

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS' PROPOSED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW IN BOARD OF ZONING  
ADJUSTMENT APPEAL NO.17657  
1231 Morse Street, Inc.**

Appeal No. 17657 of 1231 Morse Street, Inc. ("Morse Street"), pursuant, to 11 DCMR § 3100.2, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs which denied the zoning section of Morse Street's Building Permit Application to revise Building Permit Number B 477039 due to violations of 11 DCMR § 330.5(c).

HEARING DATES: October 2, October 16, and October 30, 2007

DECISION DATE: December 4, 2007

**DECISION AND ORDER**

**INTRODUCTION**

On April 20, 2007, Morse Street ("Appellant") filed this appeal with the Board of Zoning Adjustment ("Board"), challenging the decision of the Zoning Administrator ("ZA") for the Department of Consumer and Regulatory Affairs ("DCRA/Appellee"), which denied the zoning section of Appellant's Building Permit Application on the basis that it violated 11 DCMR § 330.5(c). Subsequently, on August 9, 2007, the Appellant amended its appeal to include a review of the Notices to Revoke Building Permit Number B 477039 and Emergency Demolition Permit Number B 478240. The basis for the appeal was that the "denial and revocation are improper because the addition and conversion to an 11-unit apartment building is a conforming use and a conforming structure, which may be rebuilt as a matter-of-right." (see Appellant's Notice of Appeal).

In response, Appellee asserts that once a pre-1958 building is razed, the ZA cannot approve a conversion to an 11-unit apartment building as a matter of right in an R-4 district. In as much the building permits are revoked based upon zoning violations, the ZA decision is correct.

**FINDING OF FACT**

1. Appellant is the owner of the property at 1233 Morse Street, N.E. (Square 4069, Lot 130 (formerly Lots 810, 812 and 816), which is located in an R-4 district.
2. On April 12, 2005, Appellant applied for a building permit to build an addition to a single family dwelling, to convert to an eleven unit apartment building.

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3. On September 2, 2005, DCRA issued Building Permit Number B 477039 to build the addition and to convert the existing structure to an eleven unit apartment building.
4. An addition to a pre-1958 single family dwelling, converting the existing structure to an eleven unit apartment building, was permissible in an R-4 district.
5. After 1958, apartment buildings are not allowed as a matter of right in an R-4 district. You can convert a pre-existing 1958 building; however, new construction prohibits apartment buildings in an R-4 district.
6. On or about December 12, 2005, Appellant's representative inquired with DCRA about obtaining a raze permit for the property at 1233 Morse Street, N.E. After being informed of the more-time intensive process for obtaining a raze permit, Appellant returned two days later, seeking a more expedient emergency demolition permit. On December 14, 2005, DCRA issued Emergency Demolition Permit Number B 478240 to Appellant to remove one partial exterior wall and to bring the remaining structural walls to a height of two to five feet above grade. (A typographical error indicated the permit was issued on December 14, 2006<sup>1</sup>).
7. However, on February 20, 2006, in lieu of removing the one partial exterior wall and reducing the structure to safe height for which Permit Number B 478240 had been obtained, Appellant razed all of the structural walls, except the walls of the sitting room. This sitting room wall was approximately ½ of the east side wall, which Appellant left leaning in a hole toward the middle of the former pre-1958 structure. The Appellant essentially razed the pre-1958 structure by removing structural walls beyond the scope of the approved Demolition permit.
8. The Appellant intended to remove the sitting room walls because he did not include them on his drawings and plans and never intended them to be used as part of the new structure.
9. Appellant testified at the hearing that the entire structure collapsed; however, his neighbor, Mrs. Lee, testified that she observed that all walls except the sitting room walls were knocked down by heavy equipment each day, until only the sitting room walls remained at the property. The sitting room walls, which were an original part of the pre -1958 structure collapsed on the night of Monday, February 20, 2006, a holiday, because they were left without bracing or protection from collapse.

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<sup>1</sup> The actual date on which the permit was issued is December 14, 2005. In its pleadings, Appellee mistakenly stated the issuance date was February 14, 2006; however, it was later determined that February 14, 2006 is merely the date the information was input into the computer system (the added date), and that December 14, 2005 is the actual date the permit was issued.

