

Before the

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:)
)
Advisory Neighborhood Commission 6A from the)
Administrative Decision of DCRA on)
DCRA Building Permit No. B1010205)
Decision to Vacate Revocation of Permit)

2011 MAR 22 PM 4:50

Statement of the Applicant

Advisory Neighborhood Commission 6A (ANC 6A) hereby requests that the Board of Zoning Adjustment (the Board) GRANT the Appeal from the Administrative Decision of the Department of Consumer and Regulatory Affairs Building and Land Regulation Administration to withdraw the revocation of Building Permit No. 1010205 at 138 12th St NE and in support of its appeal states the following:

SUMMARY OF APPEAL

The Department of Consumer and Regulatory Affairs (DCRA) erred in its Feb. 24, 2011 decision to withdraw its Notice to Revoke Building Permit No.1010205. The property which is the subject of this appeal is located at 138 12th St NE. On December 3, 2010 DCRA revoked Building Permit No.1010205 stating that "Here, the Construction Code does not allow an extension of the existing building permit beyond a total of eighteen months from the original building permit, B89587, which was issued on October 26,2007. Therefore, the last building permit extension ended on 4/26/10. Building Permit B1010205 erroneously extended the building permit beyond the maximum eighteen months of extensions and must be revoked."

ANC 6A believes that DCRA was correct in revoking the building permit. The DCRA's stated basis for revocation of the permit is a correct and necessary application of DCMR Title 12 Chapter 105.5.1 Extension of Permit which allows a permit to be extended for a period of only six (6) months and allows for at most three (3) extensions. In this case, the owner had been granted three (3) one (1) year extensions to the initial permit – that is clearly a breach of the District statutes set down in DCMR Title12.

An additional reason why DCRA's decision to revoke the permit is correct is that no work was performed the on property at 138 12th St NE from Oct. 26, 2007 to Feb. 24, 2011, a period of more than three (3) years. The extension of the permit beyond Oct. 26, 2009 was a breach of Title 11 DCMR § 3202.4 (a) which requires that the permit holder begin construction work with two (2) years of the date on which the permit is issued.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18239
EXHIBIT NO. 3

Board of Zoning Adjustment
District of Columbia
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Had Title 11 been correctly applied, Building Permit No.1010205 would have become invalid even before the date of the earlier permit's second extension (the second extension, Building Permit B0909377 was issued on Nov 17, 2009).

In its Feb. 24, 2001 letter withdrawing the revocation of the permit, it declares that the Building Permit No.1010205 has not lapsed. This declaration ignores the clear language of Title 11 and Title 12. The facts stated by DCRA in its December 3, 2010 letter revoking the building permit are indisputable and the grounds for DCRA's decision to revoke the permit are sound and comply with current District statutes.

DISCUSSION

The initial building permit, extended by Building Permit No.1010205, is Building Permit No. B89587. That permit was issued on 10/26/2007. The DCRA has issued three (3) one (1) year extensions to the initial permit. The first extension, Build Permit No. B0900498 was issued on Oct, 21 2008. It was renewed Sept. 21, 2009 (No.B0909377) and again on Sept. 17, 2010 (No. B1010205). All extensions were issued for a period of one year. A listing of building permits and extensions issued for the property are shown in the table below. None of these extensions comply with DCMR Title 12 Chapter 105.5.1 Extension of Permit in that they are all for a period of more than six months. Based on a correct application of DCMR Title 12, the third extension issued on Sept. 17, 2010 expired at the end of six months on Mar.17, 2010 and the permits are not eligible to be extended beyond that point.

The District statute contained in DCMR Title 11 DCMR § 3202.4 (a) also applies to the building permits for this property. That statute requires that "The permit holder shall begin construction work within two (2) years of the date on which the permit is issued". ANC 6A asserts that no construction was begun on the structure at 138 12th St NE until after Feb. 24, 2011, a period of more than three years (3) from the Oct. 26, 2007 issuance of the initial permit (No. B89587). The correct application of DCMR Title 11 makes Building Permit No.1010205 invalid and requires that the second extension (No. B0909377) should have expired as of Oct. 26, 2009, two years after the initial permit (No. B89587) was issued.

The property is located in an R-4 Zoning District. The proposed use by the current owners is as a public charter school. This proposed use is not a matter of right use in an R-4 Zoning District because the property does not meet the lot size and lot width requirements of an R-4 District. Title 11 DCMR §401.3 stipulates that for a 'public school' to be a matter of right use in an R-4 district, the property must have a minimum lot size of 9,000 sq. ft. and a minimum lot width of 120 ft. This property is 4,230 sq. ft. in area with a width of 36 ft.

Permit Number	Address	File Date
<u>B1010205</u>	138 12TH ST NE	9/17/2010
<u>B0909377</u>	138 12TH ST NE	9/21/2009
<u>B0900498</u>	138 12TH ST NE	10/21/2008
<u>B89587</u>	138 12TH ST NE	2/9/2006

The appellant requests that the Board ORDER the Department of Consumer and Regulatory Affairs to:

- Attachments (3)

[illegible]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Inspections and Compliance
Administration



February 24, 2011

To: Jack McCarthy
Managing Director
AppleTree Institute for Education Innovation, Inc.
415 Michigan Ave., NE
Washington, DC 20017

Mark A. Perry, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Ave., NW
Washington, DC 20036

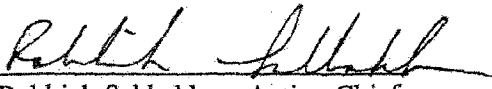
Re: 138 12th Street, NE

WITHDRAWAL OF NOTICE TO REVOKE BUILDING PERMIT NO. B1010205

This is official notice from the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") that the Notice to Revoke Building Permit No. B1010205, issued on December 3, 2010, is hereby withdrawn. By this letter, DCRA confirms that Building Permit No. B1010205, issued on September 17, 2010, is valid and has not lapsed, *nunc pro tunc*.

Any questions about this letter may be directed to the Permit Operations Division at (202) 442-4542.

Date: 2-24-11


Rabbiah Sabbakhan, Acting Chief
Permit Operations Division

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Permit Operations Division

VIA PERSONAL SERVICE or
U.S. FIRST CLASS MAIL

Appletree Institute for Education
Innovation, Inc.
400 7th Street, S.E.
Washington, DC 20003-2707

Appletree Institute for Education
Innovation, Inc.
c/o Quinten Washington
1025 Connecticut Avenue, N.W.
#1000
Washington, DC 20036

Re: Building Permit BIO10205 (138 12th Street, N.E.)

NOTICE TO REVOKE BUILDING PERMIT NO. BIO10205

This is official notice ("Notice") from the Department of Consumer and Regulatory Affairs ("DCRA") that Building Permit No. BIO10205 is revoked effective ten (10) business days from the mailing of this Notice. This action is taken pursuant to District of Columbia Municipal Regulations ("DCMR") Title 12A § 105.6, which authorizes the code official to revoke a building permit when the permit was issued in error. Here, the Construction Code does not allow an extension of the existing building permit beyond a total of eighteen months from the original building permit, B89587, which was issued on October 26, 2007. Therefore, the last building permit extension ended on 4/26/10. Building Permit BIO10205 erroneously extended the building permit beyond the maximum eighteen months of extensions and must be revoked.

Under the District of Columbia Municipal Regulations § 12A-105.6, DCRA has the authority to revoke building permits. Based upon the District's review and analysis of the building permit that was issued, DCRA is revoking Building Permit No. BIO1025. This revocation will be effective ten (10) business days from the mailing of this Notice.

1100 4th Street, SW Third Floor Washington, DC 20024
Phone: (202) 442-4589 Fax: (202) 442-4863

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RIGHT TO APPEAL

You have the right to appeal the revocation of your building permit within ten (10) days (excluding Saturdays, Sundays and legal holidays) of receipt of this Notice to the Office of Administrative Hearings. 12A DCMR § 105.6.4. Should you appeal DCRA's decision, your appeal must be mailed to the Office of Administrative Hearings at 441 4th Street, N.W., 10th Floor, Washington, D.C. 20001. Alternatively, you may hand-deliver your appeal for a hearing to the Office of Administrative Hearings at 441 4th Street, N.W., 10th Floor, Washington, D.C. 20001. If you do not request a hearing within the time and manner specified in this notice (or fail to appear at a scheduled hearing), your permit will be immediately revoked without any further written notice.

Any questions about this notice may be directed to the Permitting Operations Division on 442-4542.

Date: 12-3-10


Rabbiah Sabbakhan, Acting Chief
Permit Operations Division

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Address

St No: **138** St Name: **12TH** Suffix: **ST** Quad: **NE** Suite:Zip: Square: **0988** Suffix: Lot 1: **820** Lot 2: Lot 3: Lot Ext:Cluster: Ward: **6** ANC: Parcel Key:

Address:

Building Permit

Rec Type: **BUILDING** App. Date: Issued Date: **10/26/2007** File Job #:Bldg Permit No: **89587** Permit Type: **ADDITION/ALTER** Flrs: Units: Storage Loc:

Use Group: Use:

Permit Fee: **6,104.00** Valuation: **1,250,000.00** Filing Fee: **1,250.00**Owner Name: **appletree institute**

Phone No: () -

Agent: **MIKE WILSON 301-731-4767**Phone No: **(301) 73-1 47**

Address: City: State: Zip:

Comments: **INTERIOR RENOVATION EXISTING 2 STORY BLDG. DEMO, 3 STORY ADDITION WITH BASEMENT WITH BZA#17632 - JULY 25, 2007.**Record No: **102844**

Added By: Added Date: Updated By: Updated Date:

COPY FOR YOUR
INFORMATION

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