

4. Plaintiff's motion for Temporary Restraining Order, Preliminary Injunction, and Complaint is erroneous and misleading.
5. 3453 Holmead Place, NW is in an R-4 Zone and is 40 feet high.
6. 3453 Holmead Place, NW was four-unit dwelling, consisting of one basement and three stories.
7. The Certificate of Occupancy was issued for four units, one basement and three stories, and 3453 Holmead Place, NW continues to be a four-unit dwelling.
8. There is no fifth floor. An additional story was added to expand the third unit from a one level to a two level unit.
9. The building is still a four unit dwelling, consisting of one basement and four stories. The fourth unit is now a two-level unit.
10. Mr. Smith has diligently and willingly expended his efforts for period of 3 years, from 2007 to 2010, to resolve any issues regarding the construction at 3453 Holmead Place, NW.
11. DCRA repeatedly issued Stop Work Orders, although all work was stopped at 3453 Holmead Place, NW.
11. Mr. Smith has suffered financial harm due to the lack of timely response and action by DCRA.
12. There are R-4 buildings similar to 3435 Holmead Place, NW with R-4 zone, 40 feet, and four to five stories.
13. DCRA has caused irreparable financial hardship to Mr. Smith.

II. Response to ARGUMENTS AGAINST INJUNCTIVE RELIEF

Argument A: The District Has a Substantial Likelihood of Succeeding on the Merits

District Argument:

Mr. Smith violated the District's Zoning Regulations by exceeding the limit of three stories for buildings in the property's R-4 Zoning District.

**BOARD OF ZONING ADJUSTMENT
District of Columbia**

CASE NO. 18376

EXHIBIT NO. 25

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Response A.1

The additional story did not exceed the District's Zoning Regulations by exceeding the limit of three stories for buildings in the property's R-4 Zoning District.

- A. The property at 3453 Holmead Place, NW, Washington, DC is located in the R-4 Zone district, designated as Square 2834, Lot 0073.**

Exhibit 1: District of Columbia Zoning Map Report of 3453 Holmead Place NW

- B. The R-4 Zone regulations stipulates that a detached dwelling can be three-stories or 40 feet high. 3453 Holmead Place, NW is 40 feet high.**

Exhibit 2: DCRA Memorandum from Matthew LeGrant, Zoning Administrator, dated July 16, 2009, Item 2.

Exhibit 3: Drawing A-2, Section Elevation

Exhibit 4: Photo of Rear of 3453 Holmead Place, NW

Exhibit 5: Photo of Front of 3453 Holmead Place, NW

- C. There are other buildings within the surrounding neighborhood, which are in the R-4 Zoning District and are more than 3 stories.**

Exhibit 6: Photo of 3542 13th Street, NW

Exhibit 7: District of Columbia Zoning Map Report of 3542 13th Street, NW

Exhibit 8: Photo of 3311 13th Street, NW

Exhibit 9: District of Columbia Zoning Map Report of 3311 13th Street, NW

Exhibit 10: Photo of 1360 Kenyon Street, NW

Exhibit 11: District of Columbia Zoning Map Report of 1360 Kenyon Street, NW

Exhibit 12: Photo of 1126 Columbia Road, NW

Exhibit 13: District of Columbia Zoning Map Report of 1126 Columbia Road, NW

Exhibit 14: Photo of 1321 Euclid Street, NW

Exhibit 15: District of Columbia Zoning Map Report of 1321 Euclid Street, NW

Exhibit 16: Photo of 1319 Euclid Street, NW

Exhibit 17: District of Columbia Zoning Map Report of 1319 Euclid Street, NW

Exhibit 18: Photo of 1428 Monroe Street, NW

Exhibit 19: District of Columbia Zoning Map Report of 1428 Monroe Street, NW

Exhibit 20: Photo of 1432 Monroe Street, NW

- Exhibit 21:** District of Columbia Zoning Map Report of 1432 Monroe Street, NW
Exhibit 22: E-mail to DCRA, dated October 26, 2009

- D.** Similar properties in the R-4 Zoning District have received a Certificate of Occupancy for four and five stories and Building Permit for conversion of a single family dwelling to a five unit condo.

