

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: September 19, 2018

REVISED PREHEARING STATEMENT

I, Intervenor Kevin Cummins, respectfully submit this revised prehearing statement in support of the appeal of ANC 6C to seek the revocation of building permit B1706219 (the “Original Permit”) and 1805207 (the “Revised Permit”). In addition to the reasons described in Appellant’s Revised Prehearing Statement (Exhibit 35) and Second Revised Prehearing Statement (Exhibit 46), I respectfully urge the Board to order the revocation of both permit B1706219 and permit B1805207, which authorize construction that negatively impacts my property’s access to light and air, for the following reasons:

SUMMARY

1. The Original and Revised Permits do not accurately depict existing site conditions.
2. The Permits authorize new construction that would partially occupy what is currently publicly-maintained alley.
3. The permit drawings do not accurately show impacts to adjoining property.
4. Permit B1706219 was approved as a “revision” to non-existent permits.
5. Permit B1706219 may have been issued in error due to concern about pending approval of Rule 14-11B limiting “pop back” rear additions.
6. Stony Creek Homes is not a licensed business in the District of Columbia.
7. DCRA acted on behalf of, or as an agent of, property owner in sending owner notification for permit B1706219.

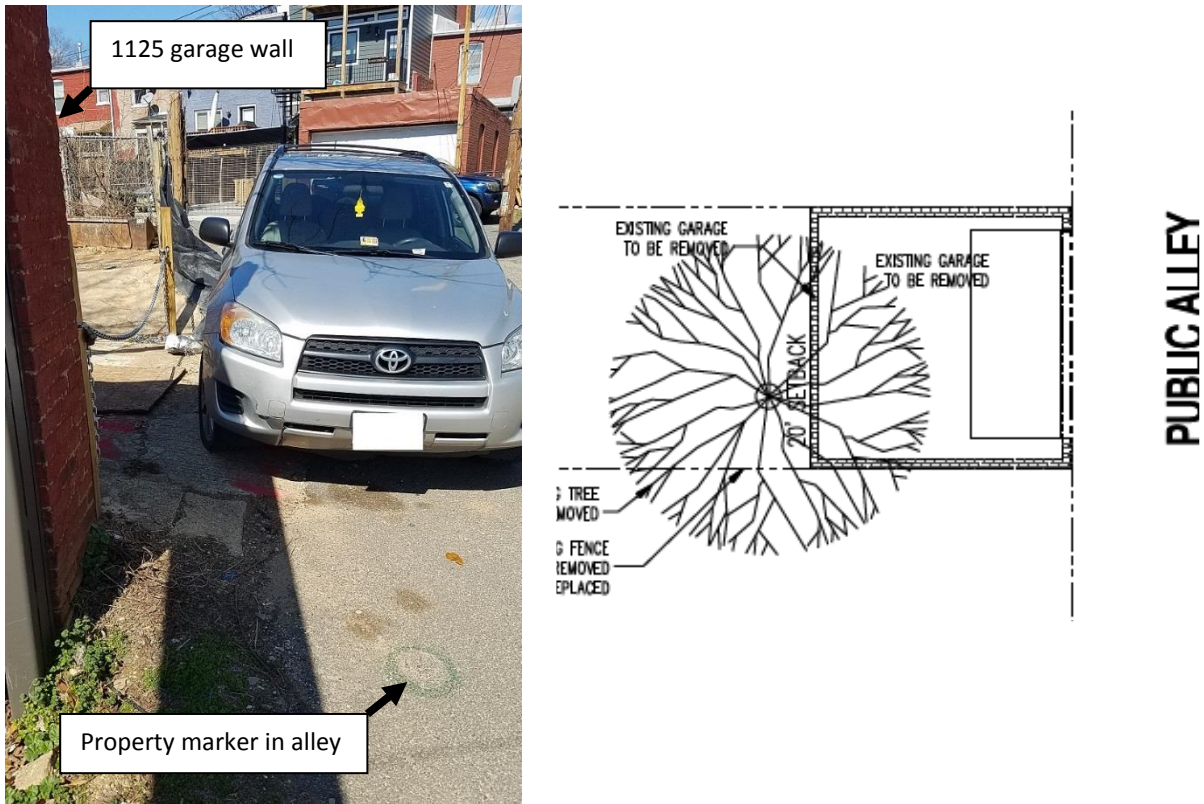
DISCUSSION

1. The Original and Revised Permits do not accurately depict site conditions.

The permit drawings do not reflect current conditions at the subject property, including the existing rear addition and partially-raised garage. Specifically, the site plan on Sheet SP.01 does not:

- (i) show that the existing rear addition connects to the adjoining building located at 1127 7TH ST NE;
- (ii) accurately depict the location of neighbors' fences on their property; and
- (iii) properly locate the existing detached garage building currently located approximately 4 feet from the rear lot line of the subject property.

