

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

RCH WELLNESS CENTER, an Arizona nonprofit corporation,
Plaintiff/Appellant,

v.

CITY OF FLAGSTAFF, a political subdivision of the State of Arizona, and
the BOARD OF ADJUSTMENT OF THE CITY OF FLAGSTAFF, a body of
the City of Flagstaff, *Defendants/Appellees,*

and

YAVAPAI HERBAL SERVICES, INC., an Arizona nonprofit corporation,
Defendant/Appellee.

No. 1 CA-CV 25-0557

FILED 04-30-2026

Appeal from the Superior Court in Coconino County

No. S0300CV202400597

The Honorable Brent Davidson Harris, Judge *Pro Tempore* (Ret.)

AFFIRMED

COUNSEL

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OPINION

Presiding Judge Daniel J. Kiley delivered the opinion of the Court, in which Judge D. Steven Williams and Judge Cynthia J. Bailey joined.

K I L E Y, Judge:

¶1 RCH Wellness Center (“RCH”) asserted claims against the City of Flagstaff (“the City”), the City’s Board of Adjustment (“the Board”), and Yavapai Herbal Services, Inc., doing business as Nirvana Center (“Nirvana”), challenging a decision of the Board that will allow Nirvana to establish and operate a business in competition with RCH’s business. The superior court dismissed RCH’s claims for lack of standing. We affirm.

FACTS AND PROCEDURAL HISTORY

¶2 The operative complaint sets forth the following allegations which, for purposes of this appeal, we accept as true. *See Arcadia Osborn Neighborhood v. Clear Channel Outdoor, Inc.*, 256 Ariz. 88, 92, ¶ 8 (App. 2023).

¶3 RCH operates Noble Herb, a licensed marijuana dispensary in Flagstaff operating since 2021.

¶4 In February 2024, Nirvana submitted a concept plan application to the City to establish a new marijuana dispensary in Flagstaff. The Flagstaff Zoning Code (“the Code”) requires dispensaries to meet various requirements, including a minimum separation of 500 feet from child daycare centers. Nirvana’s application contained an affidavit stating that the location for the proposed dispensary met the Code’s minimum separation requirements.

RCH WELLNESS v. FLAGSTAFF/YAVAPAI
Opinion of the Court

¶5 RCH later alleged that it had previously considered opening a dispensary at the same location. RCH decided against doing so, however, because the City informed it that submitting a concept plan application “created no protection” for a dispensary if a daycare center were to subsequently open within 500 feet.

¶6 After Nirvana submitted its application, RCH, through counsel, contacted the City’s counsel to confirm that Nirvana’s proposed use of the site as a dispensary had not “vested” merely because Nirvana submitted an application. The City’s counsel responded in the affirmative, stating that a dispensary applicant’s compliance with the Code’s separation requirements is not determined until the applicant has completed construction and a certificate of occupancy is to be issued.

¶7 Shortly thereafter, another entity applied for and obtained permission to operate a daycare center, “FLG Daycare,” at a site within 500 feet of Nirvana’s proposed location.

¶8 The prospective opening of the daycare center called into question Nirvana’s compliance with the Code’s separation requirements. To resolve the uncertainty, the City’s Planning Director issued an Interpretation Determination (“the Interpretation”) which contradicted the information that the City’s counsel had given RCH a month or two earlier. The Interpretation stated that “[m]inimum separation requirements are determined” when the application is first submitted, not when the proposed dispensary is to receive its certificate of occupancy. According to the Interpretation, “[I]and uses not yet established” when the application is submitted “shall not impact the development of a Marijuana Establishment.” Because FLG Daycare was not yet in operation when Nirvana submitted its application, the subsequent opening of FLG Daycare would not, under the Interpretation, take Nirvana out of compliance with the Code’s separation requirements.

¶9 RCH and FLG Daycare both challenged the Interpretation. At a hearing in August 2024, the Board upheld it.

