IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
CIVIL DIVISION

OE ALLOY PARIS, LLC,

Petitioner,

vs.

CITY OF TAMPA and JC HUDGISON, in his official capacity as the Building Official for the City of Tampa,

Respondents.
_____/

CASE NO.: 24-CA-002791

DIVISION: F

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

THIS CAUSE came before the Court on a Petition for Writ of Mandamus ("Petition") filed by OE Alloy Paris, LLC ("OE Alloy"). The Petition seeks to compel the City of Tampa ("City") and its Building Official, JC Hudgison (in his official capacity), to issue certificates of occupancy for single family homes located at 408 and 410 West Paris Street. After finding that Petitioner had set forth a preliminary basis for relief, this Court issued an Alternative Writ of Mandamus on April 11, 2024, which ordered Respondents to show cause why Count I of the Petition should not be granted. That response was filed on April 29, 2024, and Petitioner filed its Reply to the City's Response on May 2, 2024. On review of the Petition, the City's Response, and Petitioner's Reply, and being otherwise fully informed in the premises, the Court finds as follows:

I. Jurisdiction

This Court has jurisdiction pursuant to Article V, §5(b), of the Constitution of the State of Florida. *Howard v. State*, 378 So.3d 684, 686 (Fla. 2d DCA 2024).

II. Legal Standard

Mandamus is the mechanism by which officials can be compelled to perform lawful, ministerial duties. *See Eichelberger v. Brueckheimer*, 613 So. 2d 1372, 1373 (Fla. 2d DCA 1993). However, "[a]s a general rule, writs of mandamus will not issue to control the exercise of official discretion or judgment, or alter or review official action taken in the proper exercise of such discretion or judgment." *City of Hialeah v. State ex rel. Danels*, 97 So.2d 198, 199 (Fla. 3d DCA 1957). "A party petitioning for a writ of mandamus must establish a clear legal right to performance of the act requested, an indisputable legal duty, and no adequate remedy at law." *Smith v. State*, 696 So.2d 814, 815 (Fla. 2d DCA 1997). "[Mandamus] is an extraordinary remedy, which will not be allowed in cases of doubtful right," and "if issuance of the writ will not promote substantial justice or would lend aid to the effectuation of a probable injustice, the court may properly decline to grant the writ." *State ex rel. Haft v. Adams*, 238 So.2d 843, 844 (Fla. 1970) (internal citations omitted). "Mandamus may not be used to establish the existence of such a right, but only to enforce a right already clearly and certainly established in the law." *Fla. League of Cities v. Smith, 607 So. 2d 397, 401 (Fla. 1992).* "A ministerial duty is some duty imposed expressly by law, not by contract or arising necessarily as an incident to the office, involving no discretion in its exercise, but mandatory and imperative." *City of*

Tarpon Springs v. Planes, 30 So. 3d 693, 695 (Fla. 2d DCA 2010) (quoting *Escambia County v. Bell*, 717 So. 2d 85, 88 (Fla. 1st DCA 1998).

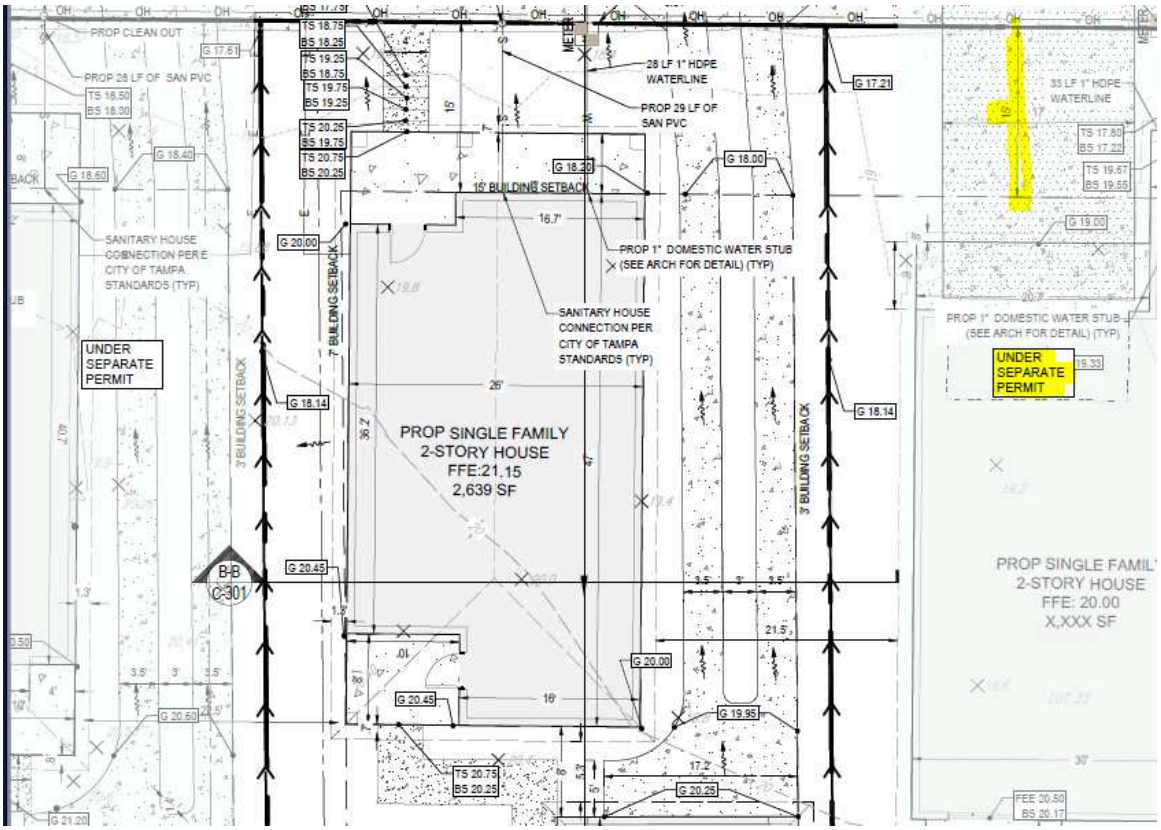
III. Factual Background

Petitioner is the owner of four contiguous lots on West Paris Street in the Seminole Heights neighborhood in Tampa. In August 2022, when all four lots were vacant, Petitioner applied for building permits to build single-family homes on the two interior lots (408 and 410 West Paris). As a sophisticated homebuilder, Petitioner knew that the proposed homes, like all buildings in the City, would be subject to setback/build-to-line ("BTL") requirements governing the minimum distance between the property line and the front building wall. For new homes in Seminole Heights, section 27-211.2.1(a) of the City's Land Development Code provided that the BTL line was "determined by average of BTL of adjacent structures on either side of the lot with same street front orientation." Because Petitioner had opted to initially seek permits for only the two interior lots, there were no "adjacent structures on either side" of either interior lot.