Moreover, Atlas caused this garage building to be partially razed in April 2017, leaving only its south wall and a small portion of the east and west walls standing, which is not reflected in the existing site plan (Sheet SP.01, **Tab A**) of the Original Permit or Revised Permit, as shown below.



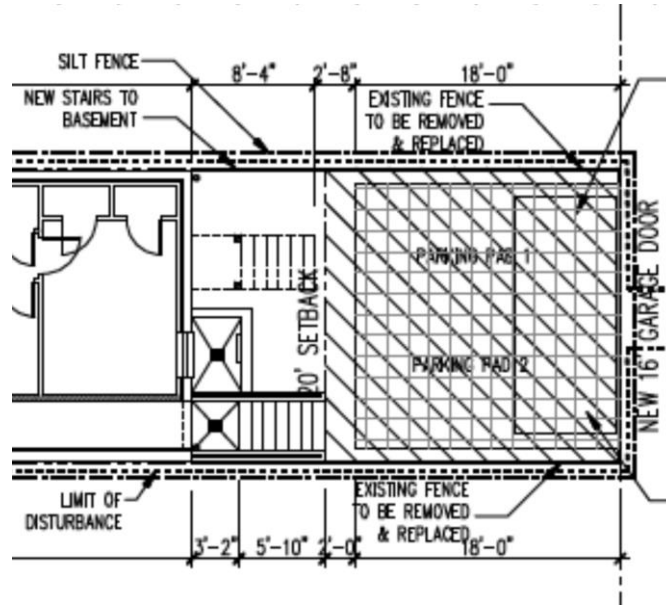
The photo above highlights the property marker in the alley asphalt. As described in more detail below, the inaccurate depiction of the garage, which is in fact setback approximately 4 feet from the lot line, is significant since the Permits authorize construction including a new garage door, fencing and parking pad that would partially occupy what is currently a publicly-maintained alley.

2. The Permits authorize new construction that would partially occupy what is currently publicly-maintained alley.

The new construction in the Original and Revised Permits extends to the east property line and will partially occupy what is currently publicly-maintained alley space in the rear of 1125 7TH

ST NE which is used by emergency vehicles, waste management trucks, and personal vehicles to access the rear of the 1100 block of 7TH ST NE and 8TH ST NE.

The existing, partially demolished garage is set back approximately 4 feet from the east lot line, which is not shown in the existing site plan (Sheet SP.01) for the Original and Revised Permits. The proposed site plan shows that a new garage door, fencing, and parking pad would extend to the east lot line and thus partially occupy what is currently publicly maintained alley space, as can be seen in the excerpt below from the Proposed Site Plan (Sheet SP.01, **Tab B**):



Neighbors' fencing and garage doors are similarly set back approximately 4 feet from the east lot lines on this block. In this view of the alley, the proposed garage door, fencing, and parking pad would extend into the alley to approximately the middle of the parked car:



3. The permit drawings do not accurately show impacts to adjoining property.

The permit drawings do not accurately show impacts to adjoining property. The adjoining properties and their improvements are not accurately depicted in the permit drawings and submittal documents, including the upper floor addition, rear addition and enlarged cellar level at 1127 7TH ST NE. The site plan and architectural drawings depict the 1127 7TH ST NE party wall as 29 feet 10 inches, yet the rear addition and areaway foundation wall located at 1127 7TH ST NE extend at least another 30 feet along the property line, as shown in photos included as **Tab C** and **Tab D**. The permit plans and drawings such as Sheet A4.2 Left Side Elevation [**Tab E**] and A4.3 Right Side Elevation [**Tab F**] do not show this existing rear addition to the adjoining property at 1127 7TH ST NE.

4. Permit B1706219 was approved as a “revision” to non-existent permits.

Permit B1706219 was approved on March 31, 2017 only 8 days after submission to DCRA as a “revision” to two earlier permits that do not exist. DCRA records show that the revised “permits” no. B1606543 and no. B1512853 referred to in the application were in fact permit applications that never resulted in issued permits. A March 10, 2017 Stony Creek Homes letter to the Zoning Commission describes the 1125 7TH ST NE property and states that “Due [to] problems with our first architect, we had a previous permit application inadvertently canceled, and we have been working with DCRA since then to get the permit application revised and approved” [**Tab G**].