¶10 RCH filed this statutory special action in the superior court against the City, the Board, and Nirvana, challenging the Interpretation as “arbitrary, capricious, [and] an abuse of [the Board’s] discretion.” Alleging that it currently enjoyed a “dominant market position” which “allows [it] greater economic power to set prices,” RCH alleged that it “will be aggrieved by the economic competition created by Nirvana’s opening.” RCH asked the superior court to enjoin the opening of the Nirvana

RCH WELLNESS v. FLAGSTAFF/YAVAPAI
Opinion of the Court

dispensary and to order the City to assess a dispensary applicant's compliance with the Code's minimum separation requirements as of the date when "the new dispensary obtains a Certification of Occupancy" rather than when the applicant first submits an application.¹

¶11 The City and the Board filed answers in which they asserted, *inter alia*, that RCH lacked standing to challenge the Board's decision to uphold the Interpretation. Nirvana, meanwhile, moved to dismiss under Arizona Rule of Civil Procedure ("Rule") 12(b)(6), asserting that RCH failed to state a claim upon which relief could be granted because "increased competition," the "only" harm alleged by RCH, was insufficient "to confer standing" to challenge the Board's decision. The City and the Board then joined in Nirvana's motion, arguing that RCH's desire to prevent "a competitor" from "enter[ing] the marijuana consumer sales market" does not constitute the type of harm necessary to establish standing. In response, RCH maintained that it had previously considered opening a dispensary at the site of the proposed Nirvana facility, but decided against doing so because the City informed it that submitting a concept plan "created no protection" for a dispensary if a daycare center were to subsequently open within 500 feet. By "appl[y]ing the opposite rule" when Nirvana submitted its application, RCH maintained, the City improperly "granted . . . an unfair competitive advantage" to Nirvana.

¶12 After oral argument, the superior court dismissed RCH's claims with prejudice, ruling that RCH's alleged harm was "speculative, not particularized, not concrete, hypothetical and entirely based on things that may, but have not yet, happened." After the court entered final judgment, RCH filed a timely notice of appeal. We have jurisdiction under A.R.S. § 12-2101(A)(1).

DISCUSSION

¶13 RCH argues that the superior court erred in dismissing its complaint for lack of standing. When reviewing a ruling on a motion to dismiss under Rule 12(b)(6), we accept as true the complaint's well-pled factual allegations. *Arcadia Osborn*, 256 Ariz. at 92, ¶ 8. Whether a party has standing to sue is a question of law that we review *de novo*. See *Aegis of Ariz., L.L.C. v. Town of Marana*, 206 Ariz. 557, 562, ¶ 16 (App. 2003).

¹ FLG Daycare, too, filed suit to challenge the Interpretation. As far as the record shows, FLG Daycare's suit remains pending.

RCH WELLNESS v. FLAGSTAFF/YAVAPAI
Opinion of the Court

¶14 RCH argues that the superior court erred in determining that RCH's complained-of injury is "speculative" and "based on things that may, but have not yet, happened." "By definition," RCH asserts, "the subject of all zoning appeals" is a "proposed" use, and the fact that harm has not yet come to pass does not establish that the challenger lacks standing.

¶15 RCH is correct that the fact that the new Nirvana dispensary has not yet opened for business does not, by itself, deprive RCH of standing to challenge the Board's decision to uphold the Interpretation. But we can affirm the superior court's dismissal of RCH's complaint if it is correct for any reason. *Fappani v. Bratton*, 243 Ariz. 306, 309, ¶ 8 (App. 2017). We turn, then, to whether the well-pled factual allegations in RCH's complaint, accepted as true, establish standing to challenge the Board's decision to uphold the Interpretation.

¶16 The starting point in deciding whether a plaintiff has standing to challenge an administrative decision is to determine "whether the statute in question authorizes review at the behest of the plaintiff." *Arcadia Osborn*, 256 Ariz. at 93, ¶ 10 (citation omitted). The statute applicable here, A.R.S. § 9-462.06(K), permits an appeal by any person who is "aggrieved" by a board of adjustment decision. A.R.S. § 9-462.06(K).² "[D]eciding whether a person is aggrieved" under Section 9-462.06(K) "necessarily involves examining the legal basis of the claimed injury." *Scenic Ariz. v. City of Phoenix*, 228 Ariz. 419, 423, ¶ 11 (App. 2011). Courts also consider traditional "judicially-established" principles of standing, which require plaintiffs to show not only "injury in fact," but "particularized harm resulting from the [challenged] decision." *Id.* at 424, ¶ 14 (citation omitted); see also *Blanchard v. Show Low Planning & Zoning Comm'n*, 196 Ariz. 114, 118, ¶ 20 (App. 1999) ("To have standing, a plaintiff must plead damage from an injury peculiar to him or at least more substantial than that suffered by the community at large." (citation omitted)).

