



**Testimony to the Committee of the Whole
on the Department of Consumer and Regulatory Affairs
Wednesday, February 27, 2019**

Rebecca Miller on behalf of the DC Preservation League

Good morning, Chairman Mendelson and members of the committee. My name is Rebecca Miller, and I am pleased to appear this morning on behalf of the DC Preservation League. Since its founding in 1971, DCPL has worked to preserve, protect and enhance the historic built environment of Washington, DC, through advocacy and education.

Given this mission, DCPL and its members citywide are very interested in all aspects of work carried out by the Department of Consumer and Regulatory Affairs (DCRA) related to the maintenance and construction of buildings throughout the District of Columbia. While our immediate focus may be on designated historic properties and districts, or those eligible to be designated, protection of these properties depends upon having a strong overall system for enforcing standards for buildings and the construction process in the city. We have a close working relationship with the Historic Preservation Office in the Office of Planning (HPO) and have recently taken a greater advocacy role by contacting leadership at DCRA directly on matters related to historic buildings. What we have observed is extreme dysfunction and general lack of process.

Our primary concern is and has been for many years the unreliable enforcement of penalties for illegal construction through exceeding the scope of building permits, or just not getting a permit. Illegal construction unfortunately is a longstanding and widespread problem, and one that has only grown worse with the current building boom.

A second concern is that permits are being issued without proper backup paper work or without



being forwarded to HPO for review. A few examples:

1. In August 2017, the owner of 150 S Street, NW (a church in the proposed Bloomingdale Historic District) applied for a raze permit. Neighbors asked DCPL to nominate the building for landmark status that was subsequently filed in December 2018. DCRA issued the raze despite the administrative hold placed on the building by HPO. The Developer was notified that the permit was invalid and that he could not proceed until a hearing before the Historic Preservation Review Board (HPRB). The nomination went before the HPRB in April 2018 and was denied landmark status. DCPL made FOIA request and found that most of the paperwork required to issue a raze permit was not on file with DCRA. No action on the building was taken until July 2018 when the developer brought in equipment to raze the building. A Stop Work Order (SWO) was issued and the developer met with building officials at DCRA. It is DCPL's understanding that the developer was told not to do any additional work until a valid permit had been issued. Nevertheless, two days later, the developer attempted to raze the building based on the invalid raze permit. A second SWO was issued but the work already done had left the west wall of the church exposed to the elements and a debris field on site. The HPRB designated Bloomingdale a Historic District effective September 9, 2018. The developer was thus required to file for a new raze permit, which it did on August 1st. HPO was then required to hold the permit for 30 days for review by the ANC and also to place a raze placard for 30 days to notify neighbors. The required placard was not posted until late August. Nevertheless, DCRA Director Melinda Bolling accepted a signed declaration from some neighbors that the developer had met its posting requirements on its original application and allowed the raze application to be removed from the HPRB agenda the day before the hearing. As a result, the church façade was immediately demolished and the new historic district was deprived of this important historic resource.

There are several issues with this case. First, the permit was issued even though an administrative hold had been placed on the building by HPO. Second, the permit was issued without the proper sign offs, and without a final inspection of the property, including the fact that the building was still occupied. Third, the developer attempted to raze the structure without a valid permit and



managed to manipulate the process in the end to reach their goal of a cleared site. Fourth, the fine for the attempted raze without a permit for a Class 1 infraction is \$4,068. Hardly a slap on the wrist for a cleared site in an historic district.

2. Franklin School, a National Historic Landmark with a designated interior. In July 2018, DCPL, along with other consulting parties including HPO, offered its views on the reuse plans for the School being converted into a linguistics museum. At this meeting, it was made clear that there should be no removal of any protected interior elements until the parties had the opportunity to tour the site, and assess its condition. David Maloney, DC's State Historic Preservation Officer has testified that the project architect reported the removal of historic fabric during the first week of August, but consulting parties were not notified until August 22nd, and a Stop Work Order was not issued until September 4th according to the online permit system. The fine was \$8,000.

The issues with this case...First, HPO was notified of the removal in early August and did not take action despite having enforcement authority. Second, DCRA was notified August 22nd by an email from DCPL. Third, no enforcement activity took place until August 29th because HPO and DCRA were coordinating a combined inspection. Fourth, the fine. Complete removal of historic finishes in a designated historic landmark should warrant a fine far greater than what was imposed. Yes, there are carrying costs to the development team, but a fine at this level is only .026% of the estimated project cost. It is not a deterrent to the illegal action which took place.

