



AGENDA REPORT

Meeting Date: January 12, 2010

Item Number: D-1

To: Honorable Mayor & City Council

From: Susan Healy Keene, AICP, Director of Community Development *SK for*

Subject: APPEAL OF THE BUILDING OFFICIAL'S REVOCATION OF BUILDING PERMIT NO. BS0725308 FOR THE PROPERTY LOCATED AT 1201 LAUREL WAY.

Attachments:

1. Appeal Petition
2. BHMC Section 1-4-105
3. December 14, 2009 letter which includes revocation of permit

RECOMMENDATION

It is recommended that the City Council schedule an appeal of the Building Official's revocation of previously issued building permit to allow a major remodel of and addition to the existing residence located at 1201 Laurel Way.

DISCUSSION

On November 27, 2007, a building permit was issued to allow the remodel of, and addition to, an existing non-conforming residence located on the subject property. The building permit and approved plans authorized the removal and replacement of approximately 49% of the existing building's exterior walls and roof area. Removing and replacing less than 50% of the residence allowed the property owner to maintain certain existing non-conforming conditions. During construction of the project, City staff became aware that the applicant had demolished somewhere on the order of 90% of the exterior walls, thus greatly exceeding what was authorized on the set of approved building plans on which Building Permit No. BS0725308 was issued. A stop work notice was issued in July of 2009.

In addition to violating the 50% demolition rule, the contractor failed to comply with the requirement noted on page A2.0 of the approved building plans to "call for inspection before and after demolition to verify with building inspector the scope of demolition is less than 50%." Although other inspections were called for, the contractor never called for these pre- and post-demolition inspections.

A copy of the December 14, 2009 letter, which contains the Building Official's revocation of the permit on page 4, is attached. This revocation is pursuant to the City's adopted Administrative Code Section 303.5, which provides:

303.5 Suspension or Revocation. The building official may, in writing, suspend or revoke a permit issued under the provisions of this code and the technical codes when the permit is issued in error or on the basis of incorrect information supplied, or in violation of an ordinance or regulation or the provisions of these codes.

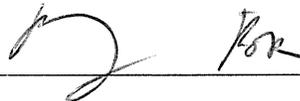
Pursuant to BHMC Section 1-3-107, "[a]ny violation of a condition of any permit or approval issued pursuant to this code shall constitute a violation of this code." Therefore, the applicant's failure to comply with the demolition condition on the approved building plans constitutes a violation of the code, which empowers the Building Official to revoke the permit.

PROCESS

Pursuant to Beverly Hill Municipal Code Section 1-4-105, the procedure for appeals of decisions of City Officials to the City Council is a two-step process. The matter is first placed on the Council agenda for review of the evidence presented in the appeal petition. If the evidence and information presented in the appeal is the same as was presented to the Official that rendered the decision, the Council can then set a public hearing to consider the appeal. However, if the appeal petition contains new information, the Council may order that the matter be referred back to the Official. Importantly, the Code provides that the Council shall not permit oral testimony in its initial determination.

The appeal petition and letter prepared by the applicant's attorney is attached to this report as Attachment 1. Community Development Department Staff and the City Attorney's Office have reviewed the appeal petition and do not believe that new information is presented therein. Therefore, staff recommends that the Council schedule this matter for a formal public hearing on February 2, 2010 to consider the appeal.

Susan Healy Keene, AICP
Director of Community Development



ATTACHMENT 1

Appeal Petition

Alex DeGood
Direct: (310) 201-3540
Fax: (310) 712-3348
AMD@jmbm.com

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
(310) 203-8080 (310) 203-0567 Fax
www.jmbm.com

Ref: 70547-0001

December 28, 2009

Byron Pope
City Clerk
City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210

Re: Appeal of Revocation of Building Permit No. BS0725308 - APPEAL
FILED UNDER PROTEST

Dear Mr. Pope:

On behalf of Papcap Laurel Way, LLC, the owner ("Owner") of the real property located at 1201 Laurel Way, this office appeals the City's revocation of Building Permit No. BS0725308 (the "Permit").

