

Legal fight over parking credits for historic Naples building headed to trial

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(Photo: Laura Layden/Naples Daily News)

A legal battle over parking for one of Naples' oldest buildings is veering toward a trial.

The yearslong dispute is scheduled for a nonjury trial Wednesday and Thursday in Collier Circuit Court.

The unusual land use case involves the vacant, historic Olde Naples Building at Third Street South and Broad Avenue South, built in 1921.

At the center of the dispute are parking space credits the city granted to the building's owners, Anne D. Camalier and Charles A. Camalier III, more than five years ago.

John Shubin, a Miami attorney representing the Camaliers, said his firm doesn't comment on pending litigation.

Neapolitan Enterprises — a competing property owner and landlord on Third Street — filed the lawsuit, challenging the city's administrative decision to approve the credits. Company owner [Joan](#)

[Tobin](#) has been described as Third Street's "curator" for her longtime involvement on the bustling downtown street, where shops and restaurants are nestled among flowered courtyards and antique fountains.

Neapolitan and its related family-owned businesses have been involved in the development of Third Street since the 1950s, and it wants to ensure "there is sufficient parking to support all businesses there," according to the suit.

Naples attorney Michael Moore, who represents Neapolitan, said in an email his client is "looking forward to its day in court and to having the judge examine the city's decision."



A display in the window of the Olde Naples Building shares the story of the Olde Naples Hotel. (Photo: *Laura Layden/Naples Daily News*)

The squabble between Neapolitan and the city began in 2011 after the Camaliers requested confirmation of a parking space credit as part of a building permit application to renovate and stabilize the Olde Naples Building.

The developers sought a credit for 76 spaces — all of the spaces city code would require for a grocery store or restaurant to operate on the property. The city's planning director, Robin Singer, approved the request administratively, without a public hearing and without knowing the future use of the building, which didn't sit well with Neapolitan.

"It is our position that the city staff are bound by the wording of the city's land development code and cannot ignore it or act contrary to the code even if it may want to do so," Moore said.

The effect of the administrative decision was to allow the redevelopment of the property to its most intensive use without requiring "a single real off-street parking space," Neapolitan contends.

The parking exemption equates to more than one-third of the public parking that's available in the Third Street commercial district, according to the lawsuit.

Neapolitan has a significant amount of off-street parking in the district, and it argues the parking credits will cause "enormous harmful impacts" on nearby property owners. It contends customers of the Olde Naples Building will use neighboring property owners' parking, giving the old building and its owners a "distinct competitive advantage."

Neapolitan filed its initial suit over the parking issue in 2012. It took the action against the city and two limited liability companies controlled by the Camaliers: Broad Avenue LLC and Olde Naples Building LLC, the owners of the building.

Collectively the defendants argue the parking decision was made legally, the planning director had the right to make it and it's a "non-reviewable executive administrative action."

The building has never provided off-street parking.

Once known as the Naples Company Building, the iconic building has been home to one of the city's earliest development companies, a church, City Hall and a movie theater. It last housed a popular grocery store and sandwich shop known as Fantozzi's, which closed in 2006.

"The building itself is unusual. We are arguing over whether a building built in 1921, prior to the city's land development code being adopted, is required to comply with the parking requirements of today, which is an unusual circumstance," said Kara Jursinski Murphy, a Fort Myers-based real estate attorney who represents the city in the case.



A view of the Third Street Plaza in downtown Naples on March 22, 2018. (Photo: Laura Layden/Naples Daily News)

Neapolitan received a letter about the parking credit approval from the city in September 2011. Unhappy about the decision, it first filed two administrative appeals with the city, but "the city was nonresponsive," according to the lawsuit.

After the city told Neapolitan a third party had no right to appeal an administrative land use decision, the property owners filed a petition with the appellate division of Collier Circuit Court challenging the parking determination. The court ruled it didn't have authority to review an executive decision made by the city's planning director. On appeal, Florida's Second District Court of Appeal denied the petition, without a written opinion.

Seeking an alternative remedy, Neapolitan filed its civil suit in July 2012, asking for declaratory and injunctive relief to reverse the city's determination. In November 2013 the company amended the complaint, bolstering its arguments on why the city's decision should be unwound.

By making a decision administratively, the city violated its own procedures for granting such a request and avoided a "transparent, public process whereby surrounding businesses could voice their concerns," Neapolitan contends.

"Essentially what they want is to second guess an administrative decision, which is not proper," Murphy said.

The city, she said, doesn't want to make its citizens "feel unhappy" or question its jobs, but in this case the city's respected planning director was right to make the decision she did under the code, which allows for a "parking nonconformity."

"The code is a living, breathing document," Murphy said. "It requires you to interpret it. It's not a Magic 8-Ball. It doesn't give you the answer for every question you have."

Neapolitan, she said, has buildings on Third Street that offer no off-street parking or don't provide as much parking as required by the city's code today.

However, Neapolitan has built more off-street parking in and around the Third Street District than any other commercial property owner and provides "twice as much private parking as all of the public parking in the entire area," according to the lawsuit.

The long-running legal fight has seen many twists and turns.

In May 2015 it looked like the battle might be over when Circuit Court Judge Cynthia Pivacek dismissed Neapolitan's amended complaint, but then her decision was reversed on appeal in January 2016.

Pivacek's ruling was based partly on arguments that Neapolitan failed to timely challenge the parking credits after the design review board approved the renovation plans for the Olde Naples Building — and on the judge's opinion that the case shouldn't move forward because it had already been decided by the appellate division of the circuit court.

The Second District Court of Appeal ruled the lower-court judge got it wrong because the merits of the case hadn't been considered or decided and that the challenge couldn't be made swiftly after the design review board's vote because the parking credits weren't officially determined by the city until months later.

Once the lawsuit came back down in 2016, it was as if the case started all over again, Murphy said.

"This issue could have been a little bit more streamlined," she said. "But it is what it is."

The case will be tried before Circuit Court Judge Lauren Brodie, who has already heard hours of arguments and testimony from both sides on the defendants' motions to dismiss the case, which she denied.

The judge's decision could ultimately determine what kind of business can operate in the Olde Naples Building.

While the lawsuit has halted the Camaliers' efforts to fill their empty building, they're moving ahead with plans to redevelop the Third Street Plaza next-door.

Plans call for a four-star 109-room hotel, which would replace the long-vacant shopping plaza often described as an eyesore. The project would include a parking garage, but the Camaliers are requesting approval of a "shared parking" plan that would result in fewer spaces than city code requires for a mixed-use building.

The Naples Planning Advisory Board approved the project, known as the Old Naples Hotel, on April 11. It's scheduled to go before the City Council for a final decision May 16.