- Exhibit 23:** Building Permit for 3311 13th Street, NW
Exhibit 24: Building Permit for 1126 Columbia Road, NW
Exhibit 25: Certificate of Occupancy for 1126 Columbia Road, NW
Exhibit 26: Building Permit for 1360 Kenyon Street, NW
Exhibit 27: Certificate of Occupancy for 1360 Kenyon Street, NW
Exhibit 28: Certificate of Occupancy for 1319 Euclid Street, NW
Exhibit 29: Certificate of Occupancy for 1321 Euclid Street, NW

District Argument:

Mr. Smith showed flagrant disregard of DCRA's notices over a period of years.

Response A.2

Mr. Smith did not show flagrant disregard of DCRA's notices over a period of years.

- A.** Mr. Smith immediately stopped construction, upon receipt of the first Stop Work Order (SWO). DCRA continued to issue SWO's for the same infraction, although there was no on-going work at the property.

- Exhibit 30:** Notice of Infraction-Notice No. I700537, dated 6/20/07
Exhibit 31: Notice of Infraction-Notice No. I700587, dated 6/25/07

- B.** Mr. Smith was very responsive to all Stop Work Orders, and made every attempt to resolve any issues regarding the permits, request for variance, and Stop Work Orders (SWOs). The Stop Work Orders were lifted on 8-29-08. Mr. Smith and wife, Santia Isidore, repeatedly tried to contact DCRA without proper results. Numerous e-mails were sent to DCRA by Mr. Smith and wife requesting immediate assistance from DCRA without proper results and response. In fact, over 40 e-mails were sent to DCRA by Mr. Smith from 2007 through 2009 to resolve the SWOs and permit issues.

- Exhibit 32:** E-mail to DCRA, dated 05/03/07 with Letter
Exhibit 33: E-mail to DCRA, dated 05/11/07
Exhibit 34: E-mail to DCRA, dated 05/11/07
Exhibit 35: E-mail to DCRA, dated 05/16/07
Exhibit 36: E-mail to DCRA, dated 05/29/07
Exhibit 37: E-mail to DCRA, dated 06/20/07

Exhibit 38: E-mail to DCRA, dated 08/15/07
Exhibit 39: E-mail to DCRA, dated 08/16/07
Exhibit 40: E-mail to DCRA, dated 12/13/0
Exhibit 41: E-mail to DCRA, dated 01/14/08
Exhibit 42: E-mail to DCRA, dated 01/22/08
Exhibit 43: E-mail to DCRA, dated 05/16/08
Exhibit 44: E-mail to DCRA, dated 07/18/08
Exhibit 45: E-mail to DCRA, dated 07/25/08
Exhibit 46: E-mail to DCRA, dated 07/25/08
Exhibit 47: E-mail to DCRA, dated 07/30/08
Exhibit 48: E-mail to DCRA, dated 08/13/08
Exhibit 49: E-mail to DCRA, dated 08/19/08
Exhibit 50: E-mail to DCRA, dated 08/28/08
Exhibit 51: E-mail to DCRA, dated 10/29/08
Exhibit 52: E-mail to DCRA, dated 11/20/08
Exhibit 53: E-mail to DCRA, dated 01/05/09
Exhibit 54: E-mail to DCRA, dated 02/21/09
Exhibit 55: E-mail from Washington Design Group, dated 05/04/09
Exhibit 56: E-mail to DCRA, dated 05/19/09
Exhibit 57: E-mail to DCRA, dated 05/20/09
Exhibit 58: E-mail to DCRA, dated 06/21/09
Exhibit 59: E-mail to DCRA, dated 10/04/09
Exhibit 60: Letter to DCRA, dated 10/04/09
Exhibit 61: E-mail to DCRA, dated 10/26/09
Exhibit 62: E-mail to DCRA, dated 11/20/09
Exhibit 63: E-mail to DCRA, dated 11/23/09
Exhibit 64: E-mail from DCRA, dated August 29, 2009

C. Mr. Smith was responsive and has abided to the requests from DCRA. Mr. Smith has done the following:

1. Paid fine for Stop Work Order

Exhibit 65: Notice of Payment, dated March 11, 2008

2. Submitted plans for structural review

Exhibit 66: Building Permit Workflow History for Permit B0900319

3. Obtained wall check survey

Exhibit 67: Wall Check Survey Plan-Office of the Surveyor

4. Requested an extension for variance review with Building Zone Adjustment (BZA)

Exhibit 60: Letter to M. LeGrant, October 04, 2009
Exhibit 68: DCRA Plan Correction List

5. Filed for Construction Permit for existing 3rd and 4th Floor addition

Exhibit 69: Permit Number B0900319, dated 10/15/08
Exhibit 70: Filing Fee Invoice and Payment, dated 10/15/08

6. Submitted Plans for Permit Review

Exhibit 66: Building Permit Workflow History
Exhibit 71: E-mail from DCRA, dated 01/05/2009

7. Attempted to Apply for Extension of Variance

Exhibit 2 : DCRA Memorandum, Office of the Zoning Administration,
dated July 16, 2009
Exhibit 72: E-mail from Washington Design Group, dated February 21,
2009
Exhibit 73: E-mail from Washington Design Group, dated May 04,
2009

8. Submitted Proposed versus Existing Plans

Exhibit 74: Permit Construction Drawings
Exhibit 75: E-mail from Santia Isodore, dated June 20, 2007
Exhibit 76: E-mail from DCRA, dated June 20, 2007
Exhibit 77: E-mail from Santia Isodore, dated August 15, 2007

9. Submitted Plans for proposed Demolition of 4th Floor

Exhibit 78: Demolition Drawings

District Argument:

Correct the illegal construction by removing the two access floors from the building and assessing the cost of such correction as tax against the property

Response A.3

The building does not have an excess of two floors. The building was a 3-story building with four units. An extension to the 3rd and 4th floor addition was added to convert the third story to a two-level unit. The building is currently 4-stories with still four units and

has the Certificate of Occupancy and electric meters for four units. The tax assessment has not changed. Mr. Smith has paid all property taxes.

Exhibit 4 : Photos of exterior dwelling at 3453 Holmead Place, NW
Exhibit 79: Photos of interior 3rd and 4th floor dwelling at 3453 Holmead Place, NW
Exhibit 80: Photos of electric meters at 3453 Holmead Place, NW
Exhibit 81: Certificate of Occupancy, No. 187249, dated 4/26/00

Argument B. The District will be Irreparably Harmed if Injunctive Relief is not Granted

District Argument:

Constant violations create climate in which businesses come to believe that they can opt out of the District's regulatory programs with impunity.

Response B.1

Mr. Smith did not constantly violate the District's regulatory programs, and Mr. Smith has been subject to the impunity of the DCRA. Mr. Smith paid and resolved all Stop Work Order fines, and has incurred financial hardship due to the lack of timely response by DCRA. Mr. Smith has sent over 40 e-mails to DCRA regarding his willingness to resolve all issues with DCRA, and his e-mails have repeatedly expressed his frustration to DCRA, and has repeatedly informed them of the negative financial impact he is suffering as a result of the lack of timely response by DCRA.

Exhibit 82: E-mail from DCRA, dated May 3, 2007
Exhibit 83: E-mail to DCRA, dated May 16, 2007
Exhibit 84: E-mail to DCRA, dated May 20, 2009
Exhibit 85: E-mail to DCRA, dated July 25, 2008

District Argument:

By illegally exceeding the building size under the zoning regulations, the property at 3453 Holmead Place, N.W. adds to the blight and also diminishes open space

Response B.2

The building has not extended the previous existing perimeter of the property, and, therefore, does not diminish open space. The building does not add to the blight. There are similar properties with R-4 Zoning, in close proximity and in the neighborhood, which are similar in height, stories, lot area, and perimeter coverage.

Exhibit 6 - 21: Photos of Similar Buildings in surrounding Neighborhood in R-4 Zoning District with over three stories

Argument C. The Balance of Harms Favors Granting Injunctive Relief

District Argument:

Public safety is compromised by illegal construction that is allowed to remain without approval or supervision. The neighbors of 3453 Holmead Place, N.W., may be placed at risk from any improper construction.