3. 810 Rhode Island Avenue, NW, a contributing building in the Shaw Historic District. The single family rowhouse sold in late 2018 to a first time developer to flip into two units. The developer applied for a postcard permit. This permit was not forwarded to HPO for approval.

This is just one example of more than 114 permits that were flagged by HPO recently that had not been forwarded by DCRA for preservation review. The majority of the 114 permits were for the new Bloomingdale Historic District that took effect in September 2018. However, if a permit was not forwarded to HPO for a building in the Shaw Historic District that was established in



1999, DCPL has very little confidence that there aren't potentially many more permits that are being issued without the required HPO review.

In addition, the established permit format makes it very difficult for neighbors to discern what the approved work is for (see attached picture of permit displayed in window of 810 Rhode Island Avenue, NW.) You can see clearly from this photo the word "Repair,," However, DCPL has been told that this is just a billing code the agency uses for the permit fee of \$36.30. In the case of 810 RI Ave NW, the permit was for interior demolition of non-load bearing walls, which is illegible because of the small font, and in turn resulted in a flurry of calls and emails to DCRA, Councilmembers and ANC Commissioners. The permit information was also not available online.

This leads to us to suggest some areas of improvement for DCRA:

- DCPL feels strongly that the Chairman's proposal to create a Department of Buildings dedicated to all aspects of building regulations is not only warranted but long overdue. It is clear that DCRA in its current form is failing miserably. DC's historic resources and the public are suffering as a result.
- DCRA should be required effective immediately to utilize a GIS based system that highlights when a property is protected as a landmark or within a historic district. At the very least, a box should be added to any building permit application that asks the owner if the property is in a historic district or not.
- A new schedule of fines should be established that deters illegal work, with the expectation that fines imposed will be enforced by agencies and not readily reduced as a condition for property owners agreeing to bring properties into compliance with the law. A fine of \$4,000 for illegally trying to raze a building, or \$8,000 for demolition of an historic interior are mere "costs of doing business." Fines need to hurt in order for them to be a deterrent from the rampant illegal construction taking place all over our city.



- A broader examination of enforcement resources for both historic properties is needed – one that looks at both HPO and DCRA and leads to a plan for dealing effectively with the current workload that would be shared with the public.
- An evaluation of the building permit layout to improve format for ease of reading and understanding by the neighbors. Residents don't need the fee bolded and in 16 point font. They need the description of work that is going to occur to be readable through a window. They also need online access to full permit files, as required by law.
- When a member of the public reports illegal construction, that person – and others interested in the same situation – should be able to track any enforcement actions taken. That is not possible today. Stop work orders may be posted and taken down, or fines imposed and vacated, without any information being made available to the public as to why such actions have been taken. The structure complained of may stay in place, or the suspect activity resumed, without public explanation. The lack of public information about enforcement actions invites the belief that none are being taken – or that they are easily evaded -- and encourages others to engage in illegal construction.
- An enforcement action for illegal construction generally begins with a stop work order, which may be appealed to the code official and thereafter to OAH (except where zoning issues are involved). OAH tracks the cases to final disposition and collects any fines paid. At the OAH oversight hearing in 2016, we asked that OAH develop a system for reporting its caseload to the public utilizing the same categories of information already being exchanged with DCRA and HPO. We ask today that DCRA provide a regular public report of enforcement actions when they are initiated.
- Finally, we would like to call attention to the continuing serious problem of vacant and blighted properties and the lack of effective action to curb demolition by neglect. The stated goal of the Vacant Buildings Enforcement Unit is to bring vacant and blighted buildings back into productive use. What is DCRA doing to achieve that goal beyond maintaining lists of vacant and blighted properties?



The city owes it to its residents and future generations to examine what actions can and should be taken to protect our irreplaceable historic buildings – before more are lost through deliberate neglect, illegal construction and bureaucratic inaction. Such buildings – reflecting the unique history of this capital city -- are part of the cultural patrimony of the nation and should not be treated with the respect and due process to which they are entitled under our local preservation law.

Thank you for your attention.

The following organizations have signed on in support of DCPLs testimony: