

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

May 8, 2007

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Via Overnight Delivery

Ruthanne G. Miller, Chairman
Board of Zoning Adjustment
441 Fourth St., NW, Suite 200 S.
Washington, DC 20001

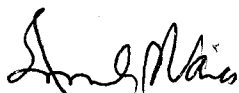
Re: Motion to Dismiss Appeal No. 17615
Appealing Building Permit No. 101019

Dear Chairman and Members of the Board:

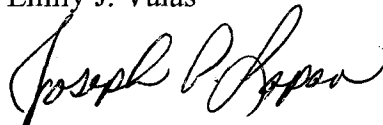
Enclosed please find on behalf of Washington Harbour Condominium Unit Owners a Motion to Dismiss the above-referenced appeal. Please contact us if you have any questions.

Sincerely,

LINOWES AND BLOCHER LLP



Emily J. Vaias



Joseph P. Lapan

Enclosure

cc: Mr. Kenneth Joy
Mr. Robert Pence
Raymond B. Via, Jr., Esq./Paul Sweeney, Esq.
Vernon W. Johnson, III, Esq.
Jill Stern, Esq.

L&B 728409v1/10043.0002

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17615

EXHIBIT NO. 15

Board of Zoning Adjustment
District of Columbia
CASE NO. 17615
EXHIBIT NO. 15

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of William J. Harnett from the
Administrative Decision of the Zoning
Administrator, DCRA, to Issue Building
Permit No. 101019

Appeal No. 17615

RECEIVED
D.C. OFFICE OF ZONING
2007 MAY -9 AM 9:35

**MOTION TO DISMISS APPEAL
FROM DECISION OF DCRA ADMINISTRATOR
REGARDING BUILDING PERMIT NO. 101019,
3030 K STREET, NW, WASHINGTON, D.C.**

Washington Harbour Condominium Owners' Association (Washington Harbour), by and through its attorneys, Emily J. Vaias, Joseph P. Lapan and Linowes and Blocher LLP, hereby files this Motion to Dismiss the Appeal of William J. Harnett vs. Zoning Administrator, regarding Building Permit No. 101019 (the "Permit"), and as grounds therefore states as follows:

1. The Permit, which approved and permitted the striping of five new parking spaces in Washington Harbour's garage, located at 3030 K Street, NW, was issued on November 17, 2006.
2. The issuance of the Permit was the final resolution of a Notice of Violation and Notice to Abate, which had been issued to Washington Harbour on or about January 4, 2005 (the "Notice of Violation").
3. Mr. Harnett ("Appellant") filed his appeal to this Board of Zoning Adjustment ("BZA") on January 12, 2007.
4. Washington Harbour submits that Appellant's appeal of the Permit to the BZA is untimely and improper and that BZA does not have jurisdiction to hear appeals from the granting of building permits by the DCRA.

5. Pursuant to Section 112A of Title 12A of the District of Columbia Municipal Regulations (“DCMR”), a copy of which is attached hereto as Exhibit “A”, appeals of the issuance or denial of a building permit are first made within the Department and must be filed within fifteen (15) days of the date of the permit being appealed. (12A DCMR 112.1)

6. Pursuant to 12A DCMR 112.1.2, within three (3) working days of receipt of appeal of the building permit, a viewing official can affirm, modify or reverse the action or decision. If the reviewing official does not act within three (3) working days, the decision is deemed affirmed and claimant may proceed to request review by the Director. The Director must then act within three (3) working days and if the Director does not so act, or the Director denies the appeal, then the claimant may appeal the matter directly to the Board of Appeals and Review. The decision of the Director is the final decision of the Department.

7. Pursuant to the Office of Administrative Hearings Establishment Act (the “Establishment Act”), D.C. Law 14-76, D.C. Code Section 2-1831, *et seq.*, the Office of Administrative Hearings adjudicates cases previously under the jurisdiction of several District of Columbia agencies, including the Board of Appeals and Review.

8. Accordingly, pursuant to 12A DCMR 112.1 and 112.1.2, and the Establishment Act, appeals of the granting of building permits must first be filed within the Department and then to the Office of Administrative Hearings.

9. Pursuant to Title 11 DCMR Section 3100.1 and .2, the Board of Zoning Adjustment has authority to hear cases involving the administration or enforcement of the Zoning Regulations and not those involving the appeal of building permits.

10. This appeal of the Permit is not related to an administration or enforcement of the Zoning Regulations, because this deals only with the issuance of the Permit.

11. Appellant is attempting to appeal herein the prior decisions of the Zoning Administrator lifting the Notice of Violation, which is arguably a matter dealing with the administration or enforcement of the Zoning Regulations.

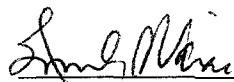
12. However, the Notice of Violation was abated on or about October 23, 2006, well before this appeal was filed on January 12, 2007, thus making this appeal untimely (A copy of the Abatement letter is attached hereto as Exhibit "B").

13. Harnett's appeal is therefore not in the correct venue and is also not timely in that under either Section 112(A) or Rule 2901.50 of the OAH rules, such an appeal must be filed within fifteen (15) days of the final decision or order. The subject Permit was issued on November 17, 2006, and therefore, the fifteen (15) day appeal period expired on Monday, December 4, 2006.

14. Accordingly, Harnett's appeal filed on January 12, 2007, is well beyond the time period for filing any such appeal.

WHEREFORE, Washington Harbor respectfully requests that because the BZA lack's jurisdiction and the appeal is not timely, that Harnett's appeal be dismissed with prejudice.

Respectfully submitted,



Emily J. Vaia
Joseph P. Lapan
Linowes and Blocher LLP
7200 Wisconsin Avenue, Suite 800
Bethesda, Maryland 20814

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of May, 2007, a copy of the foregoing Motion to Dismiss Appeal From Decision of DCRA Administrator Regarding Building Permit No. 101019 was mailed via first class United States mail, postage pre-paid to:

Vernon W. Johnson, III
Nixon Peabody, LLP
401 Ninth Street, NW
Suite 900
Washington, D.C. 20004-2128

Bill Crews
Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capital Street, NE
Suite 2000
Washington, D.C. 20002

Jill Stern, Esq.
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE
Room 9401
Washington, DC 20001



Emily J. Vaias

Source: [Legal](#) > [States Legal - U.S.](#) > [District of Columbia](#) > [Statutes & Regulations](#) > [DC - Weil's Code of D.C. Municipal Regulations](#) 

TOC: [Weil's Code of D.C. Municipal Regulations](#) > /.../ > [CHAPTER 1A. ADMINISTRATION AND ENFORCEMENT](#) > [SECTION 12A-112A. Appeals.](#)

CDCR 12A-112

CODE OF D.C. MUNICIPAL REGULATIONS
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TITLE 12A. BUILDING CODE
CHAPTER 1A. ADMINISTRATION AND ENFORCEMENT

CDCR 12A-112 (2007)

SECTION 12A-112A. Appeals.

112.1 Appeals within the Department. The owner of a building or structure or any person suffering a legal wrong, or adversely affected or aggrieved, may initiate an appeal, within the Department from a stop work order, official interpretation, refusal to grant an approval or modification pursuant to § 104.10, or from the issuance or denial of a building permit, including such appeals related to the D.C. Fire Prevention Code. Claimants shall appeal using a form provided by the code official, on which they shall state the grounds for the appeal, which shall be based on a claim that the Construction Codes or the rules legally adopted thereunder have been incorrectly interpreted or applied, the provisions of the Construction Codes do not fully apply, or that an equally good or better form of construction can be used. The appeal shall be filed within 15 days from the date of the wrong, order, interpretation, denial of approval or modification, or permit being appealed.

112.1.1 Official Notice of Action. The official inspector, or other person whose action or decision is being appealed shall provide the claimant written notice of the action or decision, which shall state as a minimum the name of the claimant, address of the property in question, nature of violation or non-compliance, section of the construction codes providing the basis for the action or decision taken, and the reviewing official within the Department to whom the appeal should be taken.

112.1.2 Action on Appeal. Within three (3) working days of receipt of the appeals form, the reviewing official shall affirm, modify, or reverse the previous action or decision. If the reviewing official affirms or modifies the previous action or decision, the claimant may request a review of the matter by the Director. Further, if the reviewing official does not act upon the appeal within the three working day period, the decision will be deemed affirmed and the claimant may proceed to request review by the Director. The Director will act on the request within an additional three (3) working days. The decision of the Director shall be the final decision of the Department. If the Director does not act within the three working day period, or denies the appeal, the claimant may appeal the matter directly to the Board of Appeals and Review.

112.2 Appeal to Board of Appeals and Review. The owner of a building or structure any person suffering a legal wrong or adversely affected or aggrieved by a final decision of the code official, as set forth above in § 112.1 may appeal to the D.C. Board of Appeals and Review. The appeal shall specify that the Construction Codes or the rules legally adopted thereunder have been incorrectly interpreted or applied, the provisions of the Construction Codes do not fully apply, or an equally good or better form of construction can be used. The

board shall have no authority to waive requirements of the Construction Codes.

112.3 Hearings. All hearings before the Board of Appeals and Review shall be held in accordance with the rules of procedure of that Board.

112.4 Enforcement of decision. The code official shall take immediate action in accordance with the decision of the Board of Appeals and Review.

STATUTORY AUTHORITY: D.C. Code § 6-1409; Mayor's Order 87-259

History of Regulations since Last Compilation (January 2004):
None

NOTES:

Editor's Note: Titles 12 through 12J were page numbered consecutively by the Department upon issuance. The page numbers assigned by the Department have been retained.

Source: [Legal](#) > [States Legal - U.S.](#) > [District of Columbia](#) > [Statutes & Regulations](#) > [DC - Weil's Code of D.C. Municipal Regulations](#) 

TOC: [Weil's Code of D.C. Municipal Regulations](#) > [/ . . . /](#) > [CHAPTER 1A. ADMINISTRATION AND ENFORCEMENT](#) > **SECTION 12A-112A. Appeals.**

View: Full

Date/Time: Tuesday, May 8, 2007 - 11:01 AM EDT



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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



October 23, 2006

Joseph P. Lapan
Linowes and Blocher, LLP.
7200 Wisconsin Avenue
Suite 800
Bethesda, Md. 20814-4842

Re: Notice of Violation and Notice to Abate for 3030 K Street, NW (January 4, 2005)
Washington Harbour Condominium Unit Owners Association, Inc.

Dear Attorney Lapan:

After careful review of our records, please be advised that we have rescinded the above Notice of Violation and Notice to Abate, which was issued on January 4, 2005, for the Violation of 11 DCMR 2117. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Crews", is written over a horizontal line.

Bill Crews
Zoning Administrator