



AlaFile E-Notice

47-CV-2014-901820.00

Judge: D. ALAN MANN

To: NICHOLAS BECKHAM
njbeckha@gmail.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

JAMES HENDERSON ET AL V CITY OF HUNTSVILLE BOARD OF ZONING ADJUSTMENT
47-CV-2014-901820.00

The following matter was FILED on 9/19/2014 10:00:26 AM

C014 BOUCHARD CHRISTINA

C013 BOUCHARD JERROD

C015 CELESKI DAN

C017 CENTRAL ASSEMBLY OF GOD CHURCH

C004 COLONNELLO JOHN

C003 COLONNELLO LEEANN

C016 DOTY DAN

C002 HENDERSON CAROL

C001 HENDERSON JAMES

C018 PADRON ANTONIN

C019 PADRON ELIZABETH

C007 PUENT MARY

C006 RICHARDS JACKIE

C005 RICHARDS ROBERT DR

C011 STEELE WALLACE

C009 VAUGHAN STEPHEN W

C008 WHITLOCK JOHN R

C012 WILLIAMS ANGELA

C010 WILSON VICTORIA

TEMPORARY RESTRAINING ORDER

[Filer: BECKHAM NICHOLAS JOSEPH]

Notice Date: 9/19/2014 10:00:26 AM

JANE C. SMITH
CIRCUIT COURT CLERK
MADISON COUNTY, ALABAMA
MADISON COUNTY, ALABAMA
100 NORTHSIDE SQUARE
HUNTSVILLE, AL 35801

256-532-3390
jane.smith@alacourt.gov



IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

JAMES HENDERSON, et. al.,)	
Petitioners/Appellants,)	
vs.)	Circuit Court Case No.: 47-CV-2014-901820
)	
CITY OF HUNTSVILLE BOARD OF)	Zoning Board Case No.: 8449
ZONING ADJUSTMENT, CITY OF)	
HUNTSVILLE, CITY OF HUNTSVILLE)	
INSPECTION DEPARTMENT, RANDY)	PETITIONERS’ MEMORANDUM OF POINTS
CUNNINGHAM, Director of Inspections, in his)	AND AUTHORITIES IN SUPPORT OF MOTION
official capacity,)	FOR TEMPORARY RESTRAINING ORDER
Respondents/Appellees.)	AND/OR PRELIMINARY INJUNCTION
)	

**PETITIONERS’ MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION**

STATEMENT OF FACTS

The property located at 4831 Sparkman Drive (hereafter the Property) is zoned as Residential 1-A. Aranda Declaration ¶2, Exhibit A. On May 19, 1998, the Board of Zoning Adjustment (BZA) held a hearing, during which the BZA issued a limited variance for the Property. The BZA granted a variance to allow an outpatient medical clinic to be operated by the Huntsville Hospital at the location. Aranda Declaration ¶3, Exhibit B.

In May 2014, Dalton Johnson, by and through his corporation DCJ Properties, LLC, purchased the Property. On May 8, 2014, Jim McGuffey, Zoning Administrator, sent a letter to the Alabama Department of Public Health, indicating that the Property was zoned for a medical clinic. Aranda Declaration ¶4, Exhibit C. McGuffey’s letter did not specify the limits of the variance granted to the Property in 1998. On May 19, 2014, Johnson filed an application for change in license requesting to move the Alabama Women’s Center for Reproductive Alternatives (AWCRA) from 612 Madison Street, Huntsville, AL to 4831 Sparkman Drive, Huntsville, AL. Aranda Declaration ¶5, Exhibit D.

During the week of July 7, 2014, Petitioners observed construction being done on the Property for at least two days and reported such conduct to the City. Henderson Declaration ¶2. Petitioners learned that no building or construction permit had been issued for the Property since 2004. Aranda Declaration ¶15. The City issued a cease work order and allowed Johnson to apply for a permit retroactively and continue his construction operations without any penalty for his blatant disregard for the law, in direct violation of the Huntsville Zoning Ordinance.

On July 10, 2014 the City issued a Building Permit for Office Space for the Property. Aranda Declaration ¶6, Exhibit E – Building Permit Number 426726. The very next day, on July 11, 2014, Johnson filed a Pre-licensure Filing document with the Alabama Department of Public Health (ADPH) reflecting his intent to reapply for a new abortion center license to operate the AWCRA at the Property. Aranda Declaration ¶7, Exhibit F. On July 17, 2014, the City issued another permit for the Property. Aranda Declaration ¶8, Exhibit G. – Building Permit Number 427132.

