

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**
441 4th Street, N.W.
Washington D.C. 20001

In re:)
Advisory Neighborhood Commission 1A,)
Appellant,)
) Appeal No. 17671
)
)
)
)

**DISTRICT OF COLUMBIA'S
MOTION TO DISMISS**

The Appellee District of Columbia (hereinafter "District"), by and through undersigned counsel, respectfully moves this Board, pursuant to Rule 3117.3 of the Board of Zoning Adjustment Rules of Practices and Procedures, to dismiss the above-captioned appeal for lack of jurisdiction for its having been untimely filed.

STATEMENT OF FACTS

On December 15, 2006, the Department of Consumer and Regulatory Affairs issued Building Permit No. 90426 (the "Permit"). Advisory Neighborhood Commission 1A ("ANC") has appealed the issuance of the Permit.

On January 19, 2007, DCRA Advisory Neighborhood Commission Liaison Eric Rogers, pursuant to DCRA policy, served all ANC Commissioners with notice as to what building permits DCRA issued from December 15, 2006 to December 31, 2006. As of that date, the ANC had actual knowledge that the Permit had been issued. See Email from Rogers to ANC Commissioners of January 19, 2007 and attached file "decissued 15-31.xls" (excerpted and

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emphasis added), attached as Exhibit 1. On May 11, 2007, ANC 1A filed the instant appeal, 112 days after having knowledge of the permit's issuance.

ARGUMENT

This Board does not have jurisdiction to hear Appeal No. 17671 because the appeal was not filed in a timely manner. The rules governing the timely filing of an appeal before the Board are set forth in 11 DCMR § 3112.2. Subsection 3112.2(a) provides that an appeal must be filed within sixty (60) days from the date the person filing the appeal had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge, whichever is earlier. In this case, that 60-day period must be measured from the issuance of the Permit. Under § 3112.2(d) of the Regulations, the Board may extend the 60-day time limit only if the appellant demonstrates that: (1) there are exceptional circumstances that are outside the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board; and (2) the extension of time will not prejudice the parties to the appeal. The District of Columbia Court of Appeals has held that "[t]he timely filing of an appeal with the Board is mandatory and jurisdictional." *Mendelson v. District of Columbia Board of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994).

The 60th day fell on Tuesday, March 20, 2007. The appeal filed on May 11, 2007, was fifty-two days late. Moreover, Appellant failed to identify any exceptional circumstances which impaired its ability to file a timely appeal as required by § 3112.2(d). As explained in the ANC's Statement of Appeal, Appellant attempted to address its concern regarding the Permit through discussions with the Office of the Zoning Administrator. These discussions began in April, 2007, and have continued to the present. However, such discussions do not satisfy the exceptional circumstances requirement. A party who chooses to engage in negotiations or other


ways to resolve a dispute does not thereby extend its time for filing an appeal. *See Waste Management v. District of Columbia Board of Zoning Adjustment*, 775 A.2d 1117 (D.C. 2001); *Woodley Park Community Ass'n v. District of Columbia Board of Zoning Adjustment*, 490 A.2d 628 (D.C. 1985).

Furthermore, both the District and the permittee would be prejudiced by an extension of time to file the appeal. As the Court of Appeals has stated, a fixed deadline for filing an appeal has the salutary effect of providing, "a period after which the permittee knows that he may proceed safely in accordance with the permit." *Waste Management*, 775 A.2d at 1122, n. 6. Both the District and the permittee would be harmed if denied the certainty that the appeal filing deadline provides. The Board need "not countenance delay in taking an appeal when it is merely convenient for an appellant to defer in making that decision." *Waste Management, supra; see also Goto v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 917, 923 (D.C. 1980) ("if the appeal was not timely filed, the Board was without power to consider it.").

As a result, the Board lacks jurisdiction to hear the appeal because it was untimely filed. The Board should grant the District's motion and dismiss this appeal.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing District of Columbia's Motion to Dismiss
was served by e- mail this 29th day of October 2007, to the following:

Robert Cooper, Esquire
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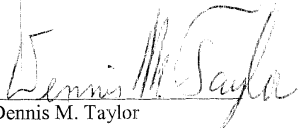

Dennis M. Taylor

Exhibit No. 1

Taylor, Dennis (DCRA)

From: Rogers, Eric (DCRA)
Sent: Wednesday, October 17, 2007 10:37 AM
To: Taylor, Dennis (DCRA)
Subject: FW: Building permit info
Attachments: decissued15-31.xls; decpending15-31.xls

From: Rogers, Eric (DCRA)
Sent: Friday, January 19, 2007 12:10 PM
Subject: Building permit info

Commissioners:

Please find the building permit list for the latter part of December. Starting on Monday, I will be sending this information to your new email accounts given by the government. I will also send, for the ones I have, a courtesy copy to ANC office emails, and finally I will send these reports by email every Monday. The report on Monday's will be for the week prior. I think this is the best way to keep ANC's as informed as possible. I will also experiment with the format to make easier to read, so as you see changes let me know. For the former commissioners who received this email...no need to worry I will not be sending any more stuff to you. Also, current commissioners could you let your newly elected colleagues know of the changes.

