

Advisory Neighborhood Commission 6A

Appeal of ANC6A from the Administrative Decision of DCRA to Issue Building Permit #89587

1. The Department of Consumer and Regulatory Affairs issued Building Permit #89587 to the AppleTree Institute for Education Innovation October 26, 2007, based on the assessment shown on the Building Plan Review Status in the DCRA computer (see Attachment A, tracking form 3758A 2006) that the "application [had] been approved by all reviewers within DCRA." These required reviews had not, in fact, been completed.
2. The DCRA computer contains an access function "to view comments from the plan review team." (Used to obtain Attachments B and C) These comments reveal that the required reviews had not been completed.
3. Using that function, the review of the Zoning Discipline review team shows the Zoning discipline was approved on October 26, 2007, despite comments in the Descriptions Section that *"As per Zoning Order #06-33, published on 9/14/07, the parking requirements for this project are to be re-reviewed as per new parking requirements under 11DCMR 2120."* (see Attachment B, Zoning)
4. Again using that function, the review of the Department of Environment review team shows the Department of Environment had been approved on October 26, 2007, at the exact time as the Zoning approval, despite comments in the Description Section that a *"revised review [is] required before permit issuance."* (see Attachment C, Department of Environment)
5. ANC 6A Chairman Joseph Fengler contacted DCRA Director Linda Argo by email on Sunday, November 11, 2007, after learning that Permit #89587 had been wrongfully issued, requesting an explanation on behalf of constituents.
6. Director Argo responded to Chairman Fengler by email on Tuesday, November 13, 2007, the first business day following the Veterans' Day Federal Holiday. The Director stated that the *"building permit was issued erroneously,"* that *"DCRA had placed a 'hold for corrections' on the permit application pending additional reviews,"* and that *"these reviews [had] not been completed."* (see Attachment D, Fengler/Argo email exchange)
7. The District of Columbia's Reply to Opposition to Motion to Dismiss with Prejudice and Request for Interlocutory Restraining Order of May 21, 2008 (found at Attachment E) states on Page 2, "On October 29 (sic), 2007, DCRA erroneously issued Building Permit #89587 (the "Permit") to AppleTree Institute...()...As a result of erroneous actions of DCRA's Permit Division, the permit issued prior to the completion of two discipline reviews, that of the

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17769
EXHIBIT NO. 20

Board of Zoning Adjustment
District of Columbia
CASE NO. 17769
EXHIBIT NO. 20

District Department of the Environment (DDoE) and the Zoning Administrator.” (Emphasis added)

8. Due to the stipulated and published rules and protocols of DCRA, the permit required additional reviews, as substantiated by the Director of DCRA and its own computer records, and it should not have been issued by DCRA. Consequently, the permit was issued without due process.

Request for Relief

Appellant humbly requests that the Board ORDER the Department of Consumer and Regulatory Affairs to revoke Permit #89587 permanently.

Nicholas Alberti, Commissioner 6A04

Designated representative for Advisory Neighborhood Commission 6A

Attached: DCRA Notice of Revocation Building Permit No. 89587, dated November 15, 2007 (attachment at F)

Consumer & Regulatory Affairs

DCRA HOME
About DCRA
How to Reach Us
Ask the Director
FOIA Requests
News Room
Helpful Links
Site Map

SERVICES
Consumer Protection
Corporate Registration
Elevator Safety & Regulation
Homeowners Center
Inspections & Enforcement
Licenses
Office of the Surveyor
Permits
Street Vending
Vacant Properties
Weights & Measures
Zoning Requirements

INFORMATION

ONLINE SERVICE
REQUESTS

Building Plan Review Status

Project Information

- Tracking number: 3758 A 2006
- Date filed: 2/9/2006
- Address: 138 12TH ST NE
- Agent: MIKE WILSON (301) 731-4767

Application Status

Approved. This application has been approved by all reviewers within DCRA. Please contact DCRA at the number below to check the status of other agencies' approvals (where required) and to inquire about retrieving your application.

To view comments from the plan review team, select from the links in the left column below. On the page that follows, enter your DC.Gov username and password. If you don't have a username and password, please [register](#).