Response C.1

There is no risk to public safety or the neighbors. Public safety can be insured by conducting the Building Inspection of the 3rd and 4th floors. Pursuant to the Order of the Superior Court of the District of Columbia dated November 22, 2010, inspection of 3435 Holmead Place, N.W. is to be conducted prior to December 10, 2010. The neighbors are not at risk. The structural integrity of the building and the additional story has been determined to be safe by a licensed structural engineer, and the plans have been submitted to DCRA for structural review.

Exhibit 86: Superior Court of the District of Columbia Order, dated November 22, 2010.

Exhibit 87: (letter from Structural Engineer)

Exhibit 66: Building Permit Review History, dated 10/15/08

District Argument:

Any rental of the units on the building's fourth and fifth floors that Defendants maintain would be unlawful for failure to possess an appropriate CO.

Response C.2

The building does not have a fifth floor. The building has four units. The fourth unit consists of the 3rd and 4th floor. The building at 3435 Holmead Place, N.W., always had an appropriate Certificate of Occupancy for four units. The building continues to only have four units, and therefore the rental income continues to be based on four units.

Exhibit 4: Photos of exterior for dwelling at 3453 Holmead Place, NW

- Exhibit 79:** Photos of interior of 3rd and 4th floor for dwelling at 3453 Holmead Place, NW
Exhibit 81: Certificate of Occupancy, No. 187249, dated 4/26/00
Exhibit 82: Photos of electric meters at 3453 Holmead Place, NW

District Argument:

The defendants have no legitimate expectation of making profits from operating a business in violation of District of Columbia zoning laws.

Mr. Smith had no expectation of making profits from the additional improvements to the building. The building has always had four units with a permit for renting these units, and still continues to be rental property with four units, despite the addition.

Argument D. The Public Interest Favors Granting Injunctive Relief

District Argument:

Permitting Smith to continue to maintain his illegal construction outside the District's regulatory scheme would in essence reward the defendant for flouting the law.."

Response D.1

Mr. Smith has not been rewarded by the addition of the 4th story. Mr. Smith has expended enormous funds to pay for the fines, fees, architect, lawyer, and engineer to resolve this matter. Mr. Smith continues to be harassed by DCRA, despite his cooperation and his payment of fines. This harassment has prevented Mr. Smith from obtaining a Housing Business License, in order for Mr. Smith to satisfy the DCRA infraction. To date, DCRA is still placing Stop Work Orders (SWO) on his property, although there is no on-going work. The SWOs continue to cite the complaint of encroachment by the neighbor, 3455 Holmead Place, NW, although a wall check survey has concluded otherwise, and DCRA has stated that this is a civil issue. The neighbor has lodged his complaint with the Ward Council representative and has sought to gain materially and financially from his complaint by obtaining additional space from Mr. Smith to allow the neighbor to have space for two parking spaces.

- Exhibit 88:** DCRA Infraction No. I702446, dated 5/12/10
Exhibit 67: Wall Check Survey Plan-Office of Surveyor
Exhibit 89: E-mail from Neighbor, dated May 28, 2009
Exhibit 90: E-mail from DCRA, dated June 22, 2009
Exhibit 91: E-mail to DCRA, dated June 21, 2009

- Exhibit 92:** E-mail to Neighbor, dated December 01, 2010
Exhibit 93: E-mail to Neighbor, dated May 07, 2009
Exhibit 94: Letter to Neighbor, 3455 Holmead Place, NW, dated November 21, 2007

There are similar R-4 Zone dwellings in the neighborhood similar in construction to 3435 Holmead Place, N.W., that have four or more stories, lot size and height, and would appear to be outside the District's regulatory scheme, as stated by the District. Mr. Smith has not flouted the law. Instead, Mr. Smith has repeatedly demonstrated his willingness to abide the requests and regulations by the DCRA, and has paid the fines, property taxes and obtained the permits. DCRA has been constantly harassed Mr. Smith, despite his cooperation and response for over three years, without any resolution by DCRA. Mr. Smith has suffered irreparable financial hardship due to the lack of timely response and action by DCRA. Mr. Smith has repeatedly informed DCRA of the financial hardship caused by the lengthy delay in their response. As a result, Mr. Smith has suffered financial losses in his inability to sell this property or to obtain a Housing Business License.

