

**Kevin Cummins**  
1123 7TH ST NE, Washington, DC 20002

**Appeal No. 19550, “Appeal of ANC 6C”**

1125 7TH ST NE (Square 886, Lot 35)

Hearing date: October 31, 2018 (continued from September 19, 2018)

**Intervenor’s Post-Hearing Statement in Support of Appeal No. 19550**

I, Intervenor Kevin Cummins, respectfully submit this post-hearing statement in support of the appeal of ANC 6C to seek the revocation of building permit B1706219 and its subsequent revisions permits. I ask that the Board consider the following statement of additional facts and analysis as it evaluates the October 12, 2018 filings submitted by the Department of Consumer and Regulatory Affairs (DCRA) and property owner Atlas Squared LLC (Atlas):

**Summary**

1. Decision of Zoning Administrator to Allow Removal of Protected Cornice;
2. Atlas Permit Revisions Changed Cornice and Parapet Removal
3. DCRA Supplemental Information on Cornices Not Complete;
4. Permit Application History Provided by DCRA Shows Atlas Has Repeatedly Sought Permits that Do Not Meet Zoning Regulations; and
5. Illegal Construction of a Second Principal Building.

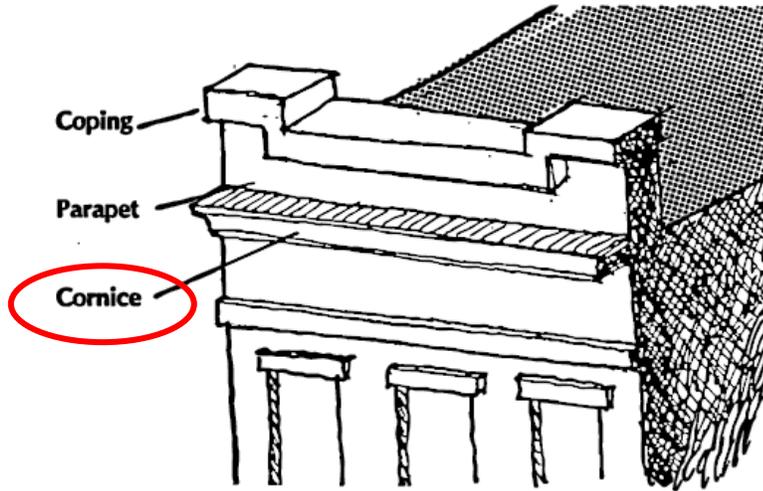
**Discussion**

**1. Decision of Zoning Administrator to Allow Removal of Protected Cornice**

Atlas and DCRA make an unpersuasive claim that the cornice at 1125 7<sup>th</sup> ST NE is neither a cornice nor a protected rooftop architectural element within the meaning of Section E-206.1(a). Atlas provides in support of its claim an illustration of the type of cornice that crowns a column found in a Roman temple or neo-classical building. Notably, Atlas’ Post-Hearing Statement references a different definition of cornice than contained in the fully cited Webster’s Unabridged Dictionary, Second Edition below.

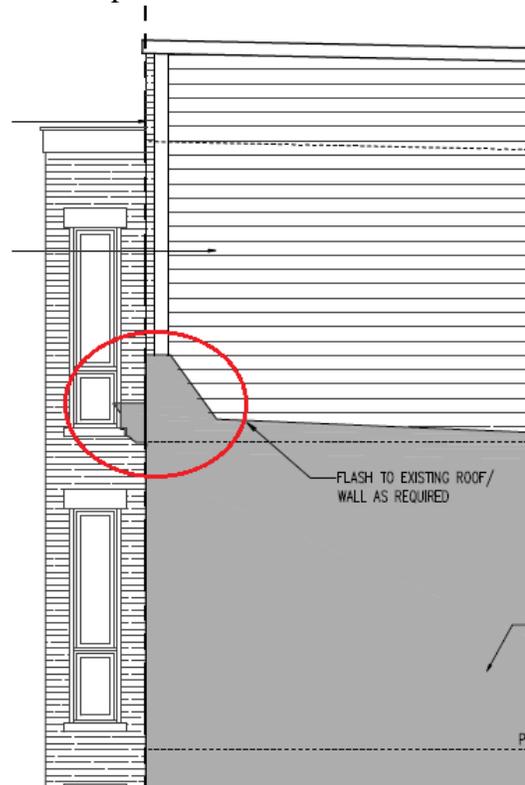
A more appropriate illustration of the type of cornice on the subject property is published in the DC Office of Planning’s document entitled "District of Columbia Historic Preservation Guidelines: Roofs on Historic Buildings" (available at <https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/DC%20Roof%20G>

uidelines.pdf, accessed October 23, 2018), which discusses rooftop elements such as cornices and parapets:



**Parapets are commonly found on flat roof commercial or residential buildings.**

Atlas also falsely states that the cornice is located below the roof top, when in reality the cornice is at the roofline but below the parapet—similar to the cornice configuration in the above illustration from the Office of Planning. Here is a photo of the cornice (left) and a detail from Sheet A4.2 Right Side Elevation (right) showing the cornice in profile:



Even if the cornice were located below the roof level (which is not the case at 1125 7TH ST NE) it would still be a cornice. The Office of Planning illustrates such a cornice configuration in a publication entitled Historic Anacostia Design Guidelines (available at [https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/140714\\_Anacostia%20Design%20Guidelines-screen%20-%20Copy.pdf](https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/140714_Anacostia%20Design%20Guidelines-screen%20-%20Copy.pdf), accessed October 23, 2018), with photos of cornices that are located below the roof top, including this example from page 9:



*Decorative wood cornices or pent roofs embellished façades and concealed sloping roofs.*

Finally, the definition of “cornice” in Webster’s Unabridged Dictionary, which is to be relied on when a term is not explicitly defined in the Zoning Regulations, makes clear that a cornice does not have to be located at the roofline.

The second prong of definition 1a of “cornice” makes clear that a cornice need not “surmount” a building but can also “[divide] it horizontally for compositional purposes.” See the excerpt below from Webster’s Unabridged Dictionary, Second Edition. 2001. Random House (New York):

**cornice.** *noun.*

**1.** *Archit.*

**a.** any prominent, continuous, horizontally projecting feature surmounting a wall or other construction, or dividing it horizontally for compositional purposes.

**b.** the uppermost member of a classical entablature, consisting of a bed of molding, a corona and a cymatium, with rows of dentils, modillions, etc., often placed between the bed molding and corona.

**2.** *(not applicable)*

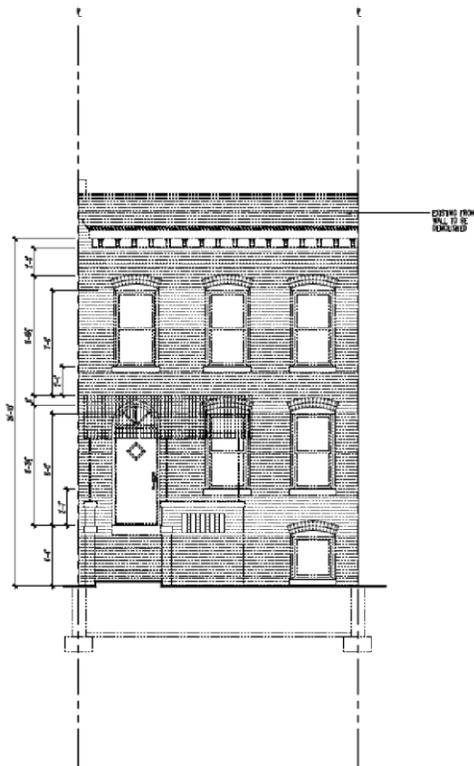
**3.** *(not applicable)*

**4.** *(not applicable)*

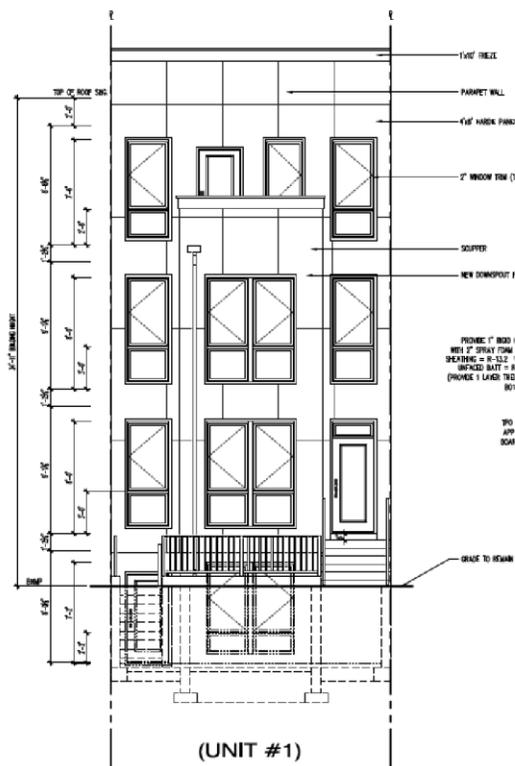
## 2. Atlas Permit Revisions Changed Cornice and Parapet Removal

Atlas claims that the façade was permitted to be removed by permit B1706219 and therefore this zoning violation cannot be challenged in the revised permits. The original Atlas permit B1706219 did propose completely removing the front façade, including the cornice and parapet, and replacing it with a new two-story bay projection and veranda. However, the revised permit B1805207 makes significant changes to the front, including by replacing the veranda and making the bay projection three stories tall. (The front building entry way and subterranean corridor are also flipped from B1706219 to B1805207.) This new design and construction is subject to the Zoning Regulations as they existed on April 18, 2018, when the permit was issued.

The following excerpts from the building plans clearly show the extent of the changes related to the cornice removal. Sheet A4.1 Front Elevation from B1706219 states “EXISTING FRONT WALL TO BE DEMOLISHED” and shows that the original cornice and other façade features are completely removed. The existing front porch and its roof are also removed. The proposed front elevation in Sheet A4.1 shows that in its place there is a new façade, 2-story bay window and 3rd level balcony projecting into the public space.



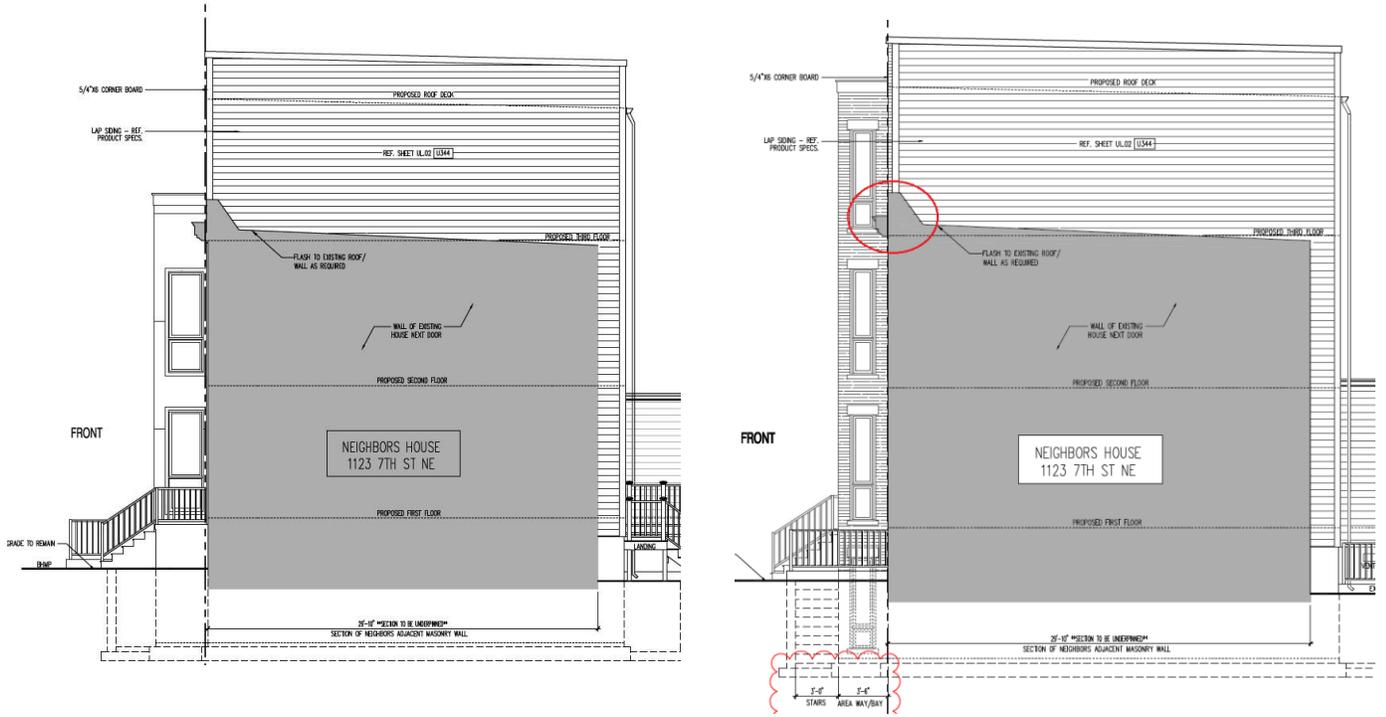
EXISTING FRONT ELEVATION  
SCALE 1/4"=1'-0"



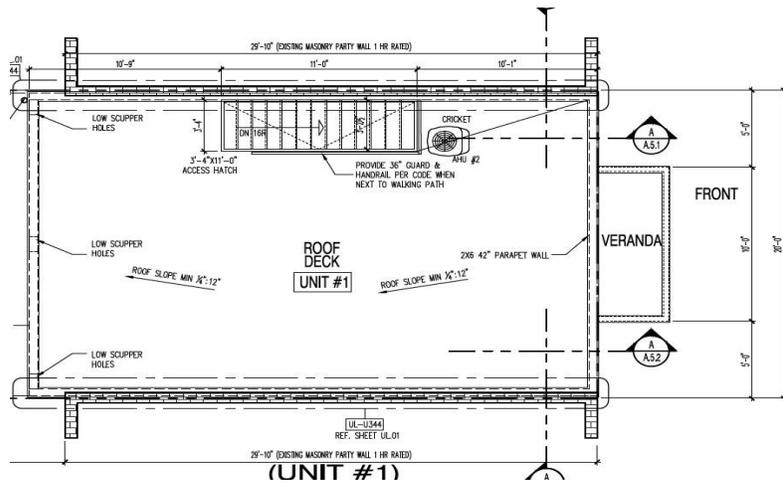
PROPOSED FRONT ELEVATION  
SCALE 1/4"=1'-0"

Comparing Sheet A4.2 Right Side Elevation from the original B1706219 and the revised permit B1805207 clearly shows the removal of the cornice shared with the adjoining 1123

property and the new bay window and balcony projection. See excerpts below from 1706219 (on left) and B1805207 (on right):



The Roof Deck Plan in Sheet A3.1 from B1706219 shows the original front wall removed and labels the 3rd story balcony projection a “veranda,” which does not exist in the revised permits:



### 3. DCRA Supplemental Information on Cornices Not Complete

The information provided by DCRA about actions to protect cornices is incomplete. In addition to the cornices listed in DCRA’s October 12, 2018 filing (Exhibit 62), the Office of Zoning Administrator also requested a Stop Work Order on April 7, 2017 for the illegal removal of a cornice at 1019 4<sup>TH</sup> ST NE, a rowhouse located just three blocks from the Atlas property.

The Online Building Permit Application Tracking (OBPAT) website (available at: <https://eservices.dcr.dc.gov/obpat/default.aspx>) notes that this Stop Work Order was “due to a violation of Zoning regulations 11 DCMR § E-206.1” and that the “[Office of Zoning Administrator] is concerned that the property has removed an architectural element (the cornice feature along the previous roofline) without proper authorization”:

Enter the Property Address to review Application Status:

St. No.\*    St. Name\*    St. Suffix\*    Quad\*    Find

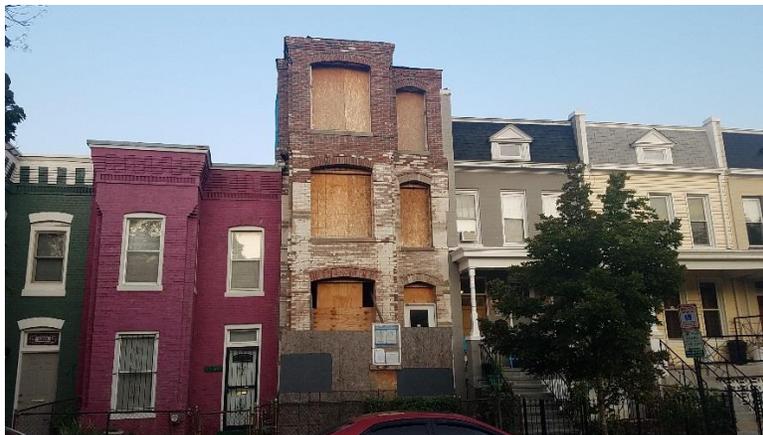
1019    4TH    Street    NE

**Application Status by Property Address:**  
 Please see the table below for review statuses. The table is not shown if the reviews have not been identified. A blank Status date means that the initial review has not been completed. [Click here to see the Restrictions & Holds placed against to the address: 1019 4TH ST NE](#)

**Restrictions & Holds** Close

Address	Unit	SSL	Type	Date Issued	Date Removed	Description	Detailed Description
1019 4TH ST NE		0806 0018	Hold	2017/04/07		Stop Work Order	I would like to request a Stop Work Order be placed on 1019 4th St, NE due to a violation of Zoning regulations 11 DCMR § E-206.1 on the property. OZA is concerned that the property has removed an architectural element (the cornice feature along the previous roofline) without proper authorization
1019 4TH ST NE		0806 0018	Hold	2017/04/06		ZONING	DO NOT ISSUE ANY BUILDING PERMIT WITHOUT APPROVAL FROM THE ZONING ADMINISTRATOR, DEPUTY ZONING ADMINISTRATOR, OR SUPERVISORY ZONING TECHNICIAN. A Zoning Compliance concern has been raised, and it must be reviewed by zoning.

This photo taken on September 19, 2018 shows the cornice removed from 1019 4<sup>TH</sup> ST NE:



#### **4. Permit Application History Provided by DCRA Shows Atlas Has Repeatedly Sought Permits that Do Not Meet Zoning Regulations**

The permit application history for 1125 7<sup>TH</sup> ST NE reveals that Atlas has repeatedly applied for matter of right permits that would not meet zoning regulations and did not result in issued permits. Then DCRA issued B1706219, which led to the present appeal of ANC 6C to have that permit revoked.

Atlas' significant revisions to permit B1706219 appear to attempt to correct zoning violations described in ANC 6C's original request for appeal and pre-hearing statement, including the excessive number of dwelling units, lack of minimum pervious surfaces, a "lobby/breezeway" connection between two separate buildings that is not fully above grade, etc. However, Atlas now argues that the existence of permit B17096219 provides vesting rights exempting subsequent permit revisions from the zoning regulations as they exist at the time of permit issuance.

While ANC 6C has already adequately described how this Atlas claim is not supported by the text of the Zoning Regulations, it is still worthwhile evaluating the permit application history provided by DCRA. The records for permit applications filed in 2015 and 2016 reveal that Atlas has repeatedly applied for matter-of-right permits that do not conform to zoning regulations. The permit application history also indicates that DCRA appears to have attempted to facilitate the issuance of permits that do not meet zoning regulations by reviving long dead, cancelled applications--and incorporating them into new permits issued after the filing of this BZA appeal.

The Board should thus reject the claim by Atlas that the Zoning Regulations protecting the cornice (Section E-204.1(a)) and preventing the rear addition extending beyond 10 feet past the neighboring property's rear wall (Section E-205.4) do not apply to Atlas' revised permits.

##### **Application B1503166** (filed by different property owner, cancelled November 15, 2015)

DCRA's supplemental October 12, 2018 statement (Exhibit 62) incorrectly describes the permit application filed on January 5, 2015 and cancelled on November 15, 2015 as "B1606543." This 2015 permit application is actually B1503166, which was filed by a different property owner *before* Atlas acquired 1125 7<sup>TH</sup> ST NE. This permit application did not meet building code and zoning requirements. The application also did not propose constructing two separate buildings connected by a "lobby" as in the original and revised Atlas permits.

DCRA purportedly revived and consolidated this long dead permit application almost three years later in the Atlas permits B1810239 and B1900128 issued on and June 14, 2018 and October 3, 2018 respectively.

##### **Application B1512853** (cancelled October 3, 2016)

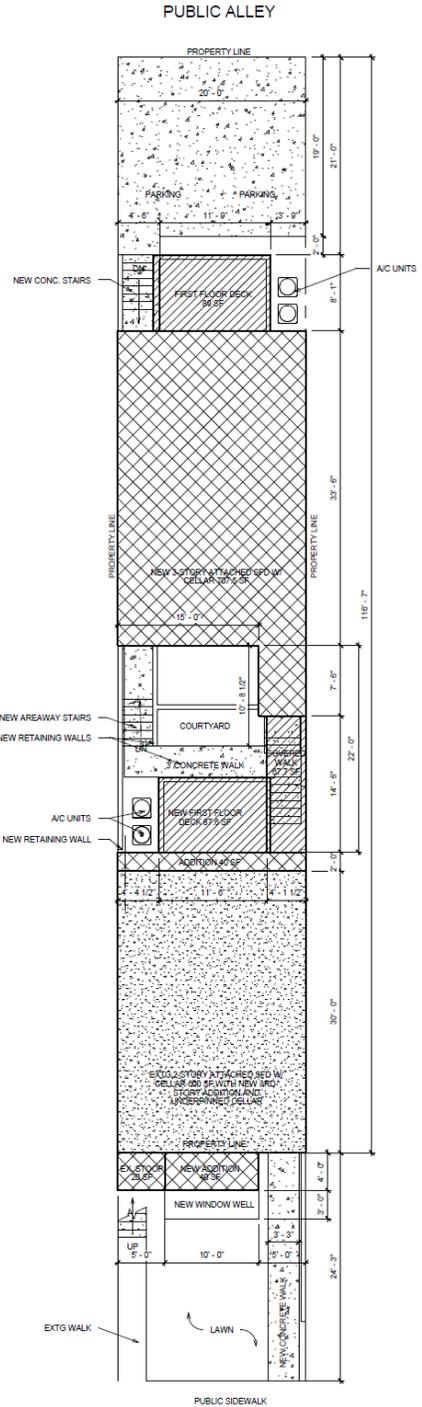
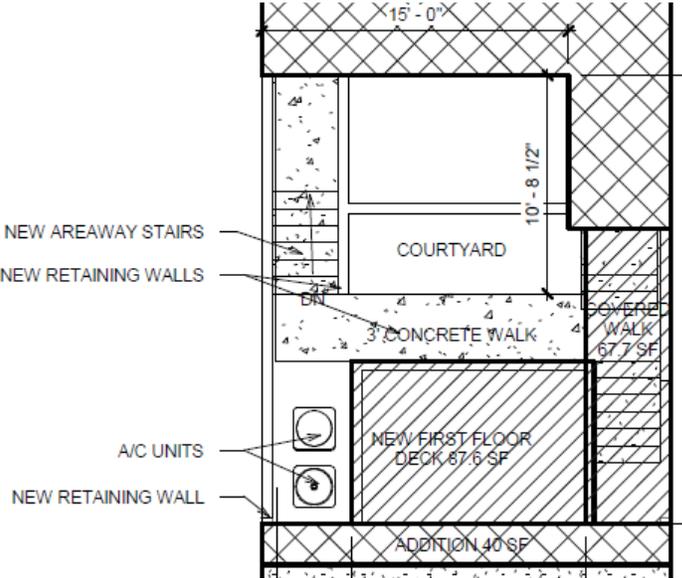
Permit application B1512853 did not meet zoning regulations. The "Project Data" summary on Cover Sheet C1.0 [**EXHIBIT A**] proposes converting the existing row house into 4 dwelling units, which is not allowed as a matter of right in the R-4 (now RF-1) zone. The Proposed Site

Plan included on Sheet C1.0 also clearly shows 4 A/C Units, two for each building, which also indicates Atlas' intention to build 4 dwelling units at 1125 7<sup>TH</sup> ST NE.

In addition, the project data table incorrectly describes the property as being located in the R-5-B zone district. This table also states that the project involves 3 stories plus a mezzanine and cellar level, which is also not allowed under the zoning regulations that existed at the time (or today), as shown in this excerpt from sheet C1.0:

PROJECT DATA		
BUILDING DATA	EXISTING	PROPOSED
SQUARE	0886	N/A
LOT	035	N/A
ZONE	R-5-B	R-5-B
TYPE OF CONSTRUCTION	IIIB	IIIB
USE GROUP	R	R
YEAR BUILT	UNKNOWN	N/A
LAND AREA	2,332 SF	N/A
LOT OCCUPANCY	30%	N/A
F.A.R.	1.8	N/A
F.A.R. CALCULATION	1.8 X 2,332	MAX 4,197
NO. STORIES ABOVE GRADE	3	3 + MEZZ.
NO. OF UNITS	1	4
BUILDING AREA	600 SF	787.5 SF
FULLY SPRINKLED	YES	YES
CELLAR/BSM'T	YES	YES

Moreover, this “foundation level” permit proposed a below-grade corridor connecting two separate buildings, which is located on the opposite side of the property compared to the “breezeway/lobby” in B1706219 and subsequent permit revisions incorporated in this BZA appeal. This is clearly depicted in the Proposed Site Plan from Sheet C1.0 in application B1512853, which describes the foundation level only:



### **Application B1606543** (cancelled October 3, 2016)

Permit application B1606543 did not meet zoning regulations and was cancelled on October 3, 2016.

### **Permit B1706219** (issued March 31, 2017)

Appellant's original pre-hearing statement describes the unusual circumstances around the issuance of permit B1706219, which was issued in just 8 days, purportedly as a "revision" to two permits that do not exist but were instead permit applications that were cancelled on October 3, 2016.

While not meeting building code or zoning requirements, permit B1706219 did correct many deficiencies of the earlier permit application B1606543 that it revises. An April 4, 2017 letter from Shawn P. Kelley of Moment Engineering and Design to property owner and developer Tarique Jawed describes numerous changes in B1706219 that attempt to address the deficiencies identified in a permit review of B1606543 [see **EXHIBIT B**].

## **5. Illegal construction of a Second Principal Building**

Atlas's post-hearing submission repeatedly states that the "lobby" connection between the front and rear buildings is above grade per the requirement of Section 309.1(a). This is not the case in the original permit B1706219, which clearly shows that the "breezeway/lobby" is not fully above grade. ANC 6C's original pre-hearing statement (Exhibit 35) describes this in detail on pages 9-10.

When the original permit B1706219 was revised to make this "lobby" connector fully above grade, the subterranean corridor entranceway underneath the front building was also moved from the north to the south property line and the courtyard areaways were reconfigured compared to the original permit B1706219. These changes alone constitute significant changes to the permit which make the revised permits ineligible for the vesting provision adopted under Z.C. 14-11B, which restricts any rear addition at 1125 7<sup>TH</sup> ST NE to extend no further than 10 feet past the rear wall of an adjoining property.

Moreover, the definition of "lobby" from Webster's Unabridged dictionary, which is to be relied on when a term is not explicitly defined in the Zoning Regulations, describes a more grand entrance hall, corridor or foyer than the narrow hall depicted in the Atlas permits:

**lobby.** *noun.*

1. an entrance hall, corridor, or vestibule, as in a public building, often serving as an anteroom; foyer.
2. a large public room or hall adjacent to a legislative chamber.
3. (*not applicable*)
4. (*not applicable*)

Source: Webster's Unabridged Dictionary, Second Edition. 2001. Random House (New York).

Atlas' post hearing statement does not reconcile the claim that the purported "lobby" connection "[a]llows free, unrestricted and reciprocal access for the owners, occupants and visitors of each dwelling unit to other portions of the building" with its acknowledgement later that the separate front and rear buildings are also just two dwelling units that need not have reciprocal access.

### **Conclusion**

For the reasons stated above and those provided in ANC 6C's filings, I urge the Board to order the revocation of permit B1706219 and its subsequent revision permits, which violate the Zoning Regulations and negatively impact my property's access to light and air.

Respectfully submitted,

A handwritten signature in black ink that reads "Kevin Cummins". The signature is written in a cursive style with a horizontal line underneath it.

Kevin Cummins  
1123 7<sup>th</sup> Street NE  
Washington DC, 20002  
Telephone: (202) 725-4735  
E-mail: kevin.cummins11@gmail.com

## **TABLE OF ATTACHMENTS**

- A.** Cover Sheet C1.0 from permit application B1512853
  
- B.** April 4, 2017 letter from Shawn P. Kelley (Moment Engineering and Design) to Tarique Jawed (Stony Creek Homes)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 24, 2018, I served a true and correct copy of the foregoing by electronic mail to the following individuals at the address below:

Matt LeGrant  
Zoning Administrator  
Department of Consumer and Regulatory Affairs  
matthew.legrant@dc.gov

Anna Kaprelova, Esq.  
Department of Consumer and Regulatory Affairs  
anna.kaprelova@dc.gov

John Patrick Brown, Jr., Esq.  
Greenstein DeLorme & Luchs, P.C.  
jpb@gdllaw.com  
*Counsel for Property Owner, Atlas Squared, LLC*

Mark Eckenweiler, Esq.  
Commissioner  
ANC 6C  
6C04@anc.dc.gov  
*Counsel for Appellant*



---

Kevin Cummins