STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

BRIAN G. BARR and JAMES D. BRADSHAW,

Plaintiffs,

-against-

CITY OF SYRACUSE,

Defendant.

Index No. 07-3910
RJI No. 33-07-2254

DECISION

BACKGROUND

This is an action brought by the plaintiffs, Brian Barr and James Bradshaw ("plaintiffs"), following the City of Syracuse's ("the City" or "defendant") actions that led to the elimination of curb cuts used for ingress and egress of motor vehicles at a property owned by plaintiffs at 420 Park Avenue, and the change of a curb cut on Leavenworth Avenue from a commercial width to a residential width. Plaintiffs own and operate Spector Cadillac Dealership, which has its primary place of business located on 717 West Genesee Street in Syracuse, New York. Contiguous to this address, is the parcel of land at 420 Park Avenue, Syracuse, New York ("the property") which is and has been used by the dealership for employee parking, and the storage of cars that are waiting to be repaired and/or picked up by customers. The property is and always has been zoned either Residential A or B since the City of Syracuse 1922 Zoning Ordinance went into effect. While there is some dispute over when the property began to be used for commercial purposes, the parties seem to agree that such use began between 1938 and 1949. Plaintiffs did stipulate that there had been no commercial use of the property prior to the enactment of the 1922 Zoning Ordinance, a showing that is generally

required in order for a nonconforming use to be considered legally valid. *See* Syracuse Aggregate Corp. v. Weise, 51 N.Y.2d 278, 284-85 (1980).

In 2007, the City "closed off the [commercial] curb cut" that permitted access to the property on the Park Ave. side, and limited the Leavenworth curb cut to residential width during a curb rehabilitation program in the neighborhood. Plaintiffs commenced this action, contending that the commercial use of the property at 420 Park Avenue is a legal nonconforming use, or that, in the alternative, the City should be estopped from asserting that the use is nonconforming. Plaintiffs are seeking a Declaratory Judgment that the use of the property as "an open lot for the purposes of storing motor vehicles" is a legal nonconforming use.

The City now moves to dismiss the complaint, pursuant to NY CPLR §3211(a)(7). Plaintiffs oppose defendant's motion and request that this Court grant an order compelling defendant to restore the curb cuts, at their previous locations and widths on both Park Avenue and Leavenworth Avenue, and enjoining or otherwise restricting the defendant from interfering with the plaintiffs' use of the subject lot.

DECLARATORY JUDGMENT ACTION

In a Declaratory Judgment Action, the plaintiff must show that there is a valid interest in securing a declaration and present, in an adversary context, a controversy with the defendant concerning that interest. Krieger v. Krieger, 25 N.Y.2d 364; Dicanio v. Incorporated Village of Nissequogue, 180 A.D.2d 223. Indeed, there must be some actual, genuine, live controversy, the decision of which can definitely affect existing legal relations. If the issue is not yet ripe for determination, or if no actual potential conflict can be established, or if all of the factors of a potential conflict are not yet in place, or if those facts may change by alteration and circumstances or otherwise, such issues cannot

be determined by declaratory judgment. *See* Hearst Corporation v. Clyne, 50 N.Y.2d 709; Wisholek v. Douglas, 97 N.Y.2d 740. *See also* Borchard, Declaratory Judgments 34-36, 2nd Edition, 1941.

In order for the Court to consider a request for Declaratory Judgment, CPLR §3017(b) requires that the demand specify the rights and legal relations on which a declaration is requested, whether further relief is or could be claimed, and the nature of any further relief that is requested. The Court is required to look to the pleadings submitted in the action to determine what the specific right or rights promote the request for a Declaratory Judgment Action. Such requests will come in the complaint that commences the Declaratory Judgment Action, any affirmative pleading throughout the case, and in any counterclaim, cross-claim, or third-party complaint. Spadanuta v. Incorporated Village of Rockville Center, 20 A.D.2d 799. The complaint must present facts in a definite, intelligible and concise manner so as to enable the court to determine if there is a justiciable controversy and, if so, to determine the universe of facts that make up the controversy. Bloom v. Mayor of New York, 35 A.D.2d 92; Lakeland Water District v. Onondaga County Water Authority, 24 N.Y.2d 400; New York State Association of Insurance Agents, Inc. v. Schenck, 44 A.D.2d 757.

Once the Court assumes jurisdiction of a Declaratory Judgment Action via a motion or otherwise, it has the power to grant any relief, whether such relief was prayed for or not. Levy v. Blue Cross and Blue Shield, 124 A.D.2d 900; Reiner v. Prudential Insurance Company, 48 N.Y.S.2d 880. If the plaintiff is not entitled to relief, the Court should retain jurisdiction and proceed to issue a declaration in favor of the party entitled thereto rather than dismiss the action outright, where the determination will affect the legal relations of the private parties. St. Lawrence University v. Trustees of

Theological School of St. Lawrence University, 20 N.Y.2d 317; East Brooklyn Savings Bank v. Leibner, 256 N.Y. 596. The law has been clear that generally the court should make specific declarations of legal interest, but dismissal of such a request in a particular case can be, and often is, justified as an exercise of discretion. Sweeney v. Cannon, 23 A.D.2d 1; Bernkrant v. Temporary State Housing Rental Commission, 36 Misc.2d 507. Further, CPLR §3017(a) authorizes the Court to grant any relief appropriate to the proof, whether demanded or not. New York Association of Counties v. Axelrod, 191 A.D.2d 932.

DISCUSSION

Plaintiffs here now seek a Declaratory Judgment from this Court that their use of the property constitutes a legal nonconforming use. A nonconforming use is defined as follows:

> A use of land that lawfully existed prior to the enactment of a zoning ordinance, and which is maintained after the effective date of the ordinance although it does not comply with the use restrictions applicable to the area in which it is situated, is commonly referred to as a "nonconforming use." P. Salkin, New York Zoning Laws and Practice § 10.02 (4th Ed. 2008).

It is well-recognized that the policy of zoning is to affect the eventual elimination of nonconforming uses, an approach generally endorsed by New York Courts. *See* Harbison v. City of Buffalo, 4 N.Y.2d 553, 559-60 (1958). It is the person claiming the right of the nonconforming use – in this case the plaintiffs - who bears the burden of showing that the nonconforming use existed prior to the relevant zoning ordinance. *See* Syracuse Aggregate Corp., 51 N.Y.2d at 284-85 (1980).

The City's motion to dismiss centers primarily around the adoption of the City of Syracuse Zoning Rules and Regulations ("1922 Zoning Ordinance") in 1922. The City

maintains that since the commercial use of the property did not commence until sometime between 1938 and 1949, the plaintiffs cannot assert that their current commercial use constitutes a legal nonconforming use. Moreover, the City argues that they cannot be estopped from enforcing the Zoning Ordinance. Plaintiffs counter that the City did not regulate parking until 1959, and thus their use of the property is a legal nonconforming use.

The dispute between the two parties boils down to a disagreement over what the 1922 Zoning Ordinance regulated. It is the plaintiffs' contention that since the 1922 Zoning Ordinance did not specifically regulate parking, defendants are without authority to alter the preexisting curb cuts at the property. Plaintiffs note that the 1922 Zoning Ordinance never specifically mentioned "premises" or "parking," and, therefore, only regulated "buildings," "structures," "trades," "businesses," "industries" and "professions." *See* Plaintiffs' Post-Hearing Memorandum at 36. Since the Ordinance never specifically mentions "parking" or "premises," plaintiffs argue that the 1922 Zoning Ordinance has no bearing on whether the commercial use of the property is a legal nonconforming use. *See* Syracuse Aggregate Corp., 51 N.Y.2d at 284-85. According to the plaintiffs, the appropriate start date for calculating when the commercial use became a legal nonconforming use is and should be 1959. The City counters, noting that the 1922 Zoning Ordinance regulates "uses" of the districts, and thus it is the plaintiffs' use of the property that constitutes a violation of the Ordinance.

The relevant portions of the 1922 Zoning Ordinance are as follows:

> Whereas, said Planning Commission has adopted certain rules, regulations, prohibitions and restrictions concerning the builisgs, (sic) structures and *uses allowed and permitted in said districts* as follows...

> No structure shall be erected, located, altered *or used* in any of said districts, and *no profession, business, trade or industry shall be carried on in any of said districts*, except as hereinafter specifically authorized and set forth in conformity with the rules, restrictions, regulations and prohibitions herein contained. City of Syracuse Zoning Ordinance of 1922 at 2. (*emphasis added*).
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> Use – The purpose for which a structure *or premises, or part thereof* is occupied, designed, arranged or intended. *Id.* at Article I (b), p. 3.

A careful reading of the 1922 Zoning Ordinance leads to the conclusion that the plaintiffs are without authority to claim that their use of the property is a legal nonconforming use. It is true that the paragraph cited above and by the plaintiffs on page 2 of the Zoning Ordinance does not specifically refer to "parking" or "premises." However, that paragraph does set out that "uses" of property are covered by this Ordinance, while also establishing a prohibition on commercial uses of property within residential districts, other than those specified later in the Ordinance. It flows logically then, that even if the Ordinance does not regulate parking specifically, an improper use of the property under the Ordinance could include using the property for commercial parking; i.e. parking that is intricately related to the operation of a business.

Here, although there is no structure located on the lot, the property has been consistently used for employee parking, as well as to store cars that are waiting to be repaired; or, put another way, for commercial use. This use is part and parcel of the operation of the automobile dealership owned and operated by the plaintiffs. Most, if not all, of the issues raised by the plaintiffs involve problems that relate to the operation of Spector Cadillac.[1] Plaintiffs cannot avail themselves by carefully arguing that the 1922

[1] Plaintiffs complain, among other things, that there have been traffic backups as a result of there being only one entrance on the Leavenworth side; that large vehicles, such as tow trucks, dump trucks, etc., have to back out on to Leavenworth, which can cause traffic and safety issues. However, plaintiffs seem to ignore the obvious; these problems are not a direct result of the City's enforcement of their Zoning

Zoning Ordinance does not regulate the premises, or parking. The Ordinance regulates the "use" of the property, which includes "the purpose for which...a [premise] is occupied." *See* 1922 Zoning Ordinance, Article I (b). Since the lot was used by Spector Cadillac employees for parking, as well as for storing cars that were waiting to be repaired, the plaintiffs violated the 1922 Zoning Ordinance. Thus, the claim that their commercial use of their property was a legal, nonconforming use must fail. As a result, this Court is unable to issue the Declaration that the plaintiffs seek, and thus declines to do so.

PLAINTIFFS' ESTOPPEL ARGUMENT

Plaintiffs contend that substantial hardships will befall the automobile dealership if plaintiffs cannot continue to use the property as an extension of the dealership business. This Court finds no compelling circumstances here which would permit this Court to enjoin the City from enforcing their own Zoning Ordinance. It is well settled in New York that "[a] municipality... is not estopped from enforcing its zoning laws either by the issuance of a building permit or by laches." Parkview Associates v. City of New York, 71 N.Y.2d 274, 282 (1988) (quoting City of Yonkers v. Rentways, Inc., 304 N.Y. 499, 505 (1952).

In Parkview, the Court of Appeals rejected the plaintiff's arguments that the City should be estopped from revoking a wrongfully issued building permit, even though the owner of the property had completed a substantial amount of construction on the building at issue. Id. The Court of Appeals noted that the wrongfully issued permit "violated the long-standing zoning limits imposed by the applicable [ordinance]."

Ordinance, rather, they are a direct result of the plaintiffs' continuous use of their residential property, located in a residential neighborhood, for commercial purposes. It is the commercial use of the property that violates the 1922 Zoning Ordinance, not the manner in which plaintiffs park on their property.

Parkview Associates, 71 N.Y.2d at 282. Moreover, "the mistaken or erroneous issuance of a permit does not estop a municipality from correcting errors, even where there are harsh results." Id.

The circumstances in Parkview were far more compelling from the plaintiff's perspective than the circumstances before this Court. There, the property owner had already completed a good deal of construction on his building before his permit was revoked. Here by contrast, the plaintiffs have used their residential property as an extension of the business – for parking or otherwise – for some time. Whereas the plaintiffs in Parkview acted upon their erroneously issued building permit in good faith, the plaintiffs here have continued to use the property for commercial uses despite the inability of their predecessor in interest to obtain permission to do so.[2] There has been no showing of fatal or catastrophic hardship to the plaintiffs if the use were discontinued. There has simply been no adequate showing of why this Court should estop the City from enforcing its Zoning Ordinance in this case.

This Court also notes the efforts made by both the City and the neighborhood to improve the neighborhood. This private/public partnership has revitalized the Park Street neighborhood at great expense and effort by both the City and those that live in the neighborhood. The use of the residential lot for commercial purposes – aside from the illegality of use – detracts from the neighborhood. The elimination of the curb cuts has promoted safety in the neighborhood. The equities weigh in favor of the defendant

[2] According to Mr. Charles Ladd, the former Zoning Administrator for the City of Syracuse, plaintiffs' predecessor in interest applied for conditional use permits in 1949, and 1957; both of which were denied. Furthermore, an application for a special permit for parking was denied in 1974. Although the Planning Commission approved a similar application in 1976, it was later denied by the Common Council, failing the necessary two-part approval process. (Transcript of October 9, 2008, at 75-82). The history thus shows that while the City – de facto – looked the other way and allowed the use for over half of a century, they never legally condoned the use, rejecting multiple requests through legal process to confirm plaintiffs' commercial use.

and the citizens of Syracuse that live in the neighborhood. The inconveniences to plaintiffs' business practice do not rise to a level that sways this Court to disregard – or set aside – the long standing zoning laws of the City of Syracuse.

CONCLUSION

In sum, the plaintiffs have failed to meet their burden in proving that the commercial use of the property existed prior to the 1922 Zoning Ordinance regulating the uses of the residential premises or that the City should be estopped from enforcing the current zoning regulations. For all of the reasons set forth in this decision,

NOW, upon the original motion papers submitted in support of and in opposition to the original motions before this Court, and upon the sworn testimony before this Court, and upon all of the actions and proceedings, it is hereby

ORDERED, DECLARED, AND ADJUDGED, that the City of Syracuse's 1922 Zoning Ordinance restricted the uses of property zoned within residential districts to only those uses specified within the Ordinance; and it is further

ORDERED, DECLARED, AND ADJUDGED, that plaintiffs' commercial use of the property, which began sometime between 1938 and 1949, is in violation of the 1922 Zoning Ordinance and all subsequent zoning laws, as commercial use of the property was and is not authorized under the Ordinance or subsequent zoning laws; and it is further

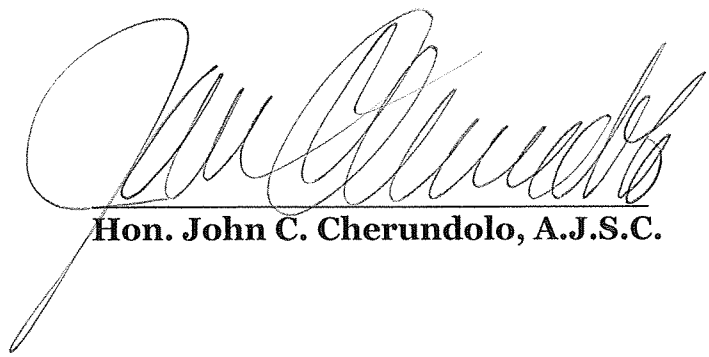
ORDERED, DECLARED, AND ADJUDGED, that plaintiffs' use of the property cannot be deemed a legal nonconforming use, as commercial use of the property did not commence until well after the 1922 Zoning Ordinance had taken effect; and it is further

ORDERED, DECLARED, AND ADJUDGED, that plaintiffs request to have the City estopped from enforcing the Zoning Ordinance is hereby DENIED, and it is further

ORDERED, DECLARED, AND ADJUDGED, that the plaintiffs complaint be, and the same hereby is, DISMISSED, without costs.

Further, the Court DIRECTS the defendants to submit a proposed Order and Judgment in keeping with this Decision and attaching a copy of this Decision thereto, upon notice to counsel for the plaintiffs. The plaintiffs shall have (5) days after receipt of the proposed Order to submit any objections to the proposed Order and Judgment to this Court.

DATED: November 5, 2010.



Hon. John C. Cherundolo, A.J.S.C.