

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

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DISTRICT OF COLUMBIA
OFFICE OF PLANNING,
Petitioner,

v.

BIZUWURK NEGUSSIE,
Respondent.

Case No.: 2011-OP-T100339
NOI No: T100339

FINAL ORDER

I. Introduction

Petitioner, the District of Columbia Office of Planning (OP), served Respondent Bizuwerk Negussie Notice of Infraction (NOI or Notice) No. T100339,¹ charging him with a violation of 12A District of Columbia Municipal Regulations (DCMR) 105.1, for exceeding the scope of a building permit: new vinyl windows; front door/transom; and rear one story addition. OP sought a total of \$2000 in fines.

An evidentiary hearing was held in this matter on November 16, 2011. Keith Lambert, Historic Preservation Building Inspector, and Brendan Myer, Historic Preservation Specialist, appeared for OP. Respondent, Bizuwerk Negussie, appeared, represented himself, and entered a

¹ On the Notice, OP named Nitussa Bazwurk as a Respondent in this matter. OP did not produce any evidence that a person by that name was linked to the Property. Thus, OP agreed that the case should be amended to delete any reference to Nitussa Bazwurk. The case, including the case caption, was amended accordingly.

plea of Deny. Based on the entire record, including testimony and exhibits, I find Respondent liable for an infraction charged, but reduce the \$2000 fine requested to \$1000.

II. Findings of Fact

Respondent owned a residential property at 712 Q Street, NW, (Property), from May 2008 through September 2011. Petitioner's Exhibits (PXs) 100, 101. The Property is in the Shaw Historic District.

On March 12, 2009, Respondent began the application process for Building Permit No. B0904043. Interior and exterior renovations were proposed in the application's description of work, including drywall replacement and changing windows and doors. PX 127. Since the Property was in a historic district, Respondent was required to submit the application to the OP Historic Preservation Office for approval before final submission to the Department of Consumer and Regulatory Affairs (DCRA). Brendan Myer, Historic Preservation Specialist, approved the permit application, but placed a restriction on the application to alert DCRA that the Property's front door was not to be replaced under the permit. PXs 120, 127. DCRA issued Respondent Building Permit No. B0904043, which, consistent with the permit application, authorized interior and exterior renovations, including drywall replacement and changing the Property's windows and doors, and provided that the front door was not to be replaced under the permit. PX 104.

Respondent replaced the Property's exterior front and back windows after obtaining the permit. Except for the window in the transom over the front door, the replacement windows were framed in vinyl. Respondent also replaced the Property's front door. But, Respondent did not add a structure to the Property's rear first level.

On May 6, 2011, OP Inspector Keith Lambert inspected the Property and noticed the replacement windows and door Respondent installed; and he noticed a structure attached to the rear first level of the Property. PXs 106-112. On August 19, 2011, OP served Respondent NOI No. T100339 for the conditions Inspector Lambert noticed on May 6th and sought a \$2,000 fine.

III. Discussion and Conclusions of Law

A. Jurisdiction

This case is governed by the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*); the Zoning Act of 1938 (D.C. Official Code §§ 6-641.01 *et seq.*); the Office of Administrative Hearings Establishment Act at D.C. Official Code § 2-1831.03; the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.*); and OAH procedural rules at 1 DCMR 2800 *et seq.*

B. The Violation

OP charged Respondent with a violation of 1 DCMR 105.1 for exceeding the scope of a building permit by installing front windows, a front door, and adding a rear addition to a Property in a historic district when the work was not authorized by the permit obtained.² The violation is a Class 1 infraction punishable by a maximum \$2,000 fine for a first offense.³ It is OP's burden to show, by a preponderance of the evidence, that the Respondent committed the infraction, as charged.⁴ A preponderance of the evidence is such proof as leads the fact-finder to

² A building permit is required to replace windows and door in a historic district. 12A 105.1, 105.2.9.a., 105.2.5.