¶17 The only injury that RCH claims to have suffered from the Board's decision to uphold the Interpretation is the threatened loss of its dominant position in the local marijuana market. RCH maintains that the potential loss of market share to a business rival constitutes "particularized harm" that confers standing to challenge a municipal land use decision. As

² The statute provides in pertinent part that "[a] person aggrieved by a decision of . . . [a] board . . . at any time within thirty days after the board . . . has rendered its decision, may file a complaint for special action in the superior court to review the . . . board decision." A.R.S. § 9-462.06(K).

RCH WELLNESS v. FLAGSTAFF/YAVAPAI
Opinion of the Court

support for its position, RCH relies on *Center Bay Gardens, L.L.C. v. City of Tempe City Council*, 214 Ariz. 353 (App. 2007).

¶18 In *Center Bay*, the Court held that an apartment complex owner had standing to challenge a zoning variance that allowed the construction of a mixed-use housing and retail development across the street from the complex. In so holding, the *Center Bay* court noted that the owner had alleged that the proposed development, a five-story structure that was exempted from setback requirements, would adversely affect the neighborhood by diminishing its aesthetic appeal while vastly increasing its density. *Id.* at 359-60, ¶¶ 21, 26. The *Center Bay* court did not, however, hold that the owner's standing derived from its "objection to increased competition from a neighboring project." *Id.* at 360-61, ¶¶ 30-31. On the contrary, the Court expressly declined to consider that issue, stating that "whether there will be increased . . . competition" was not "before us." *Id.* *Center Bay* thus provides no support to RCH's position.

¶19 RCH cites no case holding that the prospect of facing competition from a business rival constitutes the type of harm required to establish standing to challenge a municipal land use decision. Courts from other jurisdictions have overwhelmingly reached the contrary conclusion. See, e.g., *S. Bethlehem Assocs., LP v. Zoning Hearing Bd. of Bethlehem Twp.*, 294 A.3d 441, 448 (Pa. 2023) (holding that hotel owner lacked standing to appeal zoning variance granted to prospective competitor because hotel owner's "only interest affected by the zoning board's ruling was [the owner's] desire to suppress competition in the open market"); *ATC South, Inc. v. Charleston Cnty.*, 669 S.E.2d 337, 340 (S.C. 2008) (adopting the "prevailing" view that "an increase in business competition" is "insufficient to confer standing" to challenge zoning decision & citing cases); *Earth Movers of Fairbanks, Inc., v. Fairbanks North Star Borough*, 865 P.2d 741, 745 (Alaska 1993) (adopting "the majority interpretation" of the term "aggrieved" and holding that a plaintiff lacks standing to challenge a land use decision if the plaintiff's "only alleged injury is potential increased competition"); *A Guy Named Moe, LLC, v. Chipotle Mexican Grill of Colorado, LLC*, 135 A.3d 492, 508-09 (Md. App. 2016) ("[A] person is not aggrieved for standing purposes when his sole interest in challenging a zoning decision is to stave off competition with his established business." (citation omitted)). See also 4 *Rathkopf's The Law of Zoning and Planning* § 63.34 (4th ed. 2005) (stating that, "generally, persons whose only complaint is that the rezoning or grant of special permit or variance would create competition with them in the conduct of their business have been held not to have standing to litigate the validity of the zoning action").

RCH WELLNESS v. FLAGSTAFF/YAVAPAI
Opinion of the Court

¶20 Because, as Arizona courts have long recognized, “our free economy is based upon competition[.]” *Amex Distrib. Co., Inc. v. Mascari*, 150 Ariz. 510, 516 (App. 1986) (citation omitted), we find persuasive the majority view that the “particularized harm” needed to establish standing cannot be established by showing that a municipal land use decision will result in increased competition from a business rival.

¶21 RCH argues that it has standing to challenge the Board’s decision because it has been “the victim of official discrimination.” According to RCH, the Interpretation is contrary to the position the City took when RCH looked into the possibility of opening a dispensary on the site now owned by Nirvana. “RCH and Nirvana are similarly situated in all relevant aspects[.]” RCH contends, and the favored treatment Nirvana received “deprived RCH of its rights in a manner sufficient for RCH to assert a claim under 42 U.S.C. § 1983.”

¶22 For several reasons, this argument is unavailing. First, RCH’s contention that it could have “assert[ed] a claim under 42 U.S.C. § 1983” is irrelevant since RCH has not done so. *See Sears v. Hull*, 192 Ariz. 65, 70, ¶ 22 n.7 (1998) (holding that plaintiffs lacked standing to bring nuisance claim to enjoin governor from entering casino gaming compacts and rejecting plaintiffs’ argument that “they meet the criteria for standing in federal court” as irrelevant because plaintiffs sought relief “in state court”).