5. Permit B1706219 may have been issued in error due to concern about pending approval of Rule 14-11B limiting “pop back” rear additions.

The March 10, 2017 letter from Stony Creek Homes to the Zoning Commission regarding Z.C. Case No. 14-11B [**Tab H**] may also partly explain the motivation for such a hasty, 8 day permit review and approval by DCRA. The Stony Creek Homes letter, in arguing for a vesting provision, or grandfathering in, of pending building permit applications that would be subject to this new zoning rule, describes potential impacts to their proposed construction at 1125 7TH ST NE. The letter states, “if the Amendments are adopted as currently written, a property owner would be required to have a building permit approved and issued prior to the effective date of the Amendments, which we understand may be imminent.” Stony Creek further argued that a vesting provision:

“takes pressure off of DCRA staff to quickly issue building permits which might be affected by the Amendments. If vesting occurs at permit application, the property owner and DCRA are free to prudently evaluate, revise, and correct, if necessary, the details of that permit application without fear that the property owner’s investment will be wiped out upon the implementation of the new Regulations.”

Although such a vesting provision was ultimately adopted by the Zoning Commission, this occurred after Stony Creek Homes obtained permit B1706219 on March 31, 2017.

6. Stony Creek Homes is not a licensed business in the District of Columbia.

The property developer listed on Permit B1805207, Stony Creek Homes, is not a registered business entity in the District of Columbia, nor does it have a business license to operate legally in the District. A search for “Stony Creek Homes” returns no records from DCRA’s Business License Verification website available at <https://eservices.dcr.dc.gov/BBLV/Default.aspx>.

7. DCRA acted on behalf of, or as an agent of, property owner in sending owner notification for permit B1706219.

Section 3307.2 of the Building Code requires that adjoining property owners be notified of construction that involves the need to install structural support including underpinning. The Building Code further provides that such notification must be provided not less than 30 days prior to permit issuance.

I received a purported neighbor notification from DCRA official Christopher Bailey after the permit’s issuance, seemingly on behalf of the property owner. Mr. Bailey used official DCRA letterhead and a city government email account to send a notification letter stating “this shall serve as official notice” in defiance of the Building Code requirement [**Tab H**].

DCRA official Christopher Bailey also sent a neighbor notification form and legal contract, partially completed in his handwriting, for me to sign granting access to my property for structural work associated with permit B1706219 [**Tab I**]. This DCRA action further highlights the unusual circumstances around the issuance of permit B1706219 in defiance of Zoning Regulations.

CONCLUSION

For the reasons stated above and those in Appellant’s Revised Prehearing Statement (Exhibit 35) and Second Revised Prehearing Statement (Exhibit 46), I respectfully urge the Board to order the revocation of both permit B1706219 and permit B1805207, which authorize construction that violates the Zoning Regulations and negatively impacts my property’s access to light and air.

