



District of Columbia Government  
Advisory Neighborhood Commission 6A  
Box 75115  
Washington, DC 20013



April 21, 2011

Mr. Clifford Moy  
Secretary, Board of Zoning Adjustment  
441 Fourth Street, NW, Suite 210 South  
Washington, DC 20001

Re: ANC 6A appeal of DCRA Decision to Vacate Revocation of Permit B1010205

Dear Sir,

At a regularly scheduled and properly noticed meeting on April 14, 2011, Advisory Neighborhood Commission 6A voted 6-0-1 (with 5 Commissioners required for a quorum) to appeal the administrative decision of the Department of Consumer and Regulatory Affairs Building and Land Regulation Administration to vacate its decision to revoke Building Permit No. 1010205 for the property at 138 12th St NE. The statement of appeal will be sent to your offices under a separate cover.

The original permit has far exceeded the maximum amount time allowable for renewal, especially since the City Regulations for public schools in the R-4 district have changed to prohibit the use of small properties such as 138 12<sup>th</sup> Street, NE.

ANC 6A requests that the developer be required to return to BZA for the normal special exception and variance process.

On behalf of the Commission,

A handwritten signature in cursive script, appearing to read "David Holmes".

David Holmes  
Chair



**BEFORE THE BOARD OF ZONING ADJUSTMENT  
OF THE DISTRICT OF COLUMBIA**



**APPEAL**

Before completing this form, please review the instructions on the reverse side.  
Print or type all information unless otherwise indicated.

Pursuant to Section (s) §3100 and §3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken

from the administrative decision of: Name of administrative officer and title Rabbiah Sabbakhan, Acting Chief DCRA Permit Operation Division

made on Date of decision February 24, 2011, to the effect that ANC 6A is appealing DCRA's decision to

withdraw the revocation of building permit NO. B1010205

	Square(s)	Lot(s)	Zoning Districts
138 12th St. NE	0988	820	R-4

Present use of Property: Vacant

Proposed use of Property: Public School

Owner of Property: AppleTree Institute for Education Innovation, Inc. Telephone No.: (202) 488-3990

Address of Owner: 415 Michigan Ave NE, Washington DC 20017, Attention: Jack McCarthy

Name, address and telephone number of lessee:

Name, address and telephone number of appellant, if other than owner: ANC 6A

PO Box 75115, Washington DC 20013-0115

State specifically manner in which appellant is aggrieved by the administrative decision, the allegations of error in the administrative decision, and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation).

Please use a separate piece of 8 1/2" x 11" to respond and attach it to the Form 125 Appeal.

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this application/petition is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.  
(D.C. Official Code § 22 240c)

Date: April 21, 2011

Signature:

\* If appeal is filed by agent of the Appellant, Form 125 Appeal shall be accompanied by a letter signed by the appellant authorizing the agent to act on his behalf in this appeal.

To be notified of hearing and decision (Appellant or Authorized Agent\*):

Name: Commissioner David Holmes

Address: PO Box 75115, Washington DC 20013-0115

Phone No.: 202 251-7079

Fax No.:

E-Mail: holmes6a3@gmail.com

*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 )

**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 12<sup>th</sup> 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 12<sup>th</sup> 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, 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 12<sup>th</sup> 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.

### Building Plan Review Status

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

### 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 expired as of Apr. 26, 2010.
- 2) Require that the property owners apply for zoning relief if they wish to pursue their proposal to establish a public school at 138 12<sup>th</sup> NE in accordance with DCMR Title 11 §3202.7 - *A building permit issued in accordance with §§ 3202.4 through 3202.6 shall not be renewable if permitted to lapse, unless it is reprocessed in accordance with all provisions of this title.*

Attachments (3)

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 7<sup>th</sup> Street, S.E.  
Washington, DC 20003-2707

Appletree Institute for Education  
Innovation, Inc.  
*clo* Quinten Washington  
1025 Connecticut Avenue, N.W.  
#1000  
Washington, DC 20036

Re: Building Permit BIO10205 (138 12<sup>th</sup> Street, N.E.)

NOTICE TO REVOKE BUILDING PERMIT NO. BIOI0205

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.

## 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 4<sup>th</sup> Street, N.W., 10<sup>th</sup> Floor, Washington, D.C. 20001. Alternatively, you may hand-deliver your appeal for a hearing to the Office of Administrative Hearings at 441 4<sup>th</sup> Street, N.W., 10<sup>th</sup> 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

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 12<sup>th</sup> 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



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:

