



AlaFile E-Notice

47-CV-2014-901820.00

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 complaint was FILED on 9/19/2014 9:40:20 AM

Notice Date: 9/19/2014 9:40:20 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, CAROL
HENDERSON, LEEANN COLONNELLO,
JOHN COLONELLO, DR. ROBERT
RICHARDS, JACKIE RICHARDS, MARY
PUENT, JOHN R. WHITLOCK, STEPHEN W.
VAUGHN, VICTORIA WILSON, WALLACE
STEELE, ANGELA WILLIAMS, JERROD
BOUCHARD, CHRISTINA BOUCHARD,
DAN CELESKI, DAN DOTY, CENTRAL
ASSEMBLY OF GOD CHURCH, ANTONIN
PADRON, and ELIZABETH PADRON,
Petitioners/Appellants,

vs.

CITY OF HUNTSVILLE BOARD OF
ZONING ADJUSTMENT, CITY OF
HUNTSVILLE, CITY OF HUNTSVILLE
INSPECTION DEPARTMENT, RANDY
CUNNINGHAM, Director of Inspections, in his
official capacity,
Respondents/Appellees.

Circuit Court Case No.: 47-CV-2014-901820

Zoning Board Case No.: 8449

**AMENDED COMPLAINT FOR INJUNCTIVE
RELIEF**

COME NOW Reverend James and Carol Henderson, LeeAnn and John Colonnello, Dr. Robert and Jackie Richards, Mary Puent, John R. Whitlock, Stephen W. Vaughn, Victoria Wilson, Wallace Steele, Angela Williams, Jerrod Bouchard, Christina Bouchard, Dan Celeski, Dan Doty, Central Assembly of God Church, Antonin Padron, and Elizabeth Padron the undersigned Petitioners/Appellants, by and through counsel, and for their Complaint/Appeal from, the final decision of the Huntsville Board of Zoning Adjustment on August 19, 2014 to affirm James McGuffey’s interpretation of the 1998 variance granted by the Board of Zoning Adjustment for the property located at 4831 Sparkman Drive (hereafter the “Property”) that the 1998 variance for the operation of a medical clinic includes the operation of an abortion center, and state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Alabama Code section 11-52-81.

2. Venue is proper in Madison County Circuit Court because the conduct complained of occurred in Madison County, Alabama.

PARTIES

3. The City of Huntsville (hereafter “City”) Board of Zoning Adjustment (hereafter “BZA”) is, and at all times herein mentioned was, an administrative agency, organized and existing under the laws of the State of Alabama, and is capable of suing and being sued. The BZA is responsible for the enforcement of the City Zoning Ordinance in the City.

4. The City of Huntsville, is and at all times herein mentioned was, a municipal corporation organized and existing under the laws of the State of Alabama, and is a corporate entity capable of suing and being sued. Defendant City maintains and operates the Board of Zoning Adjustment, which in the first instance is responsible for the enforcement of the City Zoning Ordinance. Defendant City maintains and operates the Inspection Department, which, in the first instance, is responsible for the enforcement of the City Zoning Ordinance, City International Building Code, City National Electrical Code, City International Mechanical Code, City International Fuel Gas Code, City International Plumbing Code, City Existing Building Code, and City International Residential Building Code.

5. The City Inspection Department is, and at all times herein mentioned was, an administrative agency organized and existing under the laws of the State of Alabama, and is capable of suing and being sued. The Inspection Department is responsible for the enforcement of the City Zoning Ordinance, City International Building Code, City National Electrical Code, City International Mechanical Code, City International Fuel Gas Code, City International Plumbing Code, City Existing Building Code, and City International Residential Building Code.

6. Randy Cunningham is, and at all times herein mentioned was, employed by the City as the Director of Inspections, and in doing the acts hereinafter described, acted within the course and scope of his authority and employment with the City and pursuant

to the official policies, customs, procedures, and usages of the City and was an agent of the City. He is sued in his official capacity.

7. Petitioners James and Carol Henderson work and volunteer in the City. As a tenet of their faith, both Reverend and Carol Henderson oppose abortion and are adamantly opposed to the City issuing a business license, issuing a certificate of occupancy, and/or granting a zoning variance that would permit Dalton Johnson to open the Alabama Women's Center for Reproductive Alternatives (hereafter "AWCRA") on the 4831 Sparkman Drive property. Reverend and Mrs. Henderson have engaged in prayer and counseling outside the AWCRA for several years. The Hendersons have witnessed first hand the physically and verbally abusive conduct of pro-abortion activists outside the AWCRA and do not want that type of criminal element in the City where they are employed and volunteer.

8. Petitioner Stephen W. Vaughn works in the City in close proximity to the Property. As a tenet of his faith, he opposes abortion and is adamantly opposed to the City issuing a business license, issuing a certificate of occupancy, and/or granting a zoning variance that would permit Johnson to open the AWCRA on the Property.

9. Petitioners Dr. Robert and Jackie Richards own a chiropractic business near the Property. They are adamantly opposed to the City issuing a business license, issuing a certificate of occupancy, and/or granting a zoning variance that would permit Dalton Johnson to open the AWCRA on the Property. Dr. Richards is familiar with the type of activities pro-abortion activists have engaged in at Johnson's former abortion clinic and does not want that type of criminal behavior to interfere with his business.

10. Petitioner Dan Doty is the Pastor of the Central Assembly of God Church located near the Property. Both Pastor Doty and the church are adamantly opposed to the City issuing a business license, issuing a certificate of occupancy, and/or granting a zoning variance that would permit Dalton Johnson to open the AWCRA on the Property. Pastor Doty is familiar with the type of activities pro-abortion activists have engaged in at Johnson's former abortion clinic and does not want that type of criminal behavior to interfere with the business of the Church.

11. Petitioners Leeann Colonnello, John Colonnello, Mary Puent, John R. Whitlock, Victoria Wilson, Wallace Steele, Angela Williams, Jerrod Bouchard, Christina Bouchard, Dan Celeski, Antonin Padron, and Elizabeth Padron reside and/or work and/or volunteer in Huntsville and are adamantly opposed to the City issuing a business license, issuing a certificate of occupancy, and/or granting a zoning variance that would permit Johnson to open the AWCRA on the Property.

ALLEGATIONS OF FACT

12. The Property in question is zoned as Residential 1-A. See Exhibit A – Official Zoning Map of the City of Huntsville obtained from the GIS Department.

13. On May 19, 1998, the 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. The BZA specified when granting the variance that the Property was to be used by a single occupant and was not to be sublet or split into more than one office space. See Exhibit B – Minutes from the 5-19-98 Board of Zoning Adjustment Hearing.

14. According to the minutes of the 1998 BZA hearing, Huntsville Hospital leased the Property for a term of 15 years beginning in 1998.

15. The Alabama Women’s Wellness Center (hereafter “AWWC”) leased the Property in 2013. Dr. Yashica Robinson-White did and currently does operate an OBGYN medical office at the location. Robinson-White performed abortions at the AWCRA when it was located at 612 Madison Street, Huntsville, Alabama and she has a long-standing relationship with Dalton Johnson, clinic director for AWCRA.

16. In May 2014, Dalton Johnson, by and through his corporation DCJ Properties, LLC, purchased the property located 4831 Sparkman Drive in Huntsville, Alabama. Johnson continued to lease the Property to the AWWC.

17. On May 8, 2014, Jim McGuffey sent a letter to the Alabama Department of Public Health, indicating that the property located at 4831 Sparkman Drive was zoned for

a medical clinic. See Exhibit c attached. McGuffey's letter did not adequately specify the limits of the variance granted to the Property in 1998.

18. On May 19, 2014, Johnson filed an application for change in license requesting to move the AWCRA from 612 Madison Street Huntsville, AL to 4831 Sparkman Drive, Huntsville, AL. See Exhibit D attached.

19. On July 1, 2014, the Women's Health and Safety Act took effect. The 612 Madison Street facility was not able to comply with the new regulations. Thus, Johnson surrendered his abortion license on July 1, 2014 to avoid adverse action by the ADPH.

20. As recently as the first week of July 2014, the City claimed that no building permits had been issued for the Property.

21. 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. Petitioners learned that no building or construction permit had been issued for the Property. 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.

22. On July 10, 2014 the City issued a Building Permit for Office Space for the Property. See Exhibit E – Building Permit Number 426726.

23. The very next day, on July 11, 2014, Johnson filed a Pre-licensure Filing document with the ADPH reflecting his intent to reapply for a new abortion center license to operate the AWCRA at the Property. See Exhibit F.

24. On July 17, 2014, the City issued another permit for the Property.

25. 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. Petitioners submitted the following items along with their appeal application and memorandum: 1) a list of all property owners within 500 feet of the subject property, 2) a copy of the notification letter which was sent to all property owners notifying them of the time, place, and date of the hearing on this petition (Exhibit G), 3) photographs of the subject

property (Exhibit H), and 4) a copy of the applicable page of the official Zoning Map of the City of Huntsville obtained from the GIS Department (Exhibit A).

26. On July 25, 2014, the City conducted a final inspection regarding permit number 426726.

27. On July 25, 2014, the City conducted a final inspection regarding permit number 427132.

28. 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.

29. 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. See Exhibit I.

30. Neither the Petitioners nor any other owner within 500 feet of the Property received notice of the issuance of any building permits for construction on the Property.

31. Neither the Petitioners nor any other owner within 500 feet of the Property received notice of the BZA's decision to allow an abortion center to be operated at the Property.

ALLEGATIONS OF LAW

32. The City Zoning Administrator, James McGuffey, and the BZA have erroneously determined that operating an abortion center at the Property does not violate the City Zoning Ordinance and have unlawfully failed and/or refused to take any action to enforce the provisions of the Zoning Ordinance on the Property owners and/or tenants.

I. THE PROPERTY IS NOT ZONED FOR AN ABORTION CENTER.

33. Petitioners reallege paragraphs 1 – 32 of this Complaint and incorporate them herein by this reference.

34. Huntsville Zoning Ordinance Section 92-5-4 provides that the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this

ordinance when granting a variance. This is precisely what the Board did when granting the 1998 variance. The Board restricted use of the Property to a single business and limited the variance to the operation of an outpatient medical clinic by the Huntsville Hospital. Huntsville Zoning Ordinance Section 92-5-4 states: "Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Section 91.5 -Penalties hereof." Thus, any other use that does not conform with the limited variance is in violation of the Zoning Ordinance. An abortion center is not a permitted use under the variance.

35. The Property is zoned Residential 1-A with a variance granted in 1998 to permit the operation of a medical clinic run by Huntsville Hospital.

36. Allowing anything other than an outpatient medical clinic by the Huntsville Hospital at the Property violates the conditions and safeguards placed on the Property when the BZA granted the limited variance. Huntsville Hospital is no longer operating a medical clinic at the Property, thus any use other than Residential, is in violation of the Zoning Ordinance.

37. At the conclusion of the lease and once Huntsville Hospital was no longer operating an outpatient medical clinic at the Property, the new property owner and/or lessee should have been required to go back to the Board to request a new variance, per the Board's specifications of the variance at the 1998 hearing.

38. An abortion center is not the same as a medical clinic. An abortion center is a specialized ambulatory surgical center under Alabama law and subject to additional state regulations, whereas a medical clinic is not. An abortion center requires a special license from the Alabama Department of Public Health, whereas a medical clinic does not. The City Zoning Ordinance differentiates between a medical clinic and a surgery center.

39. Allowing both the AWWC and the AWCRA to jointly occupy the Property violates the terms of the 1998 variance and thus, violates the Zoning Ordinance. As of August 8, 2014, and without notice to Petitioners, the City has issued a business license to operate both the AWWC and the AWCRA at the Property. This is precisely what the

terms of the 1998 variance prohibited. The BZA erred in not requiring Johnson to return to the BZA and petition for a new variance.

II. THE BZA VIOLATED THE ZONING ORDINANCE BY GRANTING A NEW VARIANCE WITHOUT PROPER NOTICE.

40. Petitioners reallege paragraphs 1 – 39 of this Complaint and incorporate them herein by this reference.

41. The City Zoning Ordinance Section 92.5.4 grants the BZA the authority to issue a variance for a property under certain terms and conditions, but not without first having received a written application for a variance demonstrating a variety of conditions, secondly not without giving notice of a public hearing in accordance with Zoning Ordinance section 92.5.2(2), and lastly not without making the required finding that the variance would not be injurious to the neighborhood.

42. The BZA did not comply with any of the requirements set forth in section 92.5.4 thus, violating the City Zoning Ordinance. The BZA unlawfully granted a new variance for the operation of an abortion center at the Property.

III. THE CONSTRUCTION AT THE PROPERTY VIOLATED THE ZONING ORDINANCE.

43. Petitioners reallege paragraphs 1 – 42 of this Complaint and incorporate them herein by this reference.

44. Section 91.2 of the Zoning Ordinance makes it a violation to conduct activity for which a building permit is required unless the Zoning Administrator has given his approval.

45. On July 9, 2014, petitioners observed construction at the Property and no permit and/or approval had been issued for the activity. The Zoning Administrator erroneously declined to issue the Property owner a citation for failing to obtain a permit and thus did not perform his duties under the Zoning Ordinance.

46. Rather, the City Zoning Administrator erroneously issued a building permit to Tennessee Valley Builders Inc. for construction of an abortion center on the Property

which violated the terms and conditions of the City Zoning Ordinance and the 1998 variance issued for the Property. The Zoning Ordinance Section 91.2 provides that “a building permit shall not be issued until such time as the zoning administrator has determined that the proposed activity for which a building permit is required conforms to the provisions of this ordinance.” The Property is zoned Residential 1-A. An abortion center is not a permitted use (see Section I. above).

47. The City duplicated the error by issuing another permit for electrical work on July 17, 2014. The issuance of the second permit was an error for all of the same reasons as the July 10, 2014 permit.

IV. ALL ACTIONS REGARDING THE PROPERTY SHOULD HAVE BEEN STAYED ON JULY 24, 2014 WHEN THE APPEAL WAS FILED.

48. Petitioners reallege paragraphs 1 – 47 of this Complaint and incorporate them herein by this reference.

49. The City Zoning Ordinance Section 92.4 and Alabama Code Section 11-52-80 specifically state, “An appeal stays all proceedings in furtherance of the action appealed from....”

50. A stay is automatic unless certain criteria are met. The only way a stay is not implemented is if “the zoning administrator certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property.” Zoning Ordinance 92.4 and Alabama Code 11-52-80. The City Zoning Administrator did not issue any such certificate in this case, nor should he because a stay in this matter would not cause imminent peril to life or property.

51. The City, Zoning Administrator, and BZA all erred in not honoring a stay of all proceedings in furtherance of the appeal timely filed on July 24, 2014 challenging the Zoning Administrator’s interpretation of the 1998 variance granted by the Board of Zoning Adjustment for the property located at 4831 Sparkman Drive that the 1998 variance for the operation of a medical clinic would permit the operation of an abortion center.

52. The City, City Inspector Randy Cunningham, Zoning Administrator, and BZA erred and violated the Zoning Ordinance and state law when they allowed further construction to take place on the Property after the July 24, 2014 appeal was filed.

53. The City, City Inspector Randy Cunningham, Zoning Administrator, and BZA erred and violated the Zoning Ordinance and state law when they conducted a final inspection of the Property on July 25, 2014.

54. The City, Zoning Administrator, and BZA erred and violated the Zoning Ordinance and state law when they transferred the business license for the AWCRA from 612 Madison Street, Huntsville, AL to the Property on August 8, 2014.

55. The City, City Inspector Randy Cunningham, Zoning Administrator, and BZA erred and violated the Zoning Ordinance and state law when they issued the Certificate of Completion for the Property on August 14, 2014.

V. A NEW VARIANCE SHOULD NOT BE GRANTED.

56. Petitioners reallege paragraphs 1 – 55 of this Complaint and incorporate them herein by this reference.

57. Huntsville Zoning Ordinance Section 92-5-4 also prohibits the granting of any variance that is not in the public interest.

58. The proposed use of the property as an abortion clinic is not in the public interest. The property is located within close proximity to three schools, Ed White Middle School, Highlands Elementary and the Islamic Academy of Huntsville. It is not in the best interest of the community to locate an abortion center in close proximity to young children. Local businesses and religious groups have expressed their concern and objection to the operation of an abortion center near their businesses and places of worship. The AWCRA has a sordid history of violent pro-abortion protestors shouting profanity and physically harming peaceful sidewalk counselors who regularly pray outside the abortion center.

59. Accordingly, the BZA should deny any future applications for a variance that would allow an abortion center at the Property, pursuant to its authority under the City

Zoning Ordinance Section 92-5-4 to deny any variance if it is found to not be in the public interest.

60. Furthermore, even if the BZA was correct in its interpretation that the 1998 variance allowed for the operation of an abortion center at the Property, based on the impact of the newly proposed use of the property, the BZA should have revoked the variance pursuant to its authority under the City Zoning Ordinance Section 92-5-4 to deny any variance if it is found to not be in the public interest.

PRAYER FOR RELIEF

Wherefore, the Property Considered, the Petitioners respectfully request that this Court will find and do as follows:

- A. Declare that the variance issued in 1998 is void as the specific use has been discontinued or abandoned.
- B. Declare that an abortion center is an Ambulatory Surgical Center and is not a permitted use under the 1998 variance and/or the City Zoning Ordinance.
- C. Revoke the building permits issued on July 10, 2014 and July 17, 2014 in violation of the City Zoning Ordinance.
- D. Nullify the final inspections of the Property that took place on July 25, 2014 in violation of the City Zoning Ordinance 92.4 and Alabama Code Section 11-52-80.
- E. Revoke the business license for AWCRA that was transferred from 612 Madison Street, Huntsville, AL to the Property on August 8, 2014 in violation of the City Zoning Ordinance 92.4 and Alabama Code Section 11-52-80.
- F. Nullify the Notice of Completion issued for the Property on August 14, 2014 in violation of the City Zoning Ordinance 92.4 and Alabama Code Section 11-52-80.

- G. Declare that a variance for an abortion center at the Property is not in the public interest.
- H. Deny any future applications for a variance that would allow an abortion center to operate at the Property.

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 Petitioners/Appellants