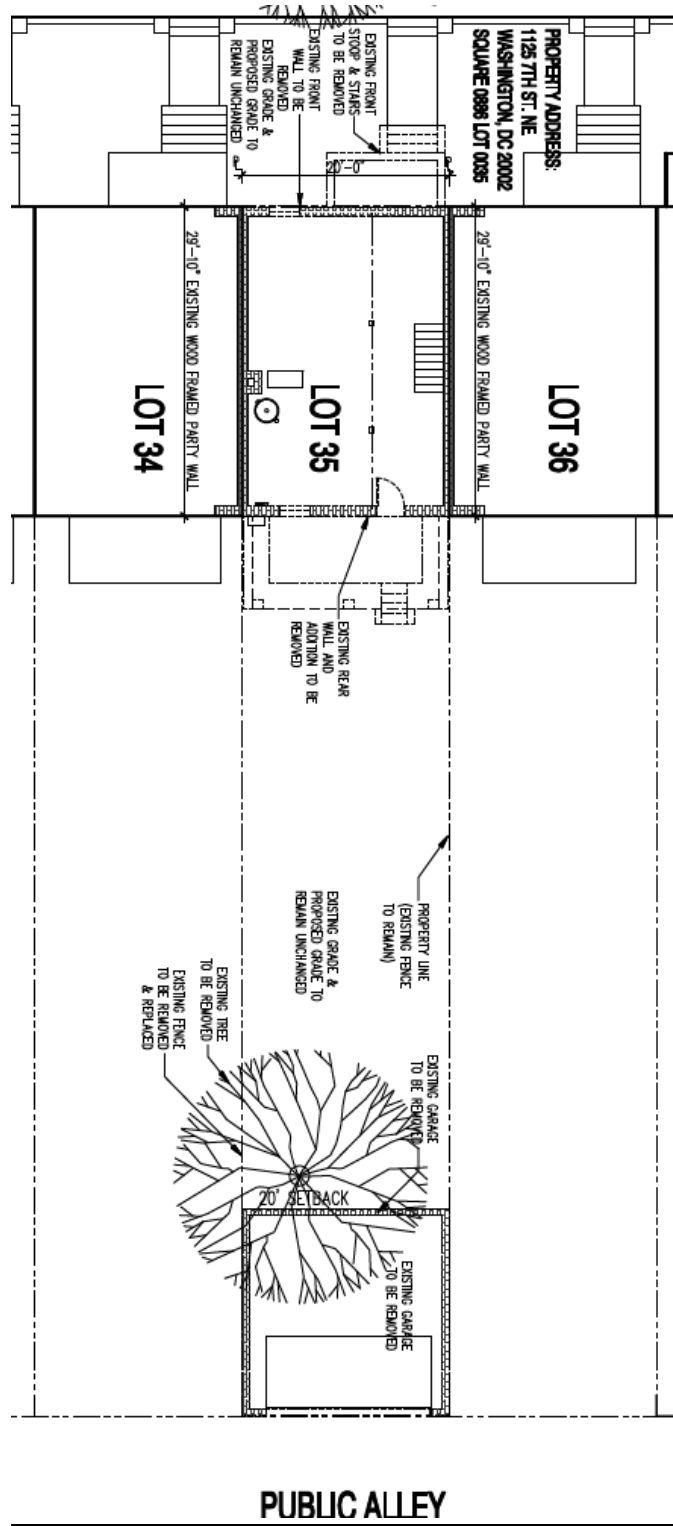
Respectfully submitted,



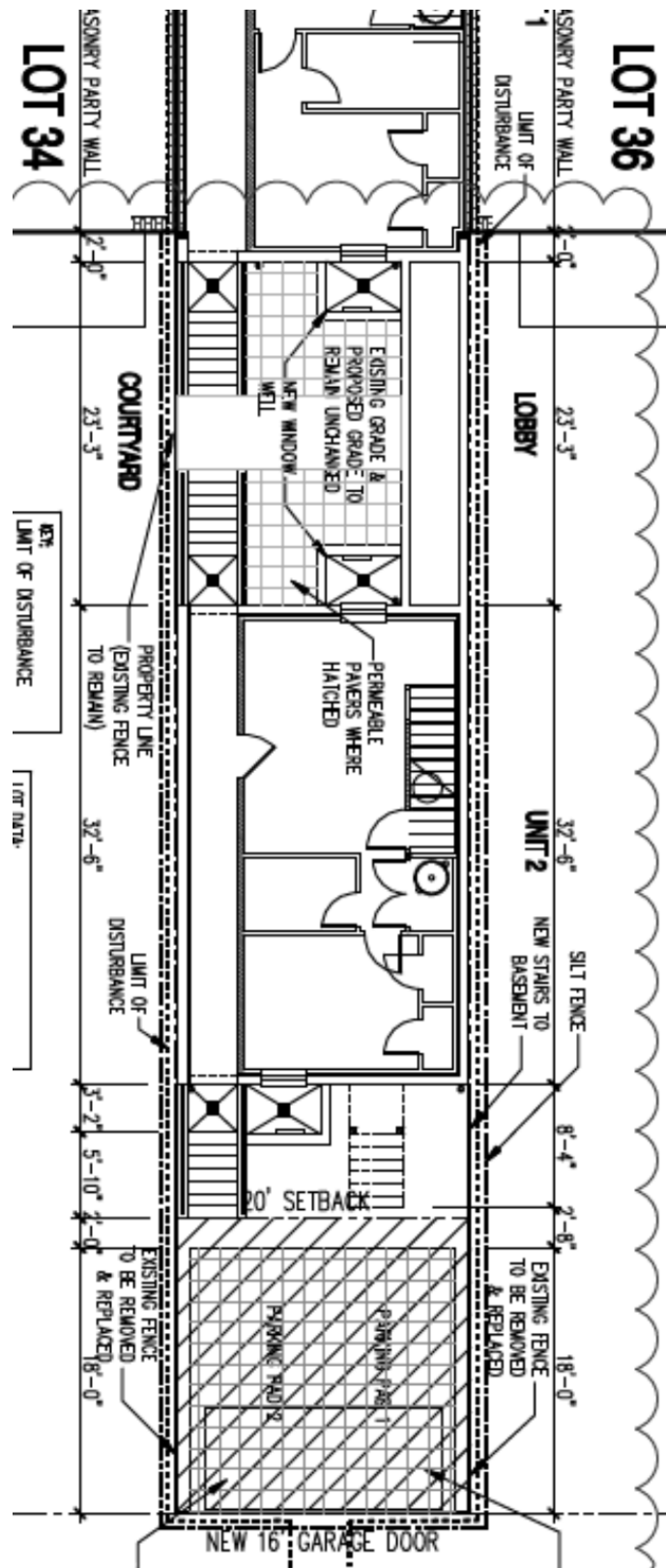
Kevin Cummins
1123 7th Street NE
Washington DC, 20002
Telephone: (202) 725-4735
E-mail: kevin.cummins11@gmail.com

EXHIBITS

Tab A. Sheet SP.01 - Existing Site Plan (detail)



Tab B. Sheet SP.01 - Proposed Site Plan (detail)



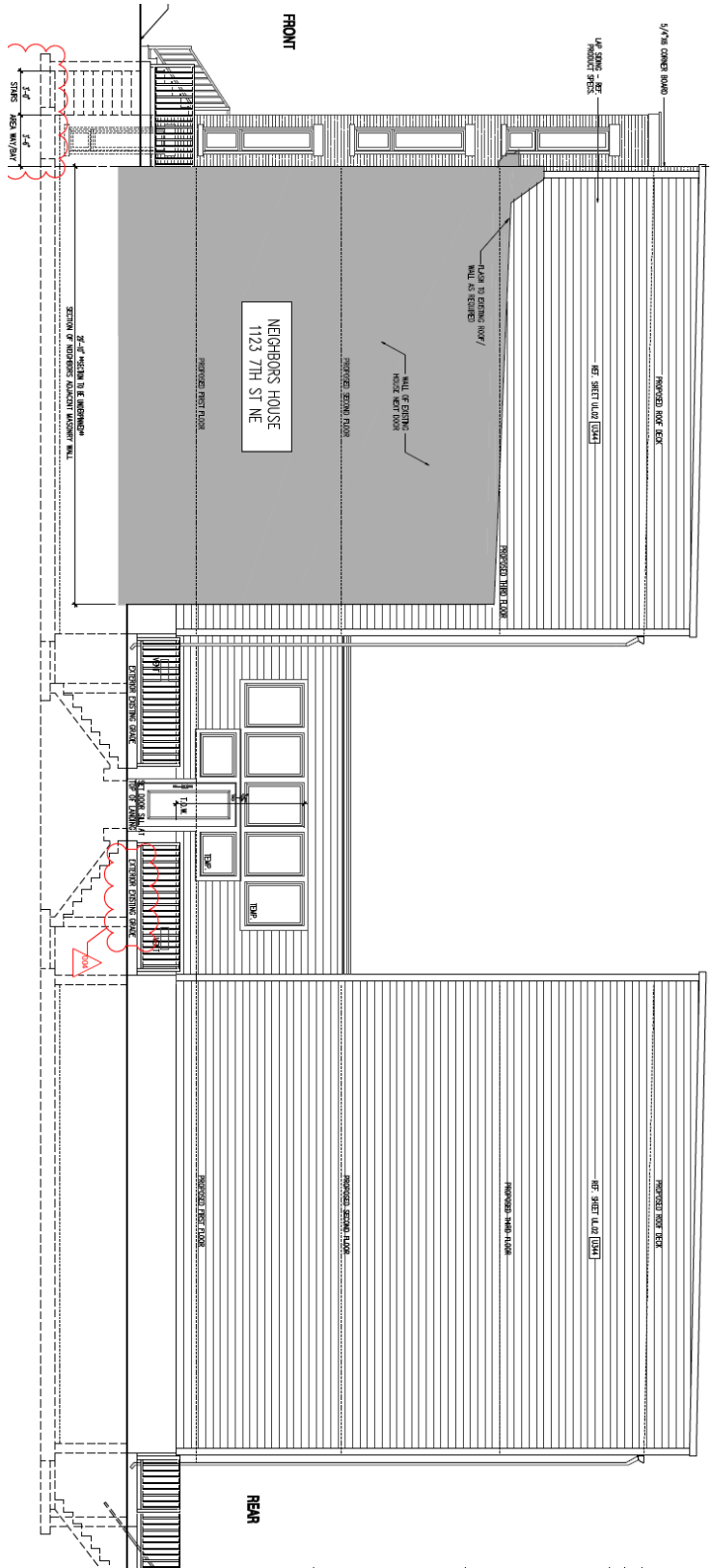
Tab C. Photo of Rear of 1125 7TH ST NE (taken 4/26/18)



