

Civil District Court for the Parish of Orleans
STATE OF LOUISIANA

No: 2020 - 07528

Division/Section: C-10

AMICUS CV BORROWER, LLC
versus
THE CITY OF NEW ORLEANS AND THE CITY ETAL ET AL

Date Case Filed: 9/8/2020

NOTICE OF SIGNING OF JUDGMENT

TO:

William R Goforth Esq 33153
1300 Perdido Street
City Hall - Suite 5E03
New Orleans, LA 70112

Katherine L Swartout Esq 36694
650 Poydras St Ste 2750
New Orleans, LA 70130

Kenneth J Gelpi Esq 24103
909 Poydras Street
Suite 2325
New Orleans, LA 70112

In accordance with Article 1913 C.C.P., you are hereby notified that Judgment
in the above entitled and numbered cause was signed on January 12, 2021

New Orleans, Louisiana
January 12, 2021

MINUTE CLERK

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CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2020-7528

DIVISION "C"

SECTION 10

AMICUS CV BORROWER, LLC

VERSUS

THE CITY OF NEW ORLEANS AND THE CITY OF NEW ORLEANS BOARD OF
ZONING AND ADJUSTMENTS

JUDGMENT WITH INCORPORATED REASONS

This matter came for a hearing on a Petition for Appeal, Injunctive Relief and Damages on November 18, 2020 filed by Plaintiff Amicus CV Borrower.

Present: Katherine Swartout, counsel for Petitioner Amicus CV Borrower, LLC

Present: William Goforth, counsel for the City of New Orleans and the Board of Zoning Adjustments

Present: Kenneth Gelpi, counsel Intervenors Jill and Grady Fitzpatrick, and Chunlin and Christoph Leonhard

Plaintiff Amicus CV Borrower, LLC ("Amicus") purchased the property with the municipal addresses 1407, 1409, 1411 Broadway Street ("Property") with the intent to convert it into 12-bedroom triplex for student housing. The Department of Safety and Permits ("Department") issued permits to proceed with a plan to renovate the multi-family dwelling. On June 24, 2020, neighbors whose residences are adjacent to the Property filed an appeal with the Board of Zoning Adjustments ("BZA"). On August 19, 2020, the BZA members voted unanimously to grant the appeal, finding that the Department of Safety and Permits issued the building permit to Amicus in error. Amicus instituted the instant appeal of the BZA's decision by filing its Verified Petition for Appeal, Injunctive Relief and Damages.

The standard of review in this case is to determine whether the BZA's decision was arbitrary and capricious or an abuse of discretion. A reviewing court cannot substitute its own judgment. Under this standard, it is not the role of the court to evaluate whether an erroneous conclusion has been reached by the BZA, but rather whether the BZA's authority was exercised honestly and upon due consideration. *Toups v. City of Shreveport*, 60 So.3d 1215 (La. 3/15/11). In issuing the permit, the structure is limited to the existing building footprint, which

does not allow for an increase in building footprint or intensity of use. Developer Amicus does not dispute that its plan expanded the existing building footprint from 1897 sq. ft. to 3,300 sq. ft. in violation of the CZO. Relying on the permit issued by the Department of Safety and Permits, Amicus contends that it continued the demolition and renovations to the Property to its detriment. Louisiana courts have consistently held that an invalid building permit vests no rights or privileges in the person to whom the permit has been issued, despite any claim of detrimental reliance. *Paillet v. City of New Orleans, Department of Safety and Permits*, 433 So.2d 1091 (La.App. 4 Cir. 1983). The BZA members voted unanimously to grant the appeal by the neighbors finding that the Department of Safety and Permits issued the building permit to the developer in error. The BZA members stated that they believed that the proposed renovation by the developer was prohibited by the CZO because it would increase the building footprint of the established multi-family dwelling on the property. As a result, the Court finds that the BZA did not abuse its discretion in reversing the Department of Safety and Permits' decision because the proposed renovation would increase the building footprint.

After considering the pleadings, the evidence, the argument by the parties, the law, and for written reasons assigned this day:

IT IS ORDERED, ADJUDGED, AND DECREED that the Petition for Appeal, Injunctive Relief and Damages filed by Plaintiff Amicus CV Borrower is hereby **DENIED**.

JUDGMENT READ, RENDERED AND SIGNED in New Orleans, Louisiana, this 11th day of January, 2020.



JUDGE SIDNEY H. CATES, IV