¶23 Second, RCH’s allegation that the Interpretation is at odds with the position that the City and the Board took in prior communications with RCH, even if true, would not establish a basis for a cognizable claim against them. *See Thomas & King, Inc. v. City of Phoenix*, 208 Ariz. 203, 210, ¶ 27 (App. 2004) (“The government ordinarily is neither estopped by the casual acts, advice or instructions issued by nonsupervisory employees, nor estopped from correcting a mistake of law.” (citations omitted)).

¶24 Third, RCH’s claim of “official discrimination” goes to the merits of its argument that the Board acted in an arbitrary or capricious manner or abused its discretion in upholding the Interpretation. But a plaintiff cannot properly rely on the merits of its claims to establish standing to bring them. *See Burks v. City of Maricopa*, 2 CA-CV 2017-0177, 2018 WL 3455691 at *2, ¶ 8 (Ariz. App. July 16, 2018) (mem. decision) (“[S]tanding is a threshold question that must be resolved before the merits of a case can be addressed.”); *see also Hannaford Bros. Co. v. Town of Bedford*, 64 A.3d 951, 957 (N.H. 2013) (holding that supermarket owner lacked standing to challenge variance granted to competitor and holding that owner’s argument that it “suffered a direct injury” because variance was

RCH WELLNESS v. FLAGSTAFF/YAVAPAI
Opinion of the Court

“unlawful” “improperly conflates the merits” of the owner’s challenge “with the standing requirement”). The threshold question of standing requires an inquiry into the nature of the claimed injury. If the nature of the claimed injury is insufficient to confer standing, the court cannot properly consider the merits of the plaintiff’s allegations about the cause of the claimed injury. *See, e.g., Sears*, 192 Ariz. at 68, ¶ 9 (“Because we agree that the plaintiffs lack standing, we do not address the merits of their claims.”). Instead, if the nature of the claimed injury is insufficient to confer standing, the cause of that injury is of no moment. *See id.*

¶25 RCH has alleged no particularized harm from the Board’s decision to uphold the Interpretation other than the unwelcome prospect of facing competition from a rival. Accepted as true, RCH’s allegations are insufficient, as a matter of law, to establish that RCH is “aggrieved” within the meaning of Section 9-462.06(K) by the Board’s decision to uphold the Interpretation. The superior court did not err in determining that RCH lacks standing to challenge the Board’s decision.

¶26 In the alternative, RCH argues that the superior court improperly dismissed its claims against the City and the Board because Nirvana alone moved for dismissal under Rule 12(b)(6). According to RCH, the City and the Board could not properly seek dismissal of the complaint under Rule 12(b)(6) because they had already answered the complaint.

¶27 Rule 12(b) provides in part that a motion to dismiss for failure to state a claim “must be made before pleading if a responsive pleading is allowed.” Ariz. R. Civ. P. 12(b). Because the City and the Board answered the complaint before joining Nirvana’s motion to dismiss, their joinder in Nirvana’s Rule 12(b)(6) motion should have been treated as a motion under Rule 12(c) instead. *See* Ariz. R. Civ. P. 12(c) (authorizing motions for judgment on the pleadings); Ariz. R. Civ. P. 12(h)(2)(B) (providing that a pleading’s “[f]ailure to state a claim upon which relief can be granted” may be challenged “by a motion under Rule 12(c)”). But we will not set aside the order dismissing RCH’s claims against the City and the Board merely because they sought relief under Rule 12(b)(6) rather than Rule 12(c). *See Liberti v. City of Scottsdale*, 258 Ariz. 496, 501, ¶ 13 (App. 2024) (affirming dismissal despite moving party’s “nomenclature mistake” in bringing the motion under Rule 12(b)(6) rather than Rule 12(c); “We will not reverse due to technical errors in pleadings.”). Dismissal was appropriate as to all defendants, and RCH is entitled to no relief.

RCH WELLNESS v. FLAGSTAFF/YAVAPAI
Opinion of the Court

CONCLUSION

¶28 For the foregoing reasons, we affirm the superior court's dismissal of RCH's claims for lack of standing. We award costs the City, the Board, and Nirvana upon compliance with Arizona Rule of Civil Appellate Procedure 21.



MATTHEW J. MARTIN • Clerk of the Court
FILED: JR