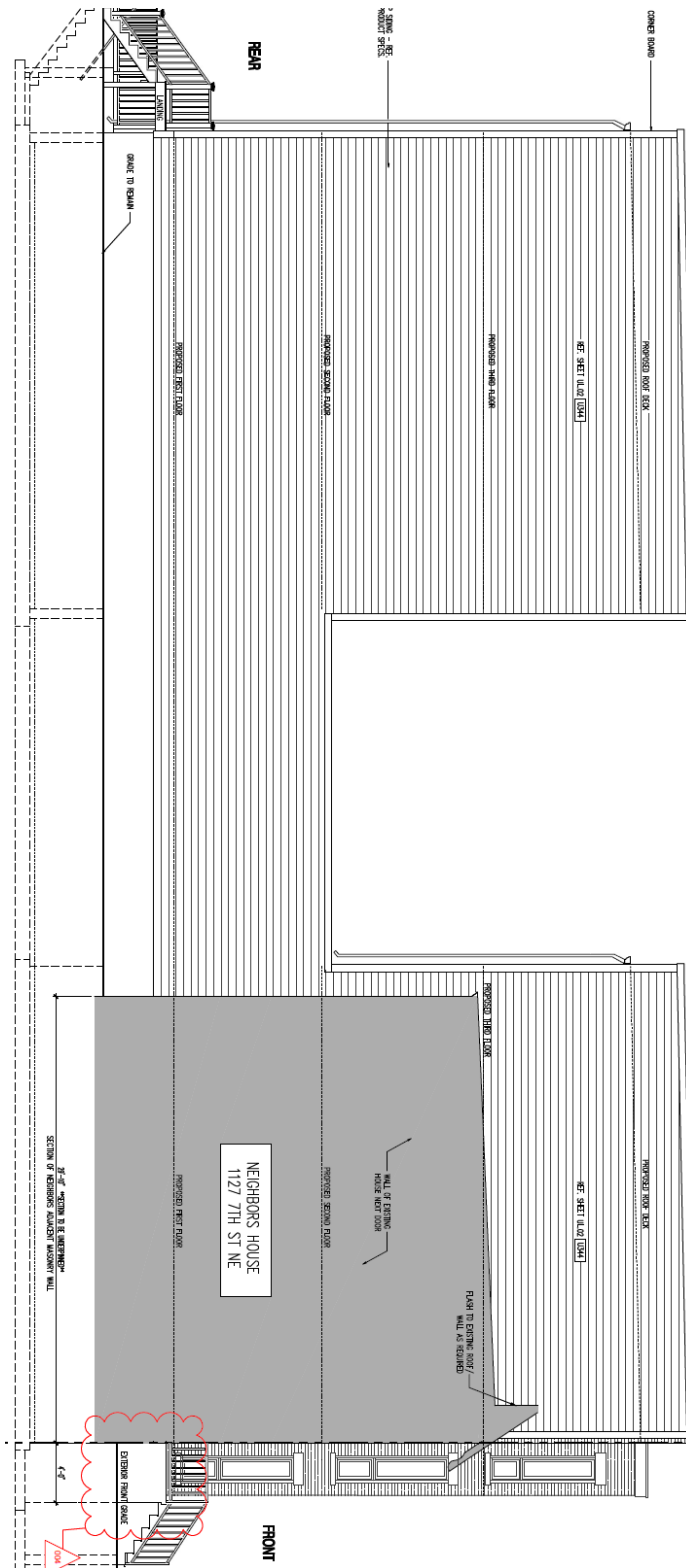
Tab D. Photo of Wall along North Lot Line (taken 4/26/18)



Tab E. B1805207 Sheet A4.2 Right Side Elevation



Tab F. B1805207 Sheet A4.3 Left Side Elevation (rear addition, cellar and third levels at 1127 7th not shown)



Tab G. Stony Creek Homes Letter to ZC



March 10, 2017

Via E-mail Submission

Anthony J. Hood, Chairman
D.C. Zoning Commission
441 4th Street, NW, Suite 200-S
Washington, DC 20001
c/o Sharon Schellin
zcsubmissions@dc.gov

Re: Comments Regarding Vesting Rights under Z.C. Case No. 14-11B

Dear Chairman Hood and Commissioners:

We are writing to express our concern about the implementation process, and related vesting rights of property owners, under Zoning Commission Case No. 14-11B (the "Amendments"). We also have concerns about the substance of several of the Amendments. However, while we will eventually adjust to the new Regulations, an immediate implementation would have significant financial consequences for us and other property owners (and employees, contractors, partners, etc.) who have made significant investment decisions with an expectation of certain property rights afforded under existing Zoning Regulations.