On July 24, 2014, Petitioners timely filed an appeal to the BZA appealing James McGuffey's interpretation that the 1998 variance granted by the BZA for the Property permits the operation of an abortion center at the Property. Aranda Declaration ¶14.

On July 25, 2014, the City conducted a final inspection regarding permit number 426726. On July 25, 2014, the City conducted a final inspection regarding permit number 427132. Aranda Declaration ¶7, Exhibit F. On August 8, 2014, the City transferred the business license for the AWCRA from 612 Madison Street, Huntsville, AL to 4831 Sparkman Drive, Huntsville, AL. Aranda Declaration ¶10, Exhibit I. On August 14, 2014, the City Inspector, Randy Cunningham, issued a Certificate of Completion certifying that the Inspection Division has inspected the premises described in the notice and found that it conforms with the Zoning Ordinance and Building Code as required by the application of the structure. The City Inspector, Randy Cunningham, further stated that the Notification constitutes the right to use the property for the proposed use shown on the Notification. Aranda Declaration ¶11, Exhibit J.

On August 29, 2014, Johnson filed with the ADPH a license application to operate an abortion center at the Property. Aranda Declaration ¶12, Exhibit K. On September 9, 2014, Ray Sherer, Licensure Director, sent notice to Johnson that the application was incomplete for several

reasons, one being that an Inspection by the Department's Division of Technical Services is required and a Certificate of Completion must be issued. Aranda Declaration ¶13, Exhibit L.

STANDARD FOR GRANTING PRELIMINARY INJUNCTION

Traditionally, a court may issue a preliminary injunction if it determines that (1) the moving party will suffer irreparable injury if the relief is denied, (2) the moving party will probably prevail on the merits, (3) the balance of potential harm favors the moving party, and (4) the public interest favors granting relief. *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-1226 (11th Cir. 2005) (per curiam), *Searle v. Vinson*, 42 So. 3d 767 (Jan. 29, 2010).

Plaintiffs satisfy the requirements for injunctive relief. Specifically, as described more fully below, there is a substantial likelihood that Plaintiffs will prevail on the merits of their zoning claim, and Plaintiffs have suffered irreparable harm that will escalate absent equitable relief. Moreover, if Defendants are ordered to reverse their actions that were contrary to law and ordered to comply with Alabama Code Section 11-52-80 and Huntsville Zoning Ordinance 92.4, they will suffer no harm because compliance with established law can never harm any of Defendants' legitimate interests. It is always in the public interest to enforce established law and compel the government to adhere to its own regulations.

ARGUMENT

I. PETITIONERS' ARE LIKELY TO SUCCEED ON THE MERITS.

A. An appeal stays all proceedings in furtherance of the action appealed from.

Alabama Code Section 11-52-80(c) states, "Appeals may be taken by any person aggrieved by any decision of the administrative officer." Huntsville Zoning Ordinance Section 92.3 states the same. Petitioners timely filed an appeal on July 24, 2014 to the Board of Zoning Adjustment challenging the Zoning Administrator's interpretation of the 1998 variance issued for the Property.

"An appeal stays all proceedings in furtherance of the action appealed from." Alabama Code Section 11-52-80(c) and Huntsville Zoning Ordinance 92.4. The stay is automatic and no

further action is needed to stop the City or its agents from taking any action on the matter that is the subject of the appeal. Thus, any action taken by the City or its agents after July 24, 2014 is unlawful and should be nullified by this court.

On August 19, 2014, the BZA ruled 3-2 in favor of reversing Mr. McGuffey's interpretation of the 1998 variance, though 4 votes were needed to reverse the Zoning Administrator's decision. Petitioners further appealed the matter to Circuit Court, pursuant to Huntsville Zoning Ordinance Section 92.7 and Alabama State Code Section 11-52-81 and timely filed the appeal on September 2, 2014. All actions and proceedings in furtherance of this matter should be stayed pending the outcome of this appeal.

B. The City, the Department of Inspection, the Board of Zoning Adjustment, and Randy Cunningham, Director of Inspections all violated the automatic stay.

Despite the above provisions mandating a stay of all proceedings in furtherance of the action appealed from, the City ignored the law and the Inspection Department conducted two independent inspections of the Property on July 25, 2014. The City further ignored the law and transferred Johnson's business license for the AWCRA form 612 Madison Street, Huntsville, AL to the Property on August 8, 2014. And most egregious, the Director of the Inspection Department issued a final Notice of Completion for the Property on August 14, 2014 paving the way for Johnson to open for business while the issue of whether or not the Property is zoned for an abortion center is pending appeal!

The City and its agents violated Alabama Code Section 11-52-80(c) and Huntsville Zoning Ordinance 92.4 by not honoring the automatic stay. All actions taken after July 24, 2014, are unlawful and should be nullified by this court. Moreover, the court should issue a temporary restraining order and/or preliminary injunction to preserve the status quo to prevent the City and its agents from taking any further action and or proceedings in furtherance of this matter pending the outcome of this appeal in accordance with Alabama Code Section 11-52-80(c) and Huntsville Zoning Ordinance 92.4.

II. THE PUBLIC INTEREST FAVORS GRANTING THE TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION.

Due Process of Law and Separation of Powers are fundamental rights guaranteed under the United States Constitution, Alabama Constitution and the Alabama Code. It is in the public interest to hold our government and its agents accountable to adhere to the law that governs them. In this matter, the City violated both of these fundamental rights in several ways. The City Zoning Administrator arbitrarily, and without legislative authority, redefined the definition of a medical clinic, as used in the Zoning Ordinance, to include an abortion center. The City Director of Inspections ignored state and local laws that automatically stay all proceedings and actions while a matter is on appeal. The City of Huntsville is inviting lawlessness if this court does not intervene to protect the public interest.

III. THE CITY'S UNLAWFUL ACTIONS WILL DETRIMENTALLY AFFECT STATE ACTIONS AND PROCEEDINGS ON THIS MATTER AND CAUSE IRREPARABLE HARM.

On August 29, 2014, Johnson filed with the ADPH a license application to operate an abortion center at the Property. Aranda Declaration ¶12, Exhibit K. On September 9, 2014, Ray Sherer, Licensure Director, sent notice to Johnson that the application was incomplete for several reasons, one being that an Inspection by the Department's Division of Technical Services is required and a Certificate of Completion must be issued. Aranda Declaration ¶13, Exhibit L.

The Technical Services Division of the ADPH relies on the City's issuance of a certificate of completion to determine if the Property complies with local law. The Certificate of Completion for the Property that was issued by Randy Cunningham, Director of Inspections, was issued in violation of Alabama Code Section 11-52-80(c) and Huntsville Zoning Ordinance 92.4. The ADPH is in imminent danger of issuing a Certificate of Completion based on the unlawfully issued City document. Furthermore, once the certificate of completion is issued by the ADPH, the next step in the process will be to issue Johnson a license to operate an abortion center. All

the while, the issue of whether or not the Property is properly zoned to permit an abortion center is on appeal.

It is incumbent upon this court to preserve the status quo as provided by Alabama Code Section 11-52-80(c) and Huntsville Zoning Ordinance 92.4 and enforce the stay of all proceedings in furtherance of this matter pending the appeal. Moreover, because the City has violated state and local law it is necessary for this court to nullify the City's unlawful actions in order to preserve the status quo as of the time of the filing of the appeal on July 24, 2014.

Accordingly, Petitioners request that this court 1) void the final inspections conducted on July 25, 2014, 2) revoke the certificate of completion issued on August 14, 2014, and 3) revoke the transfer of business license issued on August 8, 2014. In the alternative, Petitioners request that the court order the City and its agents to take the above requested action immediately. Furthermore, and in light of the City's previous unlawful actions, Petitioners request that this court issue a temporary restraining order and/or preliminary injunction to stay all proceedings in furtherance of this matter pending the appeal.

IV. THE COURT SHOULD WAIVE THE BOND REQUIREMENT.

The Court may issue temporary and preliminary injunctive relief in this case without security under Rule 65(c) because the issue is one of overriding public concern. *Spinks v. Automation Personnel Services, Inc.*, 49 So.3d 186 (Ala. 2010). Given the lack of any possible financial or other harm to the City if injunctive relief is granted, the irreparable harm that Petitioners face, and the importance of the constitutionally-protected rights, state laws, and municipal ordinances that Petitioners' seek to enforce, waiver of the security requirement is appropriate here.

CONCLUSION

For the foregoing reasons, Plaintiffs' application for a temporary restraining order and/or preliminary injunction should be granted.

Dated: September 18, 2014

/s/ Nicholas Beckham

Nicholas Beckham (ASB #4205-I43B)
181 Hagan Avenue
Childersburg, AL 35044
Telephone: 256-626-9469
Facsimile: 205-623-3870
Email: njbeckha@gmail.com

LIFE LEGAL DEFENSE FOUNDATION
Allison K. Aranda (CA Bar No. 215021)*
PO Box 890685
Temecula, CA 92589
Tel: (951) 296-2835
Fax: (951) 541-2711
akaranda@lldf.org

*Application for admission Pro Hac Vice pending
Attorneys for Appellants