10. As a result of a neighbor's complaint, on February 21, 2006, DCRA conducted an inspection at 1235 Morse Street, N.E. and found that the pre-1958 structure at 1233 Morse Street was completely razed, in violation of the emergency demolition permit issued.
11. On February 27, 2006, DCRA conducted an inspection of the premises at 1233 Morse Street, N.E., and determined that the pre-1958 structure had been completely razed without proper permits and that the Appellant was constructing a new building without a new building permits.
12. On March 6, 2007, former ZA, Bill Crews, issued a Zoning Determination Letter that denied the zoning section of Appellant's January 16, 2007 Revised Building Permit Application for Building Permit Number B 477039 due to violations of 11 DCMR § 330.5(c).
13. On July 20, 2007, DCRA issued to Appellant a Notice to Revoke Building Permit Number B 477039 and Emergency Demolition Permit Number B 478240 because the pre-1958 structure had already been razed.
14. The majority of the pre-1958 structure was destroyed as a result of excavation work performed by the Appellant and the lone remaining leaning wall of the sitting room collapsed from a result of inadequate bracing/support over Presidents' Day weekend of February 2006.
15. The pre-1958 structure was a conforming use, which later converted into a nonconforming use after the razing.
16. To construct an eleven unit apartment building without the pre-1958 single family dwelling, a non conforming use required BZA approval.
17. The Appellant did not submit drawings, permits and obtain zoning approval to remove the walls completely, but rather submitted plans that misrepresented the existing structure.

### **CONCLUSIONS OF LAW**

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code § 6-641.07(g)(1)(2001 ed.) to hear and decide appeals where it is alleged that there is error in any order, requirement, decision, determination, or refusal made by the Zoning Administrator in the enforcement of the Zoning Regulations. This appeal is properly before the Board pursuant to 11 DCMR § 3100.2.

The Appellant was issued a Building Permit pursuant to 11 DCMR § 330.5(c) to add an addition to a pre-1958 building from a single family dwelling to convert to an eleven unit apartment building, in an R-4 district. Although Appellant relies on 11

DCMR § 2004.1, which states that a non-conforming use and non-conforming structure destroyed by casualty or Act of God may be rebuilt as a matter-of-right, the Board rejects that opinion and finds no support for such in either the Zoning Regulations or case law of this jurisdiction.

Based on the evidence submitted and the Zoning Regulations, 11 DCMR § 330.5(c) which requires the pre-1958 building to remain intact until the conversion and addition was complete. However, because the pre-1958 structure was impermissibly razed by the appellant, the Zoning Administrator could not have approved the Appellant's Revised Building Permit Application for Building Permit Number B 477039. To do so, would have been in violation of the Zoning Regulations and outside of the authority of the Zoning Administrator. The Zoning Administrator was correct in determining that since the building has been razed no conversion could occur without BZA approval.

In view of the foregoing, the Board concludes that the Zoning Administrator was correct in denying the zoning sections of the Revised Building Permit Application for Building Permit Number B 477039.

The Board further concludes that Appellant razed the pre-1958 conforming structure to the ground without a permit in violation of 12A DCMR § 105.1.7 and beyond the scope of the approved Emergency Demolition permit.

The Board further concludes pursuant to 11 DCMR § 330.5(c) that: (1) the razing of the pre-1958 conforming structure resulted in construction of the eleven unit apartment building as a non conforming structure not as a matter of right, requiring BZA approval; (2) the Appellant's construction of the eleven unit apartment building without BZA approval was impermissible; and (3) the Appellant cannot convert a new single family dwelling into an eleven unit apartment building under the issuance of Building Permit Number B 477039; and Building Permits Numbers B477039 and B478240 should be revoked.

The Appellant did not demonstrate from his inconsistent testimony that any emergency existed that warranted the issuance of Emergency Demolition Permit Number B478240. Therefore, BZA rules that the Appellant must obtain BZA approval to use the structure as an eleven unit apartment building pursuant to 11 DCMR § 330.5(c). The ZA was correct that no conversion can occur because the building had been razed.

Accordingly, it is ORDERED that this appeal is DENIED.

VOTE: \_\_\_\_\_, to deny the appeal;

\_\_\_\_\_, to sustain the appeal.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member approved the issuance of this Decision and Order and authorized the undersigned to execute the Decision and Order on his or her behalf.

FINAL DATE OF ORDER: \_\_\_\_\_, 2007

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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