As we understand it, if the Amendments are adopted as currently written, a property owner would be required to have a building permit approved and issued prior to the effective date of the Amendments, which we understand may be imminent. In other similar situations, the Commission has acknowledged the need for property owners and investors to be able to rely on existing laws, and the possible unfairness which may result from an immediate implementation of new Regulations, because of the impact of those new Regulations on those in the permit review or design phases of their projects. In those cases, the Commission has provided specific vesting provisions which either delay the implementation date of the new regulations, and/or provide that an owner may vest under the pre-existing Regulations if that owner has already submitted a fully-completed building permit application.

We respectfully request that the Commission include such a provision in this case as well. We would suggest a delayed implementation of at least three (3) months, with vesting occurring with the filing of building permit application - accepted by DCRA as complete - before that three (3) months has elapsed. We believe this time period would prevent most of the potential damage to property owners who have already undertaken investment activities such as purchasing properties, engaging professionals, designing and drafting plans, pursuing permit applications at DCRA, and undertaking other activities typically done well in advance of permit issuance with certain expectations.

The provision that vesting occur at building permit application, rather than issuance, is especially critical at a time when building permit applications languish at DCRA for many months, and a

ZONING COMMISSION
District of Columbia
CASE NO.14-11B
EXHIBIT NO.12



property owner has little control over the speed of that approval process. Such a vesting provision also takes pressure off of DCRA staff to quickly issue building permits which might be affected by the Amendments. If vesting occurs at permit application, the property owner and DCRA are free to prudently evaluate, revise, and correct, if necessary, the details of that permit application without fear that the property owner's investment will be wiped out upon the implementation of the new Regulations.

Finally, we believe it is a basic issue of fairness that property owners and others should be able to rely on existing law when they begin and pursue projects for which they risk significant investment, whether those investments be of a personal or a business nature. The fair solution would be to allow projects begun under one set of Regulations to reasonably be completed under those same Regulations.

In our particular case, we would suffer tremendous financial consequences if the Amendments are made effective immediately. We originally purchased the subject property on June 12, 2015, well before the introduction of the Amendments. We applied for a foundation permit in September, 2015. We hired an architect in June, 2015, and have spent over \$46,000 in architectural fees to date. In addition to time and money spent, the loss in property value from what our expectation was when we purchase the property is estimated to be between \$500,000 and \$700,000.

Due problems with our first architect, we had a previous permit application inadvertently canceled, and we have been working with DCRA since then to get the permit application revised and approved. The revised application is just now ready to be submitted (finding quality architects with time on their hands is becoming very difficult). If the Amendments become effective before we receive our permit, all of the time and money spent on this will be lost, in addition to the lost value from the original expectation based on existing Regulations.

We urge the Commission to consider those of us who are in the process of designing and developing projects based on the existing Regulations, and allow us the necessary transition time to complete those projects under those rules.

Sincerely,

Tarique Jawed
Tarique Jawed,
Stony Creek Homes

**Tab H. April 7, 2017 letter from DCRA Deputy Building
Official of Permit Operations to Kevin Cummins**

Government of the District of Columbia
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS



April 7, 2017

To: Kevin Cummins
(1123 7th Street N.E.)

From: Christopher Bailey
Deputy Building Official of Permit Operations

Re: Neighbor Notification for 1125 7th Street N.E.

Dear Mr. Cummins,

Please find enclosed the written neighbor notification for 1125 7th Street N.E., Washington, DC 20002. This letter shall serve as official notice. The Stop Work Order was posted on April 4, 2017 for failure to supply you with proper neighbor notification. On April 6, 2017 you received the revised drawings and the structural reviewer comments for permit number #B1706219. In a separate email Century Associates responses to your comments were also provided from Director Bolling. Should you need any additional information or documentation please contact this department or me directly at (202) 442-4533 or Christopher.Bailey@dc.gov for assistance.