The City's decision to revoke the Permit is inconsistent with Beverly Hills Municipal Code ("Code") in that Owner complied with all Permit and Code requirements. The City's actions are arbitrary, capricious, and not supported by substantial evidence in the administrative record.

**THIS APPEAL IS FILED UNDER PROTEST AND WITH FULL
RESERVATION OF RIGHTS TO BRING LEGAL ACTION AGAINST THE CITY,
INASMUCH AS OWNER MAINTAINS THAT AN ADMINISTRATIVE APPEAL OF A
BUILDING PERMIT REVOCATION DOES NOT EXIST UNDER BEVERLY HILLS
MUNICIPAL CODE.**

Sincerely,



ALEX DEGOOD of
Jeffer, Mangels, Butler & Marmaro LLP

APPEAL PETITIONS MUST BE FILED WITH THE CITY CLERK'S OFFICE WITHIN
14 CALENDAR DAYS AFTER THE DATE OF THE DECISION

APPEAL TO _____ COMMISSION OR CITY COUNCIL

PLEASE TYPE OR PRINT CLEARLY IN BLACK INK

December 23, 2009
Date

In accordance with the appeals procedure as authorized by the provisions of the Beverly Hills Municipal Code, the undersigned hereby appeals from the decision of Building official George Chavez (Official, Board or Commission involved) rendered on December 14, 2009; which decision consisted of:
The grounds submitted for this appeal are as follows: *(WARNING: State all grounds for appeal. Describe how decision is inconsistent with law. Use extra paper if necessary.)*

See attached.

The undersigned discussed the decision being appealed with:
[Signature] on December 28, 2009
(Department Head(s) Involved) Date

It is requested that written notice of the time and place for the hearing on this appeal before the City Council be sent to:

Alex DeGood 1900 Avenue of the Stars, 7th FL LA, CA 90067
Name Address

[Signature]
Signature of appealing party

1490 Bienvenida Avenue, Pacific Palisades, CA 90072
Address

310-490-6449 Fax 310-230-2092
Telephone Number & Fax Number

Fee Paid \$3,655.50 (For City Clerk's use) DATE RECEIVED 12/28/09

LOG NO. 52X09 Written Notice mailed to appellant:

Copies to: City Council, City Manager, City Attorney, Building and Safety
Involved Department

2009 DEC 28 P 11
CITY CLERK'S OFFICE

ATTACHMENT 2

BHMC Section 1-4-105

Beverly Hills Municipal Code

1-4-105: CONSIDERATION OF APPEAL PETITIONS:

After an appeal petition is filed in accordance with this article, the city clerk shall place the matter on the council agenda for council action. Based on the appeal petition and the written material presented, the council shall determine whether to refer the matter back to the commission, board, or official rendering the decision pursuant to subsection A of this section or whether to grant a hearing on the appeal pursuant to subsection B of this section. The council shall not permit oral testimony in its determination under this section.

- A. If the council finds the facts in the appeal petition contain new and material evidence not previously presented to the board, commission, or official, the council may order that the board, commission, or official rehear the matter. Written notice of the rehearing shall be mailed to the appellant and to such other persons who have appeared and addressed the board, commission, or official at the prior hearing in connection with such matter, and mailing shall be at least ten (10) days before such rehearing, and such other notice as required by law for the previous hearings shall also be given.