- Exhibit 83:** E-mail to DCRA, dated May 3, 2007
Exhibit 84: E-mail to DCRA, dated May 16, 2007
Exhibit 86: E-mail to DCRA, dated July 25, 2008
Exhibit 94: E-mail to DCRA, dated June 21, 2009
Exhibit 95: Presidential Bank Account Statement, dated 07-22-2009
Exhibit 96: GCAAR Listing Agreement for Improved Real Property

Response D.2

Mr. Smith and the tenant would suffer financial hardship should the Court decide to have the fourth story removed. The fourth unit, which consists of the 3rd and 4th floor, has the interior space finished and is occupied by a tenant. The tenant would have to be evicted should DCRA prevail in their complaint.

- Exhibit 90:** Interior Photos of 3rd and 4th floor at 3453 Holmead Place, NW

III. NEIGHBOR COMPLAINTS

The neighbor complaints are erroneous, and are not based on the facts.

- 1. Building exceeded limits in an R-4 zone by additional two stories**

Response:

The building height is 40 feet and is within the height limit of 40 feet for R-4 zone dwellings. The building does not have two additional stories. Only one story was added.

There are similar buildings in the surrounding neighborhood and R-4 Zone District with the same height, lot size, and four and five stories.

2. Endangered adjacent properties with the underpinning work

Response:

There has never been any underpinning work at 3453 Holmead Place, NW. The structure is deemed suitable and safe by a DC registered structural engineer, and the structural plans were submitted showing the basement and four stories.

3. Expanded beyond set lot occupancy

Response:

The addition did not expand beyond the previous footprint or perimeter of the building. The building continues to be a four-unit rental property. The Certificate of Occupancy was issued for a four-unit dwelling.

4. Had only one electric meter

Response:

The building has four electric meters for each of the units.

5. Lacked adequate parking space

Response:

The Certificate of Occupancy was issued for four units and for the parking space. The number of units and the building footprint are still the same; therefore, the parking space has remained the same and remains adequate.

IV. CONCLUSION

- 1. Mr. Smith has demonstrated his willingness to cooperate with the regulations and requests of DCRA. Mr. Smith has sent over 40 e-mails towards this effort.**
- 2. The property meets the R-4 Zone regulation requirements in height.**
- 3. The building is a four-unit dwelling, in conformity with the Certificate of Occupancy.**
- 4. Mr. Smith has suffered undue financial hardship in the lack of timely response and action by DCRA.**
- 5. Mr. Smith and the tenant would suffer irreparable financial harm, if Court decides to have fourth story removed.**

6. The building has been deemed to be structurally sound and poses no public hazard to the neighbors and community.
7. The building height and four stories are similar to surrounding buildings with the same R-4 Zone designation, four stories, and lot size.
8. The complaints by the neighbor of Mr. Smith's construction were based on improper facts and knowledge.
9. The neighbor lodged the complaints, in order to achieve material gains.
10. Mr. Smith is unjustly harassed by DCRA in the city he resides.

All factors, presented by the District for consideration of Temporary Restraining Order and Preliminary Injunction, are flawed, erroneous, and inaccurate. As a result the court has to vacate the relief requested by the District of Columbia.

WHEREFORE, Defendant, Cornelle Smith and CBS Rental Management, request the following relief:

That the motions to vacate the Temporary Restraining Order, Complaint and Preliminary Injunction by the District of Columbia be GRANTED and for any other relief this court deems just and necessary.

I. FACTS

1. Defendant, pro se, received the Temporary Restraining Order, Preliminary Injunction, and Complaint on November 12, 2010.
2. Defendant is the owner of the property located at 3453 Holmead Place, N.W., Washington, DC.
3. On November 22, 2010, the Judge issued an Order for inspection of 3453 Holmead Place, N.W. at a mutually convenient date and time prior to December 10, 2010.