Christopher Bailey
Deputy Building Official of Permit Operations

1100 4th Street, SW Washington, DC 20024
Phone: (202) 442-8959 Fax: (202) 442-4863

Tab I. April 7, 2017 "Notification Form" and "Adjoining Owner's Response"
form sent by DCRA Official Christopher Bailey to Kevin Cummins

NOTIFICATION FORM
SAFEGUARDS DURING CONSTRUCTION

DATE: 4/7/17

OWNER: _____ ADJACENT OWNER: Kevin Cummins

MAILING ADDRESS: _____ ADDRESS: 1123 7th St NE

TEL: _____ TEL: _____

EMAIL: _____ EMAIL: kevin.cummins11@gmail.com

Address of Proposed Work: 1125 7th St NE

Section §3307.1 of the 2013 District of Columbia Building Code, 12 DCMR A (the "Building Code") requires adjoining public and private property to be protected from damage during construction, alteration, repair, demolition or raze of a premises at the expense of the person causing the work. Protection must be provided for lots, and for all elements of a building or other structure, including, but not limited to, footings, foundations, party walls, chimneys, skylights, and roofs. Provisions shall be made to control water runoff and erosion during construction or demolition or raze activities.

Proper underpinning of existing adjoining or party walls which require underpinning must be provided in accordance with applicable sections of the Building Code.

Under Sections §3307.2 and §3307.3 of the Building Code, notification of the adjoining property owner is required for certain types of construction activities. A copy of Section §3307 of the Building Code is available online on the DCRA website at <http://dcra.dc.gov/page/regulations-dcra> or through the following online link:
http://www.ecodes.biz/ecodes_support/free_resources/2013DistrictofColumbia/13Building/PDFs/Chapter%20333%20%20Safeguards%20During%20Const%20ruction.pdf

SCOPE OF WORK REQUIRING NOTIFICATION OF ADJACENT PROPERTY OWNER(S) (check as applicable):

1. The proposed work involves the need to install structural support of an adjoining building or structure (e.g., underpinning of foundation) NO; or
2. The proposed work involves excavation on the owner's property and the related need to support an adjacent property, including land and any buildings or structures located on the adjacent property (not including a public way) Yes; or
3. The proposed work will impact the use or stability or structural support of a party wall or party line Yes.

Form of Notification Required

Dear Kevin Cummins

My name is _____, (I am/we are) the owner of the property located at _____ which adjoins your property. Pursuant to Section §3307.2 and/or Section §3307.3 of the 2013 District of Columbia Building Code, Title 12 DCMR Subtitle A (the "Building Code"), (I am/We are) proposing to carry out work, as identified above, which requires notification to you as the adjacent property owner. This notification includes a copy of all *construction documents* which relate to the structural support of the adjoining building or other structure or to the structural support of the excavation, including any updates or amendments to the work plan that have been submitted with the permit application(s).

1

This form has been provided by DCRA for the purpose of demonstrating a permit applicant's compliance with the notification and property access requirements of Section 3307 of the Building Code. Compliance with these requirements does not relieve a permit holder, or person causing the work, of any obligations or responsibilities under civil or criminal law to protect an adjoining property from damage.

DCRA/POD/2014

I/we have determined that the following specific measures need to be undertaken to protect the adjoining premises:

Access to your property is hereby requested to install structural support or provide support for the excavation on my/our property:
 yes no.

You have 30 days from the date that this notification is delivered to object in writing on the grounds that the proposed work plan will not protect your adjoining property. The objection must include technical support for any claim that the proposed work plan will not protect your property. DCRA is authorized, but not required, to grant a reasonable extension of time to you if necessary to complete evaluation of the proposed work plan. Objections will be resolved pursuant to the process set forth in Section §3307.2.2.2 of the Building Code.

Any written objection must be delivered, with supporting technical documentation, to the owner at the address provided above. (Delivery by email is authorized.) A copy of any objection, with supporting technical documentation, must be provided to the Department of Consumer and Regulatory Affairs, by the owner seeking to undertake the work, at the following address:

**Chief Building Official
Department of Consumer and Regulatory Affairs
1100 4th Street SW, Third Floor
Washington, DC 20024**

Email: christopher.bailey@dc.gov

Within the same 30-day period, you must indicate in writing whether access to your adjoining premises is authorized (if such access is requested to install structural support or to provide support for the excavation) and the conditions, if any, of such access. If you expressly deny access for entry within 30 days after delivery of this notification, or if you fail to respond within the 30-day period, you will be deemed to have elected to make safe your own property without delay so as not to impede or materially delay the original construction. However, if you file an objection in accordance with Building Code Section §3307.2.2.2, you will not be required to decide whether or not access is granted to your adjoining premises, until the objection is resolved.

You should be aware that once a building permit is granted even if you fail to grant access or fail to respond to an access request, you shall