Discipline	Review Status	Status date
Department of Environment	Approved. We approved this discipline of your application.	10/26/2007
Electrical	Approved. We approved this discipline of your application.	8/23/2007
Elevator	Approved. We approved this discipline of your application.	3/30/2006
Fire	Approved. We approved this discipline of your application.	8/23/2007
Mechanical/Plumbing	Approved. We approved this discipline of your application.	8/23/2007
Structural	Approved. We approved this discipline of your application.	8/31/2007
Zoning	Approved. We approved this discipline of your application.	10/26/2007
Historic	Approved. We approved this discipline of your application.	10/26/2007

Building permit application status data current as of: 6/1/2008, 10:59:28 AM

If you have questions about a particular building application, please contact the Permits Division at: (202) 442-4589.

[Search for another job](#)

[Telephone Directory by Topic](#) · [Agencies](#) · [DC Council](#) · [Search](#) · [Elected Officials](#) · [Feedback](#) · [Translations](#) · [Accessibility](#) · [Privacy & Security](#) · [Terms & Conditions](#)

Consumer & Regulatory Affairs

DCRA HOME

About DCRA
How to Reach Us
Ask the Director
FOIA Requests
News Room
Helpful Links
Site Map

SERVICES

Consumer Protection
Corporate Registration
Elevator Safety &
Regulation
Homeowners Center
Inspections &
Enforcement
Licenses
Office of the Surveyor
Permits
Street Vending
Vacant Properties
Weights & Measures
Zoning Requirements

INFORMATION

ONLINE SERVICE
REQUESTS

Building Plan Review Status

Project Information

- Tracking number: 3758 A 2006
- Date filed: 2/9/2006
- Address: 138 12TH ST NE
- Agent: MIKE WILSON (301) 731-4767

Application Status

Approved. This application has been approved by all reviewers within DCRA. Please call DCRA at the number below to check the status of other agencies' approvals (where required) and to find out if your plans are ready for pick up.

Discipline	Review Status	Status date
Zoning	Approved. We approved this discipline of your application.	10/26/2007

Comments: Please note: You may be able to view comments about your project online, but you won't be able to pick up your plans until all required disciplines have reviewed them.

Please call DCRA at the number below to see if your plans are ready to be picked up.

Date	Description
10/26/2007 3:39:09 PM	As per Zoning Order # 06-33, published on 9/14/07, the parking requirements for this project are to be re-reviewed as per new parking requirements under 11 DCMR 2120.

Building permit application status data current as of: 6/1/2008, 10:59:28 AM

If you have questions about a particular building application, please contact the Permits Division at: (202) 442-4589.

[Search for another job](#)

[Telephone Directory by Topic](#) · [Agencies](#) · [DC Council](#) · [Search](#) · [Elected Officials](#) · [Feedback](#) · [Translations](#) · [Accessibility](#) · [Privacy & Security](#) · [Terms & Conditions](#)

Consumer & Regulatory Affairs

DCRA HOME
About DCRA
How to Reach Us
Ask the Director
FOIA Requests
News Room
Helpful Links
Site Map

SERVICES
Consumer Protection
Corporate Registration
Elevator Safety &
Regulation
Homeowners Center
Inspections &
Enforcement
Licenses
Office of the Surveyor
Permits
Street Vending
Vacant Properties
Weights & Measures
Zoning Requirements

INFORMATION

ONLINE SERVICE
REQUESTS

Building Plan Review Status

Project Information

- Tracking number: 3758 A 2008
- Date filed: 2/9/2008
- Address: 138 12TH ST NE
- Agent: MIKE WILSON, (301) 731-4767

Application Status

Approved. This application has been approved by all reviewers within DCRA. Please call DCRA at the number below to check the status of other agencies' approvals (where required) and to find out if your plans are ready for pick up.

Discipline	Review Status	Status date
Department of Environment	Approved. We approved this discipline of your application.	10/26/2007

Comments: Please note: You may be able to view comments about your project online, but you won't be able to pick up your plans until all required disciplines have reviewed them.

Please call DCRA at the number below to see if your plans are ready to be picked up.

Date	Description
10/26/2007 3:39:03 PM	PAY FEE/ Revised review required before permit issuance.

← N.B

Building permit application status data current as of: 6/1/2008, 10:59:28 AM

If you have questions about a particular building application, please contact the Permits Division at: (202) 442-4589.

[Search for another job](#)

[Telephone Directory by Topic](#) · [Agencies](#) · [DC Council](#) · [Search](#) · [Elected Officials](#) · [Feedback](#) · [Translations](#) · [Accessibility](#) · [Privacy & Security](#) · [Terms & Conditions](#)

D,

Correspondence between Joseph Fengler, Chair ANC 6A and Linda Argo,
Director DCRA

From: "Argo, Linda (DCRA)" <Linda.Argo@dc.gov>
To: Joseph Fengler <fengler6a02@yahoo.com>
Cc: "Wells, Thomas (COUNCIL)" <TWells@DCCOUNCIL.US>; David Weller
<dvdweller@aol.com>; "Allen, Charles (COUNCIL)" <CAllen@DCCOUNCIL.US>;
Nicholas Alberti <alberti6A04@yahoo.com>; David Holmes
<dw.holmes@verizon.net>; "LeGrant, Matt (DCRA)" <Matthew.LeGrant@dc.gov>;
"Rogers, Eric (DCRA)" <Eric.Rogers@dc.gov>; "Douglas, Lennox (DCRA)"
<Lennox.Douglas@dc.gov>

Sent: Tuesday, November 13, 2007 7:06:30 PM
Subject: RE: DCRA approved the AppleTree permit?

Commissioner Fengler:

This building permit was issued erroneously on October 29th, 2007. Within an hour after the permit was issued, DCRA staff asked that AppleTree surrender the permit so that it could be cancelled since it had been issued in error. DCRA had placed a "hold for corrections" on the permit application pending additional reviews by the Zoning Administrator and the District Dept. of the Environment, and these reviews have not been completed. In addition, DCRA notified the attorney for AppleTree that if the permit was not surrendered voluntarily, DCRA would begin proceedings to revoke the permit. The attorney was also advised that any construction work at the property address would be at his client's own risk. As of today, the AppleTree Institute has not returned the permit, and DCRA has initiated revocation proceedings.

I hope this answers your questions and provides the information you're seeking.

Regards,

Linda

Linda K. Argo
Director
Department of Consumer and Regulatory Affairs
District of Columbia Government
941 North Capitol Street, NE, Suite 9500
Washington, DC 20002
(202) 442-8934 (phone)
(202) 442-9445 (fax)

From: Joseph Fengler [<mailto:fengler6a02@yahoo.com>]
Sent: Monday, November 12, 2007 7:58 AM

D₂

To: Linda (Director DCRA) Argo; Matt (DCRA) LeGrant; Eric (DCRA ANC) Rogers
Cc: Tommy Wells (Council); David Weller; Charles (COUNCIL) Allen; Nicholas Alberti; David Holmes

Subject: Re: DCRA approved the AppleTree permit?

Ms. Argo, in my zeal for answers to the many questions asked by our residents, I forgot this Monday is a Federal holiday. Accordingly, and to the greatest extent possible, we would welcome the answer to the below question by close of business Tuesday. I am usually hesitant to make such a time constraint request; but in this case, I feel compelled to gain an immediate understanding of the rationale used by DCRA. Thank you in advance for your time and consideration on this matter. Regards, Joe.

Joseph Fengler, ANC Commissioner 6A02
Phone: 202-423-8868
fengler6a02@yahoo.com

----- Original Message -----

From: Joseph Fengler <fengler6a02@yahoo.com>
To: Linda (Director DCRA) Argo <linda.argo@dc.gov>; Matt (DCRA) LeGrant <Matthew.LeGrant@dc.gov>; Eric (DCRA ANC) Rogers <eric.rogers@dc.gov>
Cc: Tommy Wells (Council) <twells@dccouncil.us>; David Weller <dvdweller@aol.com>; Charles (COUNCIL) Allen <Callen@dccouncil.us>; Nicholas Alberti <alberti6A04@yahoo.com>; David Holmes <dw.holmes@verizon.net>
Sent: Sunday, November 11, 2007 11:14:31 AM

Subject: DCRA approved the AppleTree permit?

Director Argo,

Please tell me how, under the original permit, the zoning discipline for Apple Tree was approved on 10/26/07 in light of the recent ZC ruling. Given the amount of work we have done on this case over the last two years, I am hoping your office will have an answer by noon Monday. To be honest, I am disappointed that no one in DCRA thought of notifying the community that this final permit was approved given your comments at our ANC meeting. For a permit held at "your desk" -- I look forward to the detailed rational of how the existing permit would be valid under the current zoning regulations.

<http://app.dcra.dc.gov/services/permits/PermitStatus.asp?JOBNO=89587>

Joseph Fengler, ANC Commissioner 6A02
Phone: 202-423-8868
fengler6a02@yahoo.com

E

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

APPLETREE INSTITUTE FOR
EDUCATION INNOVATION,
Petitioner,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS,
Respondent

&

ADVISORY NEIGHBORHOOD
COMMISSION 6A
Intervener.

Case No. CR-C-07-100087
Hon. Steven Wellner, ALJ

**DISTRICT OF COLUMBIA'S REPLY TO
OPPOSITION TO MOTION TO DISMISS WITH PREJUDICE AND
REQUEST FOR INTERLOCUTORY RESTRAINING ORDER**

Respondent, District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"), by and through counsel, respectfully submits this Reply to Intervenor Advisory Neighborhood Commission 6A's ("ANC") opposition to AppleTree and DCRA's Joint Motion to Dismiss ("Opposition").

This Court should deny the Opposition because (1) the instant case is now moot, (2) the zoning issue raised by the ANC is currently before the Board of Zoning Adjustment, and (3) the ANC's remaining questions are not properly before this Court. As such, the Opposition presents no colorable rationale for continuing the instant case. Additionally, this Court should deny the request for a restraining order because the ANC cannot meet the legal requirements for a preliminary injunction.

FACTS

On October 29, 2007, DCRA erroneously issued Building Permit No. 89587 (the “Permit”) to AppleTree Institute for Education Innovation (“AppleTree”). As a result of erroneous actions by DCRA’s Permit Division, the Permit issued prior to the completion of two discipline reviews, those of the District Department of the Environment (“DDOE”) and the Zoning Administrator. On November 15, 2007, DCRA revoked the Permit, citing the two reviews still in progress. On November 30, 2007, AppleTree timely appealed the revocation to this Court.

During the pendency of the instant case, the Zoning Administrator and DDOE completed their reviews on March 19, 2008 and March 29, 2008, respectively, and granted their approval of AppleTree’s permit application. The completion of these reviews, and the concomitant discipline approvals, cured the defects in the October 2007 issuance of the Permit and rendered the Permit eligible for issuance. On April 22, 2008, after the respective approvals, AppleTree and DCRA entered into a Settlement Agreement, including the withdrawal of the November 15, 2007 revocation of the Permit in return for AppleTree’s dismissal of the instant appeal. On April 22, 2008, AppleTree and DCRA jointly moved this Court to dismiss the instant case in furtherance of the Settlement Agreement.

ARGUMENT

THIS CASE IS MOOT.

The ANC’s Opposition should be denied because the instant case is moot. The law of mootness is well-settled in the District of Columbia. As the Court of Appeals has stated:

[A] case is moot “if ‘there is no reasonable expectation that the alleged violation will recur [to the complaining party] and . . . interim relief or events have completely and irrevocably eradicated the effects of the violation.’”

Rales v. Rales, 908 A.2d 64, 69 (D.C. 2006) (*quoting Hardesty v. Draper*, 687 A.2d 1368, 1371 (D.C. 1997); *In re Morris*, 482 A.2d 369, 371 (D.C. 1984)). The *Rales* Court’s analysis is applicable to the instant case. Since all discipline reviews necessary for issuance of the Permit have been completed and all necessary approvals have been granted, there is no reasonable expectation that the November 25, 2007 revocation of the Permit will recur. Second, DCRA’s withdrawal of the revocation and the execution of the Settlement Agreement have completely and irrevocably eradicated the effect of the revocation because the basis for the revocation, two incomplete discipline reviews, has now been cured. Thus, the first and second *Rales* elements are satisfied.

Even if this Court were to hear the merits of the instant case, no meaningful relief could be granted. If this Court found in favor of AppleTree, the appropriate relief would be to order the withdrawal of DCRA’s November 15, 2007 revocation. Such “relief” has already been accomplished following completion of the DDOE and zoning reviews. Similarly, if this Court found in favor of DCRA and the intervening ANC, the appropriate relief would be to uphold the November 15, 2007 revocation because the DDOE and zoning reviews had not yet been completed. Since the discipline reviews have now been completed, the reason for the revocation has been cured. Any finding by this Court, whether in favor of AppleTree or DCRA and the ANC, would lead to the same ultimate result—the issuance of a permit. Thus, in the words of the Court of Appeals, “no relief which this court could grant . . . would make a substantive difference in the outcome of the case.” *Rales*, 908 A.2d at 70.

Approaching the analysis from a different perspective, the Court of Appeals has held that, “A case is moot when the legal issues presented are no long ‘live’” *Cropp v. Williams*, 841 A.2d 328, 330 (D.C. 2004). In *Cropp*, the Mayor argued that the case was moot because, “the sole legal dispute between himself and the Council . . . has been resolved by the incumbent’s resignation and departure from office.” *Id.* The Court agreed.

The instant case is analogous to *Cropp*. The legal issue before this Court is whether the Permit was erroneously issued because two necessary discipline reviews had not been completed. Notwithstanding the parties’ litigation efforts in the instant case, the two reviews have been completed. As was the situation in *Cropp v. Williams*, there is no longer a live issue before this Court. Thus the case is moot, and the Joint Motion to Dismiss should be granted.

**THE ANC ASKS THIS COURT TO DECIDE ISSUES NOT BEFORE THIS COURT AND
OUTSIDE OF THIS COURT’S SUBJECT MATTER JURISDICTION.**

The ANC has asked this Court to make an interpretation of the zoning regulations by determining whether 11 DCMR § 3202.4 or § 3202.6 controls the analysis of AppleTree’s application. However, this Honorable Court is not the proper forum for such a determination. The Board of Zoning Adjustment (“BZA”) has sole jurisdiction over challenges to the Zoning Administrator’s interpretation of the zoning regulations. *See* D.C. Official Code § 6-641.07(g)(1); *see also Murray v. BZA*, 572 A.2d 1055, 1058 (D.C. 1990) (“It is the Board, not the Zoning Administrator, which has final administrative responsibility to interpret the zoning regulations.”). Although the BZA’s exclusive jurisdiction is indisputably established by statute and case law, the ANC’s first argument asks this Court to interpret the zoning regulations, stating, “The Building

Permit Should not be Issued Under the Zoning Regulations.” Opposition at 4. This alone should be a proper basis to deny the ANC’s Opposition.

Moreover, the ANC’s request is seeking a second “bite at the apple.” The ANC has already filed a timely appeal of the issuance of the October 2007 Permit, which is at issue before this Court, with the BZA. The BZA hearing on this issue is docketed for June 3, 3008. Even if this Court were to deny the Joint Motion to Dismiss, the BZA likely will have heard the issue before an evidentiary hearing on this issue would be scheduled in this Court. Therefore, this Honorable Court should recognize the BZA’s authority to interpret the Zoning Administrator’s decision and decline to hear any zoning arguments asserted by the ANC. Accordingly, this Court should grant the Joint Motion to Dismiss.

**THE ANC’S REMAINING QUESTIONS ARE
NOT PROPERLY BEFORE THIS COURT.**

In an effort to create confusion about the issues before this Court, the ANC attempts to introduce a laundry list of discovery-like questions which have no bearing on the Joint Motion to Dismiss, the Settlement Agreement or the underlying permit revocation. *See* Opposition at 6-7.

For example, the ANC asks this Court to investigate: the validity of the construction cost estimates filed with the permit application; why the permit originally issued; whether DDOE accurately concluded that the construction site was not a “brownfield;” and why DCRA decided that the issuance of a permit following a complete review of the application was warranted.

None of these questions raises a material issue relevant to the validity of the Joint Motion to Dismiss or the Settlement Agreement. Moreover, the ANC will have the

opportunity to be heard in the BZA appeal that is scheduled for June 3, 2008. This Court should therefore decline to consider the extraneous issues not before it.

**THE REQUEST FOR AN INTERLOCUTORY RESTRAINING
ORDER FAILS TO MEET LEGAL REQUIREMENTS.**

While styled as a “Request for Interlocutory Restraining Order,” the ANC has effectively requested a back-door denial of the Joint Motion to Dismiss. Regardless of what the request is called, however, in effect the ANC is seeking a preliminary injunction. Thus, even if this Court gives credence to the back-door argument, the ANC has not satisfied the *Wieck* Standard for a preliminary injunction and enjoinder is improper.