³ 16 DCMR 3201.1(a), 3306.1.1(b).

⁴ 5 DCMR 2506.7.

find that the existence of a contested fact is more probable than its nonexistence.⁵ OP met its burden as it pertained to the front door replacement, but did not meet its burden as it pertained to the window replacements and the Property's rear addition.

At the hearing in this case, Respondent admitted that he changed the Property's front and back windows and front door, but argued that he committed no infraction because he did so in accordance with the permit. Respondent's argument is not persuasive as it pertains to the exterior front door. Since interior alterations were authorized by the permit, the authorization to change doors can be read with the prohibition against changing the exterior front door so that each entry has meaning – interior doors could be changed, the exterior front door could not. But Respondent's argument primarily fails because both the permit application and permit included clear language that the front door of the Property was not to be replaced under the permit. I, therefore, find that Respondent exceeded the scope of the Permit No. B0904043 when he changed the exterior front door.

The evidence does not support a finding that Respondent exceeded the scope of Permit No. B0904043 when he changed the front windows, however. The permit clearly authorized changes to windows. OP argued that Mr. Myer approved changes to rear windows only; that it would not have approved vinyl replacement windows for the front of the Property, as such windows are not historically appropriate. And, OP testified that an internal log, which it maintains as a business record, showed that its approval was limited to rear windows. But OP did not produce the log.

⁵ [*Jadallah v. D.C. Dep't of Emp't Servs.*, 476 A.2d 671, 675 \(D.C. 1984\)](#); see also [*Compton v. D.C. Bd. of Psychology*, 858 A.2d 470, 475 \(D.C. 2004\)](#) (recognizing that all administrative decisions are subject to this convention).

Neither did OP explain why it did not clearly restrict its approval to rear windows on the face of the application, as it did for the front door. When explaining the front door restriction, Mr. Myer noted that OP does not place restrictions on permit applications as a matter of course, as it cannot contemplate all of the renovations an owner may wish to make to a property. But, if there is a conversation at the application stage that causes OP concern that an applicant is considering an alteration that warrants further review, OP alerts DCRA by placing a restriction on the permit application, as it did for the front door. It therefore stands to reason, that the discussion between OP and Respondent about window replacements would have prompted a similar alert to DCRA for front windows. On its face, the permit authorized Respondent to change windows, without condition. There is no restriction as to location or type of window replacement. Thus, OP did not prove that Respondent exceeded the scope of Building Permit No. B0904043 when he replaced the Property's front windows.

OP also failed to prove that Respondent exceeded the scope of the building permit by adding a rear addition to the Property. Respondent testified credibly that the addition was attached when he purchased the Property in 2008. OP proffered no evidence to controvert Respondent's testimony in this regard.

OP asked for a total of \$2000 in fines for exceeding the scope of Building Permit No. B0904043 three ways: by replacing windows, by replacing doors, and by adding a rear addition. As discussed above, it proved one charge only - that Respondent exceeded the scope when it replaced the Property's front door. But OP showed more in this regard. It showed that Respondent failed to comply with an explicit and specific restriction on the face of the permit. All things considered, I impose a \$1000 fine the front door infraction.

IV. Order

Based upon the above findings of fact and conclusions of law, it is this 22nd day of March 2012:

ORDERED, that Respondent is **LIABLE** for violating 12A DCMR 105.1, as charged in Notice of Infraction No. T100339; it is further

ORDERED, that Respondent shall pay a fine in the amount of **ONE THOUSAND DOLLARS (\$1,000)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (15 calendar days plus 5 days for service by mail pursuant, to D.C. Official Code §§ 2-1802.04 and 2-1802.05; it is further

ORDERED, that, if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, by law, interest shall accrue on the unpaid amount at the rate of 1½ % per month, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); 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 or personal property owned by Respondents, pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondents' business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that the reconsideration and appeal rights of any person aggrieved by this Order are stated below.

Wanda R. Tucker
Administrative Law Judge
