

Before the
DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:

Northeast Neighbors for Responsible Growth from the
Administrative Decision of DCRA on
DCRA Building Permit No. B1010205
Decision to Vacate Revocation of Permit

Statement of the Applicant

Northeast Neighbors for Responsible Growth (NNRG) 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. In support of its appeal NNRG states the following:

RELEVANT FACTS

1. The permit was issued for the purposes of constructing a charter school at property located at 138 12th Street, NE. Washington, D.C. 20002 (hereinafter "the Property).
2. This permit was subject to several extensions.
3. Pursuant to 11 D.C.M.R. 3130, a permit based upon an Order of the BZA must be begun within six (6) months of issuance of the permit, and if work is not begun, the permit shall expire.
4. Pursuant to 12 D.C.M.R. 105.5, any extension of a building permit may not exceed six (6) months, and there can be no more than three (3) extensions.
5. Pursuant to 11 D.C.M.R. 3202.4, construction may be completed pursuant to provisions in effect on the date of issuance of a permit so long as work was begun within two (2) years of the date of issues, and if work is not timely begun, any construction engaged must comply with the provisions of the title in effect on the date the permit is amended.
6. Pursuant to 11 D.C.M.R. 3202.7, any permit issued is not renewable unless there is compliance with the Zoning Regulations on the date of such renewal.
7. Pursuant to 11 D.C.M.R. 401.3, to construct a charter school in an R-4 district, certain minimum lot qualifications must be met.

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."

NNRG 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 B 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 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.

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, 2011 letter withdrawing the revocation of the permit, it states 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, Building 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.

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 September 17, 2010 expired at the end of six months on March 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 AThe permit holder shall begin construction work within two (2) years of the date on which the permit is issued@.

NNRG asserts that no construction was begun on the structure at 138 12th St NE until after February 24, 2011, a period of more than three years (3) from the October 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.

MINIMUM LOT SIZE REQUIRED BY LAW: 9,600 sq ft. This lot size: 4,340 sq ft!

MINIMUM LOT WIDTH REQUIRED BY LAW: 120 ft This lot width: 36 sq ft!

On form 125 (revised 10/08/10) it states "state specifically manner (sic) in which appellant is aggrieved ..." IF that is still required, NNRG, a community and neighborhood group, provides the following.

This concerns the harm which will be done to the neighborhood, particularly to the residents in the vicinity of the 100 block of 12th Street, N.E. by the construction and operation of a school at 138 12th Street, N.E.

1. The proposed building and use are completely out of character for a designated Historic Area of Capital Hill. The plans are grossly out of character in a block of historic row houses and two low-rise apartment buildings. There is no commercially-zoned property for many blocks

surrounding the Lincoln Park neighborhood, except the few commercial enterprises that are small corner neighborhood-serving businesses that have been "grandfathered" under zoning regulations.

2. Allowing such a use will put a large, non-conforming building in the middle of a historic residential block. The surrounding homes tend to step down as they approach the alley, and the back is highly articulated, with doglegs, porches, green space, and other features that soften the rear of the buildings. This business structure would dwarf the surrounding homes and it would dominate the residential properties. The exposed rear yard of the proposed structure is predominantly hardscape with no planting materials to absorb noise and pollution.

3. The school will cause massive parking problems. There will be limited parking places on the property due to its very small lot size. Even if off site parking was attempted to be procured for the teachers, staff, and services personnel, this is temporary at best. Other schools in the District have on-site parking, or enforceable restrictions that prohibit parking by parents, students, staff, or support vehicles. Some prohibit driving to the school altogether and require drop-off/pick-up at satellite locations, or restrict the hours during which staff may drive to the school. Many neighbors do not have garage parking and must park on the street. At most other similar properties, the Department of Transportation has taken away many street parking places to attempt to provide some kind of curb access to the drop-off/pickup of children.

4. The school will cause traffic congestion. Any drop-off/pickup area for parents bringing their children to school will necessarily block 12th Street or if allowed to drop-off/pickup in the alley, block the alley. Many neighbors have their original carriage houses, or they have been replaced with garages that blend in with the historic nature, and garage their cars on the alley, and would:

- a.) not be able to exit their garages because of the blocking traffic waiting to move up to the property to drop-off the children, and
- b.) have to sit in the line of traffic to exit onto adjoining streets once egress from their garages was accomplished.

5. Parking or "stopping" in the alley is forbidden by law. It can not be used for pick-up/drop-off. Alleys also can not be used as thoroughfares which will be the case after drop-off/pick-ups on 12th Street as drivers use it to avoid East Capitol Street in returning to Constitution Avenue.

6. In addition, many harried parents will undoubtedly double park on narrow 12th Street as they unbuckle child safety seats and walk their children into the building - illegally crossing the street in the middle of the block.

7. 12th street is a one lane each way street: cars approaching each other must slow down to a crawl to ensure there is no contact. The circular driveway of the Steuart Square Condominiums is private property but will be used for parking and turning around, blocking their parking and access. Only a few cars can line up on 12th Street to drop-off/pick-up children. Others waiting on East Capitol Street or Constitution Avenue will congest the flow of traffic on these major arteries as they wait to make the turn into 12th Street. Cars waiting to turn onto 12th Street can

jeopardize users of the bike lane, which is particularly popular because of the BikeShare station at Lincoln Park. The traffic in the area is already horrendous. Constitution Avenue is a general thoroughfare for commuters in and out of the city. Any additional traffic in this immediate area would turn the entire general travel roads and then those with turning access onto 12th Street, and 12th Street itself into gridlock.

8. The noise of the inevitable gridlock and drop-off/pickup every weekday morning and evening will be overwhelming and will severely hurt the quiet enjoyment of one's property.

9. The trash pickup will bring more trash trucks with their accompanying noise and further congestion. The air conditioning equipment required for a commercial-style building of this size will be more than twice the capacity of that used by residential units and will generate significant noise that will echo through the confined alley space.

10. Based on Company's plans, the additional amount of people can be expected at the school:

- a.) 54 children, coming and going, yields 108 trips, mostly vehicular each day;
- b.) 20 staff members;
- c.) Visitors from administration, observers, guests, etc.
- d.) Vendor trucks delivering meals, supplies, etc. plus daily trash trucks.

11. Because this is a charter school, it must accept children from anywhere in the city by lottery. Charter schools on Capitol Hill are particularly in demand because they are close to the Capitol and the Federal office buildings. This decreases the odds that children within walking distance of the building will "win" the lottery, thereby increasing the number of children who will arrive and depart by vehicles as their parents drop-off/pick-up on their way to and from work.

REQUEST FOR RELIEF

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

- 1) Declare that Building Permit No. B89587 has expired.
- 2) IF the property owners wish to continue to attempt to place such a structure at this inappropriate site, they follow the current zoning regulations and laws.

Attachments: 2

1. Revocation of Building Permit No. B1010205
2. Revocation of the Revocation of Building Permit No B1010205

To be delivered to the appropriate parties by Personal delivery or U.S. First Class Mail