

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

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DISTRICT OF COLUMBIA
OFFICE OF PLANNING
Petitioner

v.

WORKINEH SIMRET
Respondent

Case No.: 2011-OP-T100179
NOI No.: T100179

FINAL ORDER

I. Introduction

On January 20, 2011, the Office of Planning served a Notice of Infraction on Respondent Workineh Simret, alleging a violation of 12A DCMR 105.1 for exceeding the scope of a permit. The violation was alleged to have occurred on January 1, 2011 at 3142 17th Street, N.W. (the Property). The Government seeks a fine of \$2,000 for the violation.

Respondent filed a timely answer with a plea of Deny, and I scheduled a hearing for March 10, 2011. At the hearing held on that date, the Office of Planning was represented by Keith Lambert, the inspector who issued the Notice of Infraction, and Timothy Denee, an architectural historian who is the principal project reviewer for the Mount Pleasant Historic District. Mr. Simret appeared on his own behalf.

Based on the testimony at the hearing, the documents admitted into evidence and the entire record, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

The Property is a rowhouse located in the Mount Pleasant Historic District. Mr. Simret owns and resides at the Property. On June 11, 2011, he obtained a building permit to alter an existing concrete pad to improve a parking area behind his house. Petitioner's Exhibit "PX". 101. According to the plans that were approved when the building permit was issued, the project was to include the installation of a garage door abutting the alley, construction of 8' 6" masonry supports on either side of the door, and construction of a retaining wall on either side of the concrete pad to a height of 30." PX 102 and 102A.

On August 10, 201, Inspector Toni Cherry inspected the project and found that a corrugated roof had been installed over the concrete pad. She issued a Stop Work Order because the building permit did not authorize roofing the structure. PX 105. In addition, the retaining walls on either side of the concrete pad had been built to a height of approximately 8 feet, much higher than the 30" height authorized by the approved plans. The following day, Mr Simret obtain a permit to remove the roofing and make other alterations to make the structure consistent with the approved plans. PX 106.

Inspector Keith Lambert reinspected the site on January 10, 2011. He found that although the corrugated roofing material had been removed, the retaining walls on either side of the concrete pad remained at a height of approximately 8 feet. PX 108 He also observed metal beams above the retaining walls. Some of the beams ran directly above the walls and other spanned the concrete pad between the retaining walls. Based on the conditions he observed during the inspection conducted on January 10, 2011, Inspector Lambert issued the Notice of Infraction that is now at issue in this case.

Subsequently, the Office of Planning approved a modification in the building permit that authorized a height of 7 feet, instead of 30,” for the retaining walls on either side of the concrete pad. On January 25, 2011, Mr Simret obtained a building permit authorizing him to reduce height of the retaining walls to 7 feet. The permit required, however, that the exposed portion of the retaining walls be covered with stucco. PX 110.

Inspector Lambert returned to the site on March 8, 2011. He found that the height of the retaining walls had been reduced to 7 feet as required by the revised permit. However, the exposed portion of the walls had not yet been stuccoed. He also observed the metal beams above the retaining walls. PX 111.

III. Conclusions of Law

The evidence establishes that on January 10, 2011, Respondent erected retaining walls on either side of the concrete pad to a height of approximately eight feet, although the approved plans for the building permit he obtained on June 6, 2011 authorized a height of only 30” for those walls. At the hearing, Respondent argued that neighbors have walls and fences that are approximately eight feet. Even if this is the case, Respondent was nevertheless required to comply with the permit he had been issued. A violation for exceeding the scope of a permit has therefore been established.¹

¹ It should be noted that the permit authorizes construction of 8’ 6” masonry supports on either side of the door, and that the Office of Planning agrees that these supports, which are depicted in the photos taken by Inspector Lambert on March 8, 2011, comply with the building permit.

With respect to the metal beams above the retaining walls, it is unclear from the evidence which of the beams were erected as supports for the corrugated roof and which of the beams are integral to the operation of the garage door. Erection of a roof was not authorized by the permit and constructing beams to serve as supports for the roof was therefore not authorized. However,

The maximum authorized fine for violating 12A DCMR 105.1 by exceeding the scope of a permit is \$2,000. This administrative court may suspend or reduce a fine for mitigating factors that include good faith attempts to comply, corrective action taken, acceptance of responsibility, and past compliance. D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.03(b)(6). In assessing a fine, I am weighing the following factors. First, Respondent did make some good faith efforts to comply as he secured a number of permits in connection with this project. The construction of the retaining walls to a height that exceeded the 30” height authorized by the permit may have been due in part to miscommunication. Secondly, Respondent has now taken corrective action with respect to the walls. He has reduced the height of the walls to 7 feet, the height permitted by the revised permit. In light of these mitigating factors, the fine will be reduced to \$500.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is, hereby, this 9th day of September, 2011:

ORDERED, that Respondent shall pay a fine in the amount of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within 20 calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at

the installation of a garage door was authorized, and if there are certain metal beams needed to operate the garage door, they would appear to be authorized because the permit authorized installation of the garage door.

the rate of 1½ % per month or portion thereof, starting 20 days from the date of mailing of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that pursuant to OAH Rule 2828, any party may file a motion for reconsideration within fifteen calendar days of the date of service of this order (the fifteen days consists of ten days, plus five additional days when service is made by mail (OAH Rule 2812.5)); and it is further

ORDERED, that appeal rights of any person aggrieved by this Order are set forth below.

/s/ September 9, 2011

Mary Masulla
Administrative Law Judge