Eric

Note: Monday's list will have permit information from January 1 until today and then the weekly schedule.

10/29/2007

issued_date	permit_no	st_no	st_name	st_s uffix	quad	square	lot	ward	comments	pmt_typ	valuation_cos t	owner_contra ctor	rec_no
12/15/2006 11:02:21	101991	1707	HOBART	ST	NW	2588	27	1	Renovation of existing basement bathroom to include conversion of a half bathroom to a full bathroom and replacement of lighting fixtures as per plan.	ALTERATION AND REPAI	\$5,000.00	Carol Wolchok	79510
12/15/2006 14:34:23	102013	1133	GIRARD	ST	NW	2856	121	1	Partition work. Remodeling of all bathroom and kitchen to include plumbing and electrical up-grade by licensed contractor. All work in kind.	ALTERATION AND REPAI	\$12,000.00	Sweetwine Erwin	79538
12/15/2006 15:29:59	99445	931	S	ST	NW	0362	0107	1	REVIEW OF PERMIT #475451 [INTERIOR REHABILITATION OF SF RESIDENCE]	ALTERATION AND REPAI	\$140,950.00	NCCLT	79547
12/15/2006 15:40:34	101951	2041	GEORGIA	AVE	NW	3075	807	1	INSTALLATION OF COMPUTERIZED PNEUMATIC TUBE DELIVERY SYSTEM	ALTERATION AND REPAI	\$28,000.00	CHARLES FORD	79551
12/16/2006 11:23:41	101467	1815	INGLESIDE	TER	NW	2617	133	1	REMOVE AND REPLACE EXISTING DECK (REAR)	ADDITION	\$2,500.00	BRENT CHISM	78555
12/18/2006 09:11:32	101972	1660	LAMONT	ST	NW	2601	665	1	Replace in kind of windows and window frame	ADDITION/AL TERTATION/	\$5,000.00	Zion Holding LLC	79628
12/19/2006 10:00:20	99280	3125	MOUNT PLEASANT	ST	NW	2595	808	1	REVISION TO BUILDING PERMIT #B88636. REMOVE AND REPLACE PORTION OF EXISTING STAIR AS PER PLANS. NEW CONCRETE FLOOR AS PER PLANS	ALTERATION AND REPAI	\$1,000.00	MANNA INC	79730

12/15/2006 10:25:46	90426	1432	MONROE	ST	NW	2676	762	1	RENOVATION, ADDITION & CONVERSION OF EXISTING SFD TO A 4 UNIT APT. BLDG. NEW ELEC. PLBG, & HVAC,	ADDITION/AL TERATION/	\$175,000.00	PETER DABROWSKI	79507
12/28/2006 16:23:17	102215	3548	QUEBEC	ST	NW	1957	803	1	KITCHEN RENOVATION, NEW CABINET, APPLIANCES TILE, BATHROOM RENOVATION, TOILET, SINK AND TILE	ALTERATION AND REPAI	\$58,000.00	MRS MARSHA BARNES	80243
12/29/2006 09:58:44	102228	1401	FAIRMONT	ST	NW	2665	242	1	REVISING ELECTRICAL DRAWING	ADDITION/AL TERATION/	\$0.00	KSI / COUMBIA HEIGHTS 1& 2	80261
12/15/2006 09:29:06	99885	1313	L	ST	NW	247	94	2	RENOVATION TO OFFICE SPACE ON THE 1ST FLOOR PER PLANS.	ALTERATION AND REPAI	\$133,200.00	NAEYC	79492
12/15/2006 09:35:24	100503	1401	H	ST	NW	220	66	2	RENOVATION TO OFFICE SPACE ON THE 6TH FLOOR, " MCC PER PLANS	ALTERATION AND REPAI	\$430,000.00	TREA - 1401 H, LLC	79496
12/15/2006 10:14:14	101785	3238	RESERVOIR	RD	NW	1280	835	2	Revision to existing permit (details on wall added) permit #94995	ADDITION/AL TERATION/	\$40,000.00	Esther & Lodovico	79502
12/15/2006 10:15:00	101928	1211	CONNECTICUT	AVE	NW	159	84	2	Renovation of public toilets & Public Corridors on floors 2,4,5,6	ADDITION/AL TERATION/	\$56,543.00	Cambridge Property Group	79503
12/15/2006 11:47:02	101942	2519	MASSACHUSET TS	AVE	NW	2505	53	2	Replace old flagstone patio in backyard with the same, replace fence in same location install 22 tall stone seat wall (not retaining) install 12-18 drystack stone wall (not retaining planting in spring	ADDITION/AL TERATION/	\$30,000.00	WJM Group LLC	79518