

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MORNINGSIDE HURON, LLC,)
)
Plaintiff,)
)
vs.) Case No. 2020CH02622
)
)
THE CITY OF CHICAGO, a municipal)
corporation; THE CITY OF CHICAGO)
DEPARTMENT OF TRANSPORTATION; GIA)
BIAGI, Commissioner, Chicago Department of)
Transportation; THE CITY OF CHICAGO)
DEPARTMENT OF PLANNING AND)
DEVELOPMENT; MAURICE COX,)
Commissioner, Department of Planning and)
Development; and PATRICK MURPHEY,)
Zoning Administrator,)
)
Defendants.)

8697084

COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF

NOW COMES the Plaintiff, MORNINGSIDE HURON, LLC (“MH”), by its undersigned attorneys, and complaining of the Defendants, the CITY OF CHICAGO, a municipal corporation (the “City”), the CHICAGO DEPARTMENT OF TRANSPORTATION (“CDOT”), Gia Biagi, Commissioner, CDOT, the CHICAGO DEPARTMENT OF PLANNING AND DEVELOPMENT (“DPD”), MAURICE COX, Commissioner, DPD, PATRICK MURPHEY (“Murphey”), Zoning Administrator, states as follows:

SUMMARY OF THE CASE

1. This is a challenge to the City’s, CDOT’s and Murphey’s unconstitutional denial of Plaintiff’s request for a “minor change” to Residential Business Planned Development No. 461, Subarea B (“PD 461”), and related application (“Application”) for a Commercial Driveway Permit from CDOT (“Driveway Permit”).

2. If granted, the Application and Driveway Permit would merely allow MH's tenant the continued operation and use of a non-accessory parking lot at 365 W. Huron Street, Chicago, IL (the "Parking Lot" or "Subject Property"), which same Parking Lot the City itself operated until it sold it "as is" to MH in 2018.

3. The Defendants' refusal to allow MH to operate the Parking Lot for the same purpose the City operated it for many years is arbitrary, irrational and abusive. MH is entitled to declaratory, injunctive and other relief mandating the issuance of the Driveway Permit.

THE PARTIES, JURISDICTION AND VENUE

4. Plaintiff MH is the owner of the Subject Property and the Applicant for the Driveway Permit at issue.

5. Defendant City is a municipal corporation located in Cook County, Illinois.

6. Defendant CDOT is a department of the City responsible for, *inter alia*, processing applications, and issuing permits, for the development of residential and commercial driveways.

7. Defendant Gia Biagi is the Commissioner of CDOT and is sued in her official capacity as Commissioner of CDOT.

8. Defendant DPD is a department of the City of Chicago which, *inter alia*, is responsible for the enforcement of the Chicago Zoning Ordinance ("CZO"), including the review and approval of requests for minor changes to existing Planned Developments.

9. Defendant Maurice Cox is the Commissioner of DPD and is sued in his official capacity as Commissioner of DPD.

10. Defendant Patrick Murphey is the Zoning Administrator of the City of Chicago and is sued in his official capacity. His responsibilities include making final administrative decisions on requests for minor changes to existing Planned Developments.

11. The Court has jurisdiction over Defendants pursuant to 735 ILCS 5/2-209(3) of the Illinois Code of Civil Procedure.

12. Venue is proper in that all parties are residents of Cook County, IL, and the actions complained of took and are taking place in Cook County, IL.

FACTUAL BACKGROUND

13. The Parking Lot is located at the common address of 365 W. Huron St., Chicago.

14. It is located in PD 461.

15. As enacted in 1988, PD 461 allowed the use of the Subject Property for non-accessory parking of motor vehicles.

16. For many years prior to MH's purchase of the Parking Lot in 2018, the City operated, without license or permit, a non-accessory parking lot on the Subject Property.

17. Pursuant to a Purchase and Sale Agreement dated September 6, 2016, in 2018 the City completed the sale of the Subject Property, "which is improved with a surface parking lot," to MH, "as is", for the price of \$3,864,000.00. **See Ex. A hereto.**

18. In the course of purchasing the Subject Property MH and its agents made multiple representations to the City that it intended to operate the Parking Lot until such time as further development of the Subject Property would commence.

19. No official, agent, servant or employee of the City ever said or suggested that such operation would be prohibited.

20. The use of the Subject Property as a surface parking lot has continued uninterrupted since MH purchased it.

21. On February 28, 2018, PD 461 was amended to allow for the development of a multiunit residential building on the Subject Property.

22. Although non-accessory parking was removed from the list of permitted uses in connection with that amendment, MH has continued uninterrupted the now “legally non-conforming” use of the Parking Lot for non-accessory parking, just as the City before it.

23. In August 2018, MH submitted the Application to CDOT for the Driveway Permit. **See Ex.B.**

24. The Driveway Permit is a prerequisite to MH’s commercial parking tenant’s application for the appropriate business license from the City.

25. The Application requires approval from the “Zoning Department”. **See Ex. B.**

26. Over the course of the following year zoning did not sign off on the Application.

27. Nonetheless the use of the Parking Lot for non-accessory parking continued.

28. On or about December 12, 2019, pursuant to §17-13-611-A of the CZO and Statement 12 of PD 461, as amended, MH paid the requisite \$1,500.00 fee and submitted a request to Murphey for a “minor change” to PD 461 to allow for the continued use of the Parking Lot for accessory parking (the “Request”). **See Ex. C.**

29. As submitted, that Request established (a) the legal non-conforming use of the Parking Lot, and (b) that the request met the standards for Zoning Administrator Murphey’s approval of a minor change to PD 461. **See Ex. C.**

30. Nonetheless, on January 2, 2020, Murphey denied the request. **See Ex. D.**

31. His bases therefor are arbitrary, illogical and unlawful for the following reasons:

a. Administrator Murphey’s first basis for denial of the Request was as follows:

“According to your request letter, since your client purchased the property last year, and during the amendment process, the property has been used as a non-accessory parking lot, however, there are no valid driveway permits or licenses on file.”

The reason there were no valid permits or licenses on file is because the City does not issue permits and licenses to itself.

- b. Administrator Murphey's second basis for denial is equally circular and illogical:

“In regards to the parking lot's nonconforming status, pursuant to Section 17-15-0304-A of the Zoning Ordinance, if a nonconforming use fails to maintain a valid business license, the use will be considered to have been discontinued. If a nonconforming use is discontinued for 18 months or more, all nonconforming rights are lost and re-establishment of the nonconforming use is prohibited. Therefore, pursuant to the authority granted by the Chicago Zoning Ordinance and PD 461, this minor change request is denied.”

MH could not have maintained a valid business license because there was no business license to maintain; the City does not issue itself a business license and MH bought the Parking lot owned and operated by the City *from the City*. By its Request and this lawsuit, MH is attempting to obtain the Driveway Permit from CDOT so that its tenant may receive a business license. Moreover, Administrator Murphey is flat wrong that the nonconforming use was discontinued for 18 months. It has not been discontinued at all.

32. MH owns, and through its tenant, operates a non-conforming use within PD 461. It does not even need a minor change to retain its legal right to operate a non-accessory parking lot.

33. Even if it did need approval for a minor change to PD 461, it meets the standards set forth in §17-13-611-A of the CZO and Statement 12 of PD 461, as amended.

PLAINTIFF'S INCURRED COSTS AND OBLIGATIONS

34. Plaintiffs expended substantial sums of money, and incurred financial obligations, in good-faith reliance on (a) its ability to lease the Parking Lot to a commercial tenant for the purpose of the continued operation of the Park Lot, and (b) the faithful, proper, and legal consideration and approval of the Application: \$3,864,000.00.

COUNT I

(Denial of Application and Ordinance - Substantive Due Process/Irrational Denial of Request)

1-34. Plaintiffs repeat and reallege Paragraphs 1-34 as if specifically set forth in this Count I.

35. This count is brought under Art. I, §2 of the Illinois Constitution, and pursuant to 65 ILCS 5/11-13-25.

36. Art. I, §2 guarantees to each citizen the legal right to substantive due process.

37. The denial of the request for minor change to PD 461 (the "Denial") was a decision of the City denying a request for a zoning amendment.

38. The Denial of the Request is not rationally or substantially related to the public welfare.

39. The Denial of the Request constitutes classic, arbitrary, irrational, capricious, and confiscatory zoning action relating to the Subject Property which is not rationally or substantially related to the general welfare or the City as a whole.

40. The Denial was not a valid exercise of the police power by the City.

WHEREFORE, Plaintiffs pray the Court grant the following relief:

- A. Find the Denial of the Request to be null, void, and unconstitutional as an arbitrary, irrational, and capricious exercise of the police power, as applied to Plaintiff's Subject Property, in violation of Plaintiff's due process rights;

- B. Preliminarily and permanently enjoin the City, its officers, agents, servants, and employees, and all Defendants from enforcing the denial of the Request and Application, and order the approval of the zoning relief sought, the Request and Application, and issuance of permits and/or a zoning approval of the Application.
- C. Grant Plaintiff all costs incurred herein, including expert witness fees;
- D. Grant Plaintiff all attorneys' fees incurred herein; and
- E. Grant Plaintiff such other and further relief that it may deem just.

COUNT II

(Vested Rights/Equitable Estoppel – Declaratory Judgment)

1-40. Plaintiffs repeat and reallege Paragraphs 1-34 as if specifically set forth in this Count IV.

41. There exists an actual and justiciable controversy between the parties as to the propriety and legality of the Defendants' Denial of the Request and the Application.

WHEREFORE, Plaintiffs pray the Court grant the following relief:

- A. Declare that Plaintiff has a vested right in the continued operation of the Parking Lot and that the Defendants are equitably estopped from denying the Request and/or Application;
- B. Preliminarily and permanently enjoin the City, its officers, agents, servants, and employees, and all Defendants from enforcing the denial of the Request and Application, and order the approval of the Request, the Application, and issuance of permits and/or a zoning approval of the Application.
- C. Grant Plaintiff all costs incurred herein, including expert witness fees;
- D. Grant Plaintiff all attorneys' fees incurred herein; and
- E. Grant Plaintiff such other and further relief that it may deem just.

COUNT III
(Action for Mandamus)

1-41. Plaintiffs repeat and reallege Paragraphs 1-34 as if specifically set forth in this Count III.

42. MH is the applicant which submitted the Application for the driveway permit at issue in the instant complaint.

Grounds for a Writ of Mandamus

43. This count is brought pursuant to Article XIV of the Code of Civil Procedure of Illinois, 735 ILCS 5/14-101 *et seq.*

44. Article IV of Chapter 10-20 of the Chicago Municipal Code contains the relevant provisions relating to the application for and issuance of driveway permits.

45. The Chicago Municipal Code contains the following relevant provisions relating to driveway applications:

10-20-415. Application - Insurance - Notice - Appeal. (a) ...An application shall be approved and a permit issued only upon a determination of the commissioner of transportation, upon consultation with the following departments, that the driveway will not (1) create undue safety hazards in the use of the street, parkway or sidewalk by vehicular or pedestrian traffic, nor (2) impede the safe and efficient flow of traffic upon the streets and sidewalks adjoining the property for which the driveway is proposed, and upon his or her determination that the existing and proposed use of the property to be connected by said driveway is in all respects in conformity with existing traffic, zoning and building ordinances. The commissioner of transportation shall refer applications (1) to the executive director of emergency management and communications for investigation and report on the traffic aspects incident to such determination, (2) to the zoning administrator for review and advice as to the zoning and building aspects incident to such determination, (3) to the commissioner of water management for review and advice as to the drainage structure, manhole and sewer aspects, and hydrant and water control valve aspects incident to such determination, and (4) to the bureau of electricity in the department of streets and sanitation for review and advice with regard to the underground equipment and street lighting aspects incident to such determination.

(d) Prior to issuing a use of public way permit for a driveway, the commissioner of transportation shall give 20 days written notice of the proposed issuance of the permit to the alderman of the ward in which the proposed driveway is to be located and no permit shall be valid unless such notice is delivered; provided, however, that the affidavit of the commissioner of transportation showing delivery of such notice to such alderman in person or by mailing to such address as the alderman may have filed with the city clerk, shall be conclusive evidence of delivery of such notice.

46. The complete and valid Application was filed with CDOT in August 2018. **Ex. B.**

47. The Application met or meets the requirements of the Municipal Code set forth above.

48. The Application complies with the requirements of all disciplines required to review and approve the Application.

49. The Zoning Department has refused to sign-off on, or otherwise approve, the Application.

50. As of the date of the filing of this Complaint, CDOT has not issued MH a driveway permit, despite its compliance with all required standards and review criteria.

51. Since the filing of the Application, MH has repeatedly demanded and sought the issuance of the driveway permit from CDOT and the Zoning Department.

52. The defendants are thus under a plain duty to issue MH Driveway Permit applied for in the Application.

53. The defendants' failure and refusal to perform this mandated and ministerial duty is predicated upon Administrator Murphey's wrongful denial of the Request.

WHEREFORE, Plaintiffs pray the Court grant the following relief:

- A. A writ of mandamus directing Defendants to approve the Application, *instantly*;
- B. A writ of mandamus directing Defendants to issue MH the Driveway Permit, *instantly*;

- C. Grant Plaintiff all costs incurred herein, including expert witness fees;
- D. Grant Plaintiff all attorneys' fees incurred herein; and
- E. Grant Plaintiff such other and further relief that it may deem just.

MORNINGSIDE HURON, LLC,
Plaintiff,



One of Its Attorneys

February 28, 2020

Thomas J. Ramsdell
THOMAS J. RAMSDELL & ASSOCIATES
161 N. Clark Street
Suite 2550
Chicago, IL 60601
(312) 606-8765
Firm No. 41868
Email: tjr@ramsdell-law.com