the parking lot must be reconfigured to meet City requirements of 4 spaces per 1000 sq. feet or 16 parking spaces. Rama provided photos of re-striping of parking lot to obtain the necessary 16 spaces. That work had not been inspected for compliance as of the January 18, 2022 hearing.

A key RPA finding presented at the hearing was “The former liquor store is no longer in operation because it was forced to close by the Tennessee Alcohol Beverage Commission in November 2021.” Ex. C.

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. (Ex. H Minutes p. 4).

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.

Additionally T.C.A. 27-9-111 provides in pertinent part

- (a) At the expiration of ninety (90) days from the filing of the transcript, the cause shall stand for trial, and shall be heard and determined at the earliest practical date, as one having precedence over other litigation, except suits involving state, county or municipal revenue.
- (b) The hearing shall be on the proof introduced before the board or commission contained in the transcript, and upon such other evidence as either party may desire to introduce.
- (c) The judge shall reduce all findings of fact and conclusions of law to writing and make them parts of the record.
- (d) In making such findings of fact, the judge shall weigh the evidence and determine the facts by the preponderance of the proof. . . .

In reviewing the additional evidence introduced in court under the common law writ of cert, this Court is limited to the question whether the City Council exceeded its jurisdiction or acted fraudulently, arbitrarily, or

illegally. *Weaver v. Knox County Board of Zoning*, 122 S.W.3d 781 (Tenn. Ct. App. 2003).

FINDINGS OF FACT

At the hearing in chancery court on August 10, 2022, Mr. Patel testified that Discount Liquor has been in business since 1985. The previous owner of Discount Liquor was Jai Shiva, Inc. Amit Patel was the owner of Jai Shiva, Inc. Mr. and Mrs. Patel worked for Mr. Amit Patel, the prior owner, for several years and then purchased the business and the property from him.

Exhibit 4, a Real Estate Purchase Agreement, entered into between Amit Patel for Jai Shiva, Inc., the seller, and Mrs. Mittalkumari Patel for Rama Inc., the buyer, demonstrates that Rama purchased Discount Liquor at 7703 Lee Highway, together with real estate, furniture, fixtures, and all improvements on **November 10, 2021**. The purchase price was for 1,050,000. The contract provides that \$250,000 in earnest money was paid the effective date of the agreement which was November 10, 2021.

However, Mr. Patel testified that he purchased Discount Liquor in **2018**, with a \$250,000 down payment. He obtained a loan in 2018 from Fifth Bank to purchase Discount Liquor then transferred the loan to his wife's name. Thus Mrs. Patel then owned Jai Shiva, Inc. d/b/a Discount Liquor. The Property is secured by a DOT for \$680,000. In 2018 the property was appraised for \$800,000.

However, the liquor license remained under that of Jai Shiva, Inc. d/b/a Discount Liquor as owned by Amit Patel. Mrs. Patel knew they had to renew the liquor license every September. The previous owner

helped the Patels renew the liquor license under the name of Jai Shiva Inc. every year since 2018. Mr. Michael Patel assumed the liquor license automatically transferred to the new owner. However, Tennessee law provides otherwise. T.C.A. 57-3-212. If this testimony is true then from 2018 to 2021, Mr. and Mrs. Patel operated Jai Shiva, Inc. d/b/a Discount Liquor under the prior owner's liquor license. Further Mrs. Patel purchased the liquor inventory for Discount Liquor from Jai Shiva, Inc. when it was owned by Amit Patel, without having a liquor license.

In 2021 when the TABC discovered the change of ownership of Jai Shiva Inc. d/b/a Discount Liquor, the TABC told Mr. Patel he had to correct the change of ownership of the entity then apply to obtain a liquor license for Rama.

Rama has never had a Special Exceptions Permit.

The proof demonstrated that liquor License No. RTL RPS-HAM-1826493 expired **September 9, 2021**. (Ex. 2). TABC had previously notified the licensee to complete the renewal process on or before November 5, 2021. (Ex. 2) On November 8, 2021, the TABC notified the licensee that in the absence of the renewal process being completed by November 5, 2021, TABC was closing license number RTL RPS-HAM-1826493, effective November 8, 2021, for the property located at 7703 Lee Highway. (Ex. 2). Mr. Patel testified he was the owner when the permit expired. It appears that Mr. Patel's position is that since he had been operating Discount Liquor, albeit under another entity's license, prior to November 8, 2021, then he should not have been denied the Special Exceptions Permit by the City.

Sgt. Jason Wood, with the Chattanooga Police Department regulatory unit, testified that when the TABC revokes a liquor license, they notify his office. Then his office revokes the beer permit also. Agent Travis Patton, the TABC regulatory agent who served Ex. 2 on Discount Liquor, is Sgt. Woods' liaison with the TABC.

The Court finds that Mr. Patel's testimony as to when he and his wife purchased Discount Liquor is inconsistent with the written Real Estate Purchase Agreement. (Ex. 4). Based on the inconsistencies in his testimony, the Court does not find Petitioner's proof to be persuasive. At a minimum, if the Court were to find that Mr. and Mrs. Patel purchased Discount Liquor in 2018, then they were operating for three years without a proper liquor license. If Rama actually purchased Discount Liquor as shown in Exhibit 4, on **November 10, 2021**, then Rama purchased the liquor store after TABC closed the license on **November 8, 2021**. In either scenario the Court finds that the Petitioner's additional evidence fails to demonstrate that the City exceeded its authority or acted illegally or arbitrarily.

From all of which the Court finds the TABC revoked the liquor license for 7703 Lee Highway on November 8, 2021, prior to Rama applying for a Special Exceptions Permit for a liquor license on December 1, 2021. The Court further finds there was a change in ownership of Discount Liquor from Jai Shiva, Inc. to Rama, and Rama has never had a Special Exceptions Permit. Thus the Court finds that Rama sought its initial Special Exceptions Permit after the TABC closed the liquor license for Discount Liquor at 7703 Lee Highway.

CONCLUSIONS OF LAW

Petitioner asserts that a liquor store has operated on the premises of 7703 Lee Highway for nearly 40 years, and was in operation when the City purchased the nearby hotel for the homeless on October 26, 2021. Petitioner testified there are three other liquor stores in the area. Thus Petitioner argues that there has been no change to the area, as asserted by the City Council, and that the RPA supports its contention. Petitioner further asserts that since no one appeared in opposition to his resolution at the hearing on January 18, 2022, then the City's denial of his Special Exception Permit is arbitrary and capricious as there was no evidence to justify the City's decision. Petitioner argues it was "simply an attempt by Councilwoman Berz to champion her low income housing project and favor the same over a local business owned by a local minority, a taxpaying citizen."

However, the Court concludes that Rama was not seeking a renewal of a Special Exceptions Permit. Rather Rama sought its first Special Exceptions Permit.

Rama argues that the case of *Harding Academy v. Metropolitan Government of Nashville*, 222 S.W.3d 359 (Tenn. 2007) is analogous and supports its position. This Court disagrees. In *Harding*, Metro had issued the Harding Academy nine demolition permits. Two days later, Metro then revoked the nine permits. Unlike in *Harding Academy*, in the instant case, the City had never issued Rama a Special Exceptions Permit.

Rama also cites *Boles v. City of Chattanooga*, 892 S.W.2d 416 (Tenn. Ct. App. 1994) for support. In *Boles* the property owner legally operated an adult book

store. Several years later the City amended its zoning such that the area was no longer zoned for adult establishments. However, Boles' business was allowed to continue operating as it was "grandfathered in" as a prior non-conforming use. Subsequently Boles' business was enjoined from operating an adult-oriented establishment by an order of a criminal court. After an agreed order was entered modifying the injunction, Boles then leased the premises for operation of a new adult-oriented establishment. Subsequently the City brought an action in chancery court arguing that Boles' grandfather status had lapsed, because Boles had discontinued its use of the premises as an adult bookstore while the injunction was in place. The Eastern Section held that Boles did not lose its grandfather status, because there was not a "voluntary" discontinuance of the prior non-conforming use.

This Court determines that *Boles* is likewise distinguished, because the property owner in *Boles* had the right to operate its bookstore after the zoning change as it was "grandfathered in." However, in the instant case, Rama has never had the right to operate a liquor store at 7703 Lee Highway, as it has never had a Special Exceptions Permit. Rather Rama was seeking its initial Special Exceptions Permit to begin operating a liquor store business for the first time. Further the discontinuance of use in *Boles* was not a voluntary discontinuance. Here the prior owner's license had expired in September effective November 8, 2021, and it was not voluntarily renewed by the deadline in November. Thus there was a voluntary discontinuance of the liquor license by the prior owner.

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.

Petitioner also asserts that it spent money bringing the parking lot into compliance, apparently arguing that action gives it some vested interest in the Permit. However, the Court concludes this is not a takings action, and Rama never had a Special Exceptions Permit to operate a liquor store at 7703 Lee Highway.

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 Petitioner'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 Petitioner.

ENTER:

/s/ Pamela A. Fleenor

PAMELA A. FLEENOR

Chancellor - Part 1

**CHATTANOOGA CITY COUNCIL
DENIAL OF RAMA, INC. PERMIT,
COUNCIL MEETING MINUTES
(JANUARY 18, 2022)**



Chattanooga City Council
Chattanooga, Tennessee
John P. Franklin, Sr. City Council Building
COUNCIL MEETING MINUTES
January 18, 2022
6:00 PM

Chattanooga City Council
Chattanooga, Tennessee
John P. Franklin, Sr. City Council Building

CALL TO ORDER

Council Chairman Chip Henderson called the meeting to order. A quorum was present that included Vice-Chairman Ken Smith and Councilpersons Carol Berz, Anthony Byrd, Demetrus Coonrod, Raquetta Dotley, Isiah Hester, Jenny Hill, and Darrin Ledford. Others present were Emily O'Donnell, City Attorney, and Nicole Gwyn, Council Clerk. Video of the meeting is available on YouTube here.

[. . .]

RESOLUTIONS:

Jai Shiva, Inc./Rama, Inc.
District No. 6

Agenda Item VIII(a):

**A RESOLUTION APPROVING A SPECIAL
EXCEPTIONS PERMIT FOR A NEW LIQUOR
STORE LOCATED AT 7703 LEE HIGHWAY**

Karen Rennich of Regional Planning briefed the Council on this item. Chairman Henderson confirmed that there was no Opposition present. Although there was no Opposition present at this meeting, Chairman Henderson noted that there was opposition to this case, to which Councilwoman Berz addressed later. He opened the floor to hear from the Applicant and gave them nine minutes to address the Council.

Applicant:

- **Mike Patel** – He was not aware of the opposition to this request and wanted to hear about the concerns.

Councilwoman Berz spoke on the changes in the community and the opposition to this permit. She expressed regret that the Applicant had spoken to her prior to applying for this permit. **Councilwoman Berz moved** to deny. Vice Chairman Smith seconded. The motion carried.

ACTION: DENIED