- B. Except as provided for in subsection A of this section, the council shall set the matter for a hearing. At least ten (10) days prior to the hearing, written notice shall be mailed to the appellant and to other persons who appeared and addressed the board, commission, or official at the prior hearing on the matter, and such other notice as required by law for the previous hearing shall also be given. (1962 Code § 1-6.105)

ATTACHMENT 3

December 14, 2009 Letter Which Includes Revocation of Permit



Office of the City Attorney

December 14, 2009

Via Electronic Transmission and U.S. Mail

Benjamin M. Reznik, Esq.
Jeffer Mangels Butler & Marmaro
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308

Re: 1201 Laurel Way, Beverly Hills

Dear Mr. Reznik:

This letter is provided in response to the meeting held on November 30, 2009 with various City staff members, yourself and Messrs. DeGood and McDonnell of your office regarding the project at 1201 Laurel Way in Beverly Hills (the "Project"). The main purpose of the meeting was to discuss how to resolve the present situation wherein construction of the Project fails to conform to the approved building plans and conditions noted thereon.

As you and your client are aware the approved set of building plans includes the restriction that demolition of existing walls would not exceed 49.88%. (Approved Building Plans at p. A2.0.)

Based on this notation on the approved building plans, staff determined that the Project could retain certain nonconforming features of the Project pursuant to the "50%" rules set forth in Beverly Hills Municipal Code Section 10-3-4100 A. Recently, City staff realized that the applicant had demolished somewhere on the order of 90% of the exterior walls. Neither you nor your client dispute the fact that the demolition greatly exceeds what was authorized on the set of approved building plans on which Building Permit No. BS0725308 was issued.

In advance of the November 30, 2009 meeting, City staff considered the information provided in the letter from your office dated October 14, 2009, and completed a comprehensive review the City's records related to the Project.

If we understand correctly, it is your position that your client is entitled to maintain the nonconforming aspects of the Project notwithstanding the fact that construction has not proceeded in conformance with the approved building plans. This assertion is presumably based on Beverly Hills Municipal Code (BHMC) Section 10-3-4100 C, which provides the following:

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Re: 1201 Laurel Way
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C. Exception For Life Safety Repairs/Upgrades: The provisions of this article shall not apply to any repairs or upgrades, regardless of whether those repairs or upgrades exceed the fifty percent (50%) threshold set forth in subsections A and B of this section, which the building official determines are necessary, for safety reasons, to bring the nonconforming structure into compliance with the requirements of Title 9 of this code or any applicable governmental regulations.

The applicant's contractor, Keith Bae, asserts that a City building inspector approved the demolition to exceed the 50% allowed pursuant to the above life safety exception. Mr. Bae's declaration, at paragraph 10, states that he asked how to get authorization to demolish more than 50% of the structure, and that "Inspector Tabor stated that he had the authority to approve it" and that he would likely serve as the plan checker. Mr. Bae's statement suggests a process that would be consistent with City practice – submittal of plans for review by the City, and receipt of an approval for same. However, there is no indication in either the Bae declaration or in the City's records that revised plans denoting any "life safety repairs" in excess of the 50% allowed by the approved building plans were submitted for checking or approval.

Although no plans were submitted, Mr. Bae declares, at paragraph 19, that "the original house had been demolished per Inspector Tabor's approval..." Neither the City nor the applicant, however, has any documentation of any such approval. Inspector Tabor disputes Mr. Bae's claim that approval was granted. Granting such an approval without any documentation would be inconsistent with the City inspectors' pattern and practice to document in writing any approvals that are granted.

It is noteworthy that Mr. Bae's declaration provides no evidence that the replacement of the existing walls was necessitated by a compromised condition of those wall resulting from such things as dry-rot or termite damage, but instead admits that the additional demolition was because he "was concerned about the safety of proceeding with the necessary cuts for the Project's basement, given that [he] did not believe [he] could implement the cuts and maintain the house's structural integrity." (Bae declaration, ¶ 8.) Further, Mr. Tabor did not observe any such damage and does not recall any assertions of such damage from the contractor during the various site inspections. Therefore, based on the City's review of its records and discussions with Inspector Tabor, staff has concluded that no approval was granted to allow demolition to exceed the 50% rule.

Based on the current conditions at the site and the records available, City staff is unable to conclude that the demolition in excess of the 49.88% allowed on the approved building plans is "necessary, for reasons of safety, to bring the nonconforming structure into compliance with the requirements of Title 9" of the Municipal Code. (BHMC §10-3-4100 C.) As noted above, Mr. Bae's declaration strongly suggests that the demolition in excess of 50% was undertaken because

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of Mr. Bae's concern that "the necessary cuts for the Project's [new] basement" could adversely impact the house's structural integrity. (Bae Declaration, at ¶8.) The Municipal Code's allowance to make life safety repairs and upgrades was not intended to allow an applicant to create a safety issue through the scope of the project (such as the basement excavation proposed for this Project), and use that self-generated circumstance to evade the 50% demolition limitation while at the same time reaping the benefit of retaining non-conforming aspects of a structure.

Because of staff's realization that the Project construction was proceeding in violation of the 50% rule, a stop work notice was issued.

In addition to violating the 50% demolition rule, the contractor failed to comply with the requirement noted on page A2.0 of the approved building plans to "call for inspection before and after demolition to verify with building inspector the scope of demolition is less than 50%." Although other inspections were called for, the contractor never called for these pre- and post-demolition inspections.

In order to resolve the issue and allow construction to continue, staff has requested that the building plans be revised to conform to the current code requirements for side yard setbacks, pad edge setbacks, and maximum driveway slope. Upon submittal of the new plans, the necessary plan check process, including completion of a new view preservation analysis pursuant to Beverly Hills Municipal Code Section 10-3-2522, can be completed. Please note that the view preservation analysis is considered discretionary in nature, and thus any staff determination regarding view preservation would be appealable to the City Council within 14 days. (BHMC Secs. 1-4-101 A and 1-4-102 A.)

Further, because of the demolition in excess of the 50% rule and the resultant loss of nonconforming rights, continued construction pursuant to the previously approved building plans would be a violation of the Municipal Code Sections 10-3-203 C and D because it would constitute alteration of a building in a manner that fails to conform to code requirements, and would constitute alteration of a structure within required setbacks.

As we discussed in our meeting, Staff has determined that Building Permit No. BS0725308 will be revoked because of the need for submittal of revised plans that conform to City codes, further plan checking, and further view preservation analysis as described above. This revocation is pursuant to the City's adopted Administrative Code Section 303.5, which provides:

303.5 Suspension or Revocation. The building official may, in writing, suspend or revoke a permit issued under the provisions of this code and the technical codes when the permit is issued in error or on the basis of incorrect information supplied, or in violation of an ordinance or regulation or the provisions of these codes.

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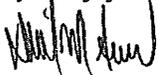
Pursuant to BHMC Section 1-3-107, “[a]ny violation of a condition of any permit or approval issued pursuant to this code shall constitute a violation of this code.” Therefore, the applicant’s failure to comply with the demolition condition on the approved building plans constitutes a violation of the code, which empowers the Building Official to revoke the permit. This letter serves as the Building Official’s written revocation of Building Permit No. BS0725308 based on the violation of the approved plans and the 50% rule noted thereon, as well as failure to comply with required setbacks resulting from the loss of nonconforming rights.

Revocation of the building permit is appealable within a 14-day period from the date of this letter, pursuant to BHMC Sections 1-4-101 A. and 1-4-102 A. Appeals must be filed with the City Clerk, along with the required appeal fee. I trust this answers your question regarding administrative remedies that must be exhausted before your client could file any legal challenge regarding a permit revocation.

It remains staff’s hope that the applicant will revise and resubmit plans for review by the Building and Planning Divisions, so that a new permit can be issued for a structure that complies with all code requirements, thus enabling the applicant to proceed with construction. Staff remains available to assist the applicant through this process.

If you have any questions regarding this letter, please do not hesitate to contact the undersigned.

Very truly yours,



David M. Snow
Assistant City Attorney



George Chavez
Assistant Director of Community Development and
Building Official

- cc: Susan Healy Keene, Director of Community Development
Jonathan Lait, Assistant Director of Community Development / City Planner
David Reyes, Principal Planner
David Yelton, Plan Check Manager

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