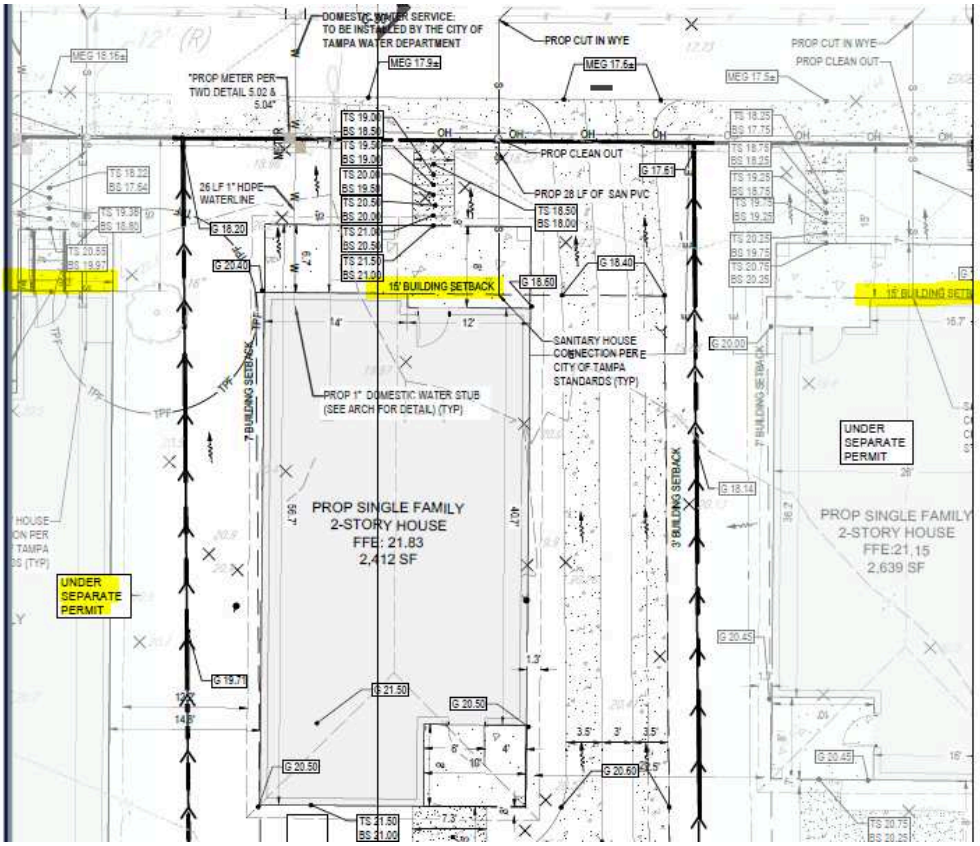
This initial strategic choice to first build on the interior lots may have allowed Petitioner to avoid the applicability of section 27-211.2.1(a) as to those two interior lots. However, Code Section 27-211(b) states that "[t]he purpose and intent of this article is to ensure that all development is compatible in form, building and structural orientation, general site layout, height, lot dimensional requirements and other site spatial relationships to the precedent within the established block and generally, the surrounding area." Thus, the intent of the rule was plain: the BTL for any new home was to be based on existing nearby homes so as to be

consistent and compatible with the existing appearance and character of the surrounding area. Thus, it would have been reasonable for Petitioner to look to, and mimic, the BTL of those existing homes closest to its lots, none of which had a BTL of less than 20 feet.[1] Alternatively, Petitioner could have contacted City staff for official direction as to the appropriate BTLs.

Petitioner did neither. Instead, as part of its permit applications, Petitioner submitted plans/drawings that misleadingly suggested that each of the two exterior lots was subject to a "separate permit" that allowed for 15-foot BTLs:



[1] Petitioner had an even more direct reference point: at the time that Petitioner purchased the subject lots, there was an existing home on one of the parcels. The BTL for that home, which Petitioner demolished, was also greater than 20 feet.



In fact, no such "separate permits" existed.

Nowhere in its Petition does Petitioner state how or why it decided on a BTL of just 15 feet. Certainly, the basis was not the existing homes on West Paris Street, nor was it other homes elsewhere in the City. There is no Euclidian residential zoning district anywhere in the City that allows for a setback of less than 20 feet. See City Code Section 27-156, Table 4-2.[2]

Because Petitioner's permit applications for the two interior lots depicted "separate permits" on the exterior lots with 15-foot BTLs, the applications gave the false impression that the appropriate BTLs for the homes to be built on the

[2] This table within section 27-156 refutes Petitioner's claim that "there was nothing in the City's Zoning Regulations that even suggested that the 15-foot BTL was not compliant..." See Petition, p. 26, ¶77.

interior lots was also 15 feet, pursuant to section 27-211.2.1(a). Based on that misinformation, the City issued permits for the interior lots on November 1, 2022 (for 408 W. Paris) and March 7, 2023 (for 410 W. Paris). In so doing, it effectively approved the 15-foot BTLs. The plans submitted by Petitioner and approved by the City also included a requirement that Petitioner install sidewalks in front of both interior lots. See Petition at Ex. Q ("Site Note" #2). No sidewalks were installed by Petitioner.

Petitioner began construction on the two interior lots in March and April, 2023. In June 2023, the City became aware that the 15-foot BTL for the two homes being constructed on the two interior lots was not supported by Code section 27-211.2.1(a), because there was no adjacent property with a 15-foot BTL and, contrary to Petitioner's representation in its application, no permit that contemplated such BTL. Thus, on June 13, 2023, the City issued Stop Work Orders for the two buildings. (See Petition, Ex. D). Those Stop Work Orders specifically advised Petitioner that "the submitted plans reflected incorrect information for determination of the required 'build to line' as required per municiple [sic] code." See Petition, Ex. D. Petitioner contacted the City and agreed that, apart from "secur[ing] the property and the construction site while it [was] shut down," it would not engage in any further construction while it worked with the City to "try to resolve [the] issue." See Response, Ex. 1.

During a meeting on August 4, 2023, the City explicitly informed Petitioner that the building permits had been issued in error, and Petitioner agreed to apply for an Alternative Design Exception ("ADE"). Rather than waiting for the ADE

process to concluded, Petitioner resumed construction on the two interior-lot homes on August 17, 2023 despite the existence of Stop Work Orders for both lots and buildings.

ADE applications, governed by City Code section 27-60, are initially decided by the City's Zoning Administrator ("ZA"). However, section 27-61 allows for an "aggrieved person" to seek review by City Council of any such decision. Here, the City's ZA approved Petitioner's ADE Application on November 14, 2023. The approval allowed for the two interior lots to maintain their 15-foot BTLs with the understanding that the two vacant exterior lots would each have a BTL of 27.5 feet. However, because the ZA's decision was challenged by an aggrieved neighbor, the matter went before the City Council for a hearing on February 1, 2024. At the conclusion of that hearing, the City Council denied Petitioner's ADE. Although Petitioner had the right to seek review of the City Council's decision through a writ of certiorari, it did not. Thus, the City Council's decision still remains in effect.

On January 5, 2024, and February 1, 2024, the two interior lots received failed inspections from the Building Official due to Petitioner's failure to build the required sidewalks. Rather than installing the sidewalks, or contacting the Building Official's office to discuss the matter, Petitioner instead reached out to Jonathan Scott in the City's Mobility Department and indicated that Petitioner intended to "pay into a trust fund" in lieu of constructing the sidewalks. The City subsequently advised Petitioner that Mr. Scott lacked the authority to waive

a construction requirement, thus, the approval of the fee-in-lieu had been rescinded. No waiver was granted by the City.

After completing construction of the two buildings (sans sidewalks), Petitioner used a private provider to perform inspection services on the homes. On March 15, 2024, the private provider sought certificates of occupancy and certificates of completion for the two buildings. Pursuant to section 553.791(13)(a), Florida Statutes, the City's Building Official was required to either issue the certificates or notify Petitioner of the deficiencies that precluded such issuance. Of course, at the time that Petitioner sought the certificates through its private provider, the City had already provided such notice. As discussed above, the deficiencies had been communicated to Petitioner through the still-in-effect Stop Work Orders and then through the City Council hearing, in which Petitioner actively participated. Petitioner had also been notified (via the failed inspection notice) of the need to install sidewalks.

IV. Legal Analysis

Section 553.791(13)(a) does not mandate that local building officials issue certificates of occupancy or completion upon receipt of a request for either. Instead, the statute explicitly gives such officials discretion as to whether such certificates should be issued. If, in his/her discretion, a building official determines that such certificates should not be issued, he/she must "provide notice to the applicant identifying the specific deficiencies as well as the specific code chapters and sections." Thus, the City's Building Official acted within his

discretionary authority by declining to issue the certificates based upon the deficiencies that had already been communicated to Petitioner.

Assuming arguendo that subsection (13)(a) requires the City to respond to the application within a two-day window after an application is submitted, the City was still not required to do so. The City's duties under (13)(a) are only triggered when an applicant presents "approval of all other government approvals required by law." Since the stop work order was still in effect when the application was submitted, and neither party disputes this fact, Petitioner could not have presented "approval of all other government approvals required by law."

Petitioner simply cannot attempt to circumvent the decision of the City and the City Council through the use of this statute and a claim of lack of notice. This is especially true because Petitioner was clearly noticed of the deficiencies. Petitioner was put on notice beginning with the Stop Work Orders, continuing through the denial of the ADE by the City Counsel and continuing through this action. Moreover, as discussed below, equity does not favor Petitioner. The Petitioner's misrepresentations about the exterior lots being "under separate permit" misled the City in the first place. But for those misrepresentations, the original permits would not have been issued.

Petitioner also seeks to rely on section 553.79(2)(b), which provides that "[a]fter the local enforcing agency issues a permit, the local enforcing agency may not make or require any substantive changes to the plans or specifications except changes required for compliance with the Florida Building Code, the Florida Fire

Prevention Code, or the Life Safety Code, or local amendments thereto." But as Petitioner concedes, subsection (2)(b) did not take effect until July 1, 2023—after the issuance of the subject permits. See Petition, p. 25, ¶72. "The general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively." *Metropolitan Dade Cty. v. Chase Fed. Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999). An example of such "clear legislative intent" is seen in the termination of parental rights case to which Petitioner cites. See Petition, p. 25, ¶72 (citing *In re A.R.*, 95 So.3d 1050 (Fla. 2d DCA 2012)). In that case, the court noted that the "plain language [of the legislation at issue] permit[ted] the trial court to consider the history of prior out-of-home placements," which obviously included out-of-home placements that predated the effective date of the statute. *Id.* at 1051. Conversely, nothing within the plain language of section 553.79 shows a legislative intent for the statute to apply retroactively to permits issued before the law took effect.

Even assuming, *arguendo*, that section 553.79(2)(b) applies here, Petitioner would still not be entitled to issuance of the certificate of occupancy. After all, if approved plans can only be changed for compliance with the Florida Building Code, the Florida Fire Prevention Code, or the Life Safety Code, then Petitioner would plainly be required to install the sidewalks that were included in the originally approved plans.

Equitable Estoppel

Petitioner argues that it has a vested right to the certificates based on the principles of equitable estoppel. Petition, p. 26, ¶74. But if equitable estoppel is warranted here, it is the City that is entitled to its protections.

The Florida Supreme Court has recognized that the doctrine of equitable estoppel is "applicable in all cases where one, by word, act, or conduct, willfully caused another to believe in the existence of a certain state of things, and thereby induces him to act on this belief injuriously to himself…" *State ex rel. Watson v. Gray*, 48 So.2d 84, 87-88 (Fla. 1950).

> Equitable estoppel presupposes a legal shortcoming in a party's case that is directly attributable to the opposing party's misconduct. The doctrine bars the wrongdoer from asserting that shortcoming and profiting from his or her own misconduct. Equitable estoppel thus functions as a shield, not a sword, and operates against the wrongdoer, not the victim.

United Automobile Ins. Co. v. Chiropractic Clinics of South Florida, PL, 322 So.3d 740, 743 (Fla. 3d DCA 2021) (citations omitted). As noted above, the City's approval of the subject permits was based upon Petitioner's misrepresentation that the exterior lots next to the subject interior lots were subject to separate permits that provided for BTLs of 15 feet. In fact, no such permits existed. Petitioner's act caused the City to believe that the subject interior lots were subject to BTLs of 15 feet. As such, compelling the City to issue certificates for the interior lot homes would result in Petitioner profiting from its own wrongdoing.

Failure to Exhaust Administrative Remedies

If Petitioner disagreed with the Stop Work Orders or the refusal to issue certificates of occupancy or completion, it had the right to seek administrative

review. Pursuant to section 553.791(13)(b), Florida Statutes, if an applicant is advised of deficiencies by the building official, "the applicant may elect to dispute the deficiencies pursuant to subsection (14)." Subsection 553.791(14)(c), in turn, provides that "any decisions regarding the issuance of a building permit, certificate of occupancy, or certificate of completion may be reviewed by the local enforcement agency's board of appeals, if one exists." City Code section 5-113.2 provides that a building owner may seek review of any "ruling, determination, decision or order or the building official … by filing with the board[3] a written notice of appeal … within thirty days" of such decision. Petitioner failed to pursue this administrative remedy.

V. Conclusion

For the reasons stated herein, it is hereby **ORDERED and ADJUDGED** that The Petition for Writ of Mandamus is **DENIED.**

DONE AND ORDERED and effective as of the date and time imprinted below with the Judge's signature.

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JENNIFER GABBARD
CIRCUIT COURT JUDGE

Copies electronically served via
JAWS on all Attorneys and Parties
registered/associated to this case.

[3] The Code specifically defines 'board' as "the appropriate Hillsborough County Board of Adjustment, Appeals and Examiners, unless otherwise specifically stated." See Code section 5-122.3.