A preliminary injunction “is an extraordinary remedy, and the trial court’s power to issue it should be exercised only after careful deliberation has persuaded it of the necessity for the relief.” *Wieck v. Sterenbuch*, 350 A.2d 384, 387 (D.C. 1976). The test for a preliminary injunction is well-settled:

A proper exercise of discretion requires the trial court to consider whether the moving party has clearly demonstrated: (1) that there is a substantial likelihood that he will prevail on the merits; (2) that he is in danger of suffering irreparable harm during the pendency of the action; (3) that more harm will result to him from the denial of the injunction than will result to the defendant from its grant; and, in appropriate cases, (4) that the public interest will not be disserved by the issuance of the requested order.

Zirkle v. District of Columbia, 830 A.2d 1250, 1255-1256 D.C. 2003) (*quoting Wieck v. Sterenbuch*, 350 A.2d 384, 387 (D.C. 1976)) (footnote omitted). The ANC has not claimed and can not claim that it meets this four-prong test.

First, the ANC concedes, as it must, that there is no substantial likelihood of prevailing on the merits. Specifically, the ANC writes, “At present, there is no cognizable impediment to withdrawal [of the revocation].” Opposition at 8. Failure on

this prong alone is grounds to deny the injunction, but the ANC also fails on the remaining prongs.

Second, although the ANC claims that it would suffer irreparable harm if AppleTree begins construction, in fact, AppleTree would be proceeding at its own risk. The issuance of the Permit is still under appeal before the BZA. An adverse decision before BZA could require AppleTree to restore the site to its pre-construction state. Furthermore, the ANC has not put forward any facts supporting a contention that construction is taking place. Should the BZA conclude that the permit should not have issued, AppleTree would then be ordered to restore the property to its pre-permit state. Not only is AppleTree unlikely to begin construction prior to the BZA's decision, any such construction is capable of being undone. Therefore, there is no irreparable harm.

Third, the ANC does not address the comparable harms. However, neither a grant nor a denial of the injunction is likely to affect the status quo because, on June 3, 2008, the BZA will be conducting a public, evidentiary hearing on the ANC's appeal of the permit issuance. As noted above, if AppleTree commences construction, it will be doing so at its own risk in light of the pending BZA hearing. By not addressing the issue, the ANC failed to prove that it would be harmed more by the denial of the injunction than AppleTree would be harmed by the grant of the injunction. Therefore, the ANC also fails on this third prong.

Fourth, the ANC claims the public interest would be harmed by denial of the injunction because the denial would, "deny [the public] any avenue to obtain relief for the harm caused by issuance of a permit, in open abrogation of the applicable zoning regulations now in effect." *Id.* However, such a sweeping statement disregards the role

of the BZA in evaluating decisions alleged to abrogate the zoning regulations, and the sweeping statement disregards the active BZA review of the subject Permit. Denial of the permit would not disserve the public. Thus, the ANC fails on this fourth prong. Because the ANC has failed to prove *any* prong of the *Wieck* Standard, much less all four prongs, the request for a restraining order should be denied.

CONCLUSION

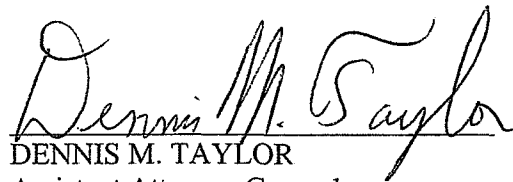
For the foregoing reasons, the Joint Motion to Dismiss should be GRANTED, and the Request For Interlocutory Restraining Order should be DENIED.

Respectfully submitted,

JILL STERN
General Counsel
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS



LORI S. PARRIS [467455]
Deputy General Counsel
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS



DENNIS M. TAYLOR
Assistant Attorney General
Bar Number 479856
Suite 9400
941 N. Capitol Street, NE
Washington, DC 20002
(202) 442-8199
(202) 442-9447 (fax)
E-mail: dennis.taylor@dc.gov

*Counsel for District Department of Consumer and
Regulatory Affairs*

F

GOVERNMENT OF THE DISTRICT OF COLUMBIA
~~DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS~~



Office of the Director

**By Personal Service or
Certified Mail, Return Receipt Requested, and
First Class Mail**

Mr. Russ Williams
Managing Director
AppleTree Institute for Education Innovation
400 7th Street, S.E.
Washington, D.C. 20003

NOTICE OF REVOCATION
BUILDING PERMIT NO. 89587

This is an official Order from the Department of Consumer and Regulatory Affairs ("DCRA") revoking Building Permit No. 89587 (the "Permit"), pursuant to 12A DCMR §105.6(6). The Permit is being revoked because DCRA issued the Permit in error, prior to completion of reviews by all of the disciplines required to approve the application, specifically environmental and zoning.

Building Permit No. 89587 was issued at approximately 11:00 a.m. on October 29, 2007. Within an hour of the permit grant, DCRA staff requested that the permit be surrendered voluntarily for cancellation, since the permit had been issued in error. In addition, your attorney, Mr. Mark Perry of Gibson, Dunn & Crutcher, was contacted by DCRA's counsel on October 29, 2007, and asked to surrender the permit voluntarily for cancellation. Mr. Perry was also advised, verbally and by email, that unless the permit was surrendered voluntarily, DCRA would initiate proceedings to revoke the permit. Your attorney was also advised that any construction pursuant to the erroneously-issued permit would be at your own risk.

At the time of issuance, at least two disciplines, environmental and zoning, still needed to clear the application for grant. Reflecting this processing status, DCRA had placed a "hold" on the granting of the application subject to clearances by two senior managers, the Zoning Administrator and the Acting Deputy Director, Permit Operations. This application status was noted in three internal tracking databases maintained by DCRA in connection with construction permit processing. On October 29, 2007, a DCRA employee exceeded his authority by removing the "hold" on the application, and authorizing the granting of the application. DCRA has determined that the DCRA employee erred in authorizing the granting of the permit prior to the application receiving the required approvals and in

Mr. Russ Williams
Managing Director
AppleTree Institute for Education Innovation
400 7th Street, S.E.
Washington, D.C. 20003
p. 2

direct contravention of his superiors' directives.¹

The permit is being revoked so that DCRA can complete the reviews required as part of its processing procedures, reviews which were truncated by the erroneous issuance of the permit on October 29, 2007. One of the issues to be considered by the Zoning Administrator was the impact of an amendment of the Zoning Regulations pursuant to Zoning Commission Order 06-33, published in the District of Columbia Register on September 14, 2007. This zoning review could not be completed until the District Department of the Environment (DDOE) returned the permit application and plans to DCRA.³ The application and plans were not returned by DDOE until October 25, 2007. Before the zoning review could be completed, and contrary to the computer "hold" on the application to enable such review, the permit was granted. Moreover, even though DDOE returned the plans to DCRA on October 25, 2007, it is DCRA's understanding that DDOE had not, and still has not, completed its investigation with respect to the toxic waste issue.

Pursuant to 12A DCMR §105.6(6), DCRA is authorized to revoke a building permit if the permit was issued in error. Accordingly, DCRA hereby revokes Building Permit No. 89587.

RIGHT TO APPEAL

You have the right to appeal the revocation of your building permit. To appeal, your appeal must be mailed to the Office of Administrative Hearings at P.O. Box 77718, Washington, DC 20002. Alternatively, you may hand-deliver your appeal or request to the Office of Administrative Hearings at 941 North Capitol Street, NE, Suite 9100, Washington, DC 20002. The deadline for such an appeal or request is ten (10) business days following your receipt of this Notice.

Any questions about this Notice may be directed to the Permit Operations at (202) 442-4541.

Nov. 15, 2007
Date

Linda K. Argo
Linda K. Argo, Director

CC: Mark Perry, Esq.

¹ Following an internal investigation, your permit expeditor was cleared of any wrongdoing in connection with the permit issuance.

³ The application and plans had been sent to DDOE for review on or about September 1, 2007, for DDOE to determine if the construction site was contaminated by hazardous chemicals as had been alleged. In an August 30, 2007 letter and email from Advisory Neighborhood Commission 6A Commissioner David Holmes, Mr. Holmes raised the concerns of his constituents that the site contained hazardous chemicals, stemming from when the site had been operated as a distribution site for oil and other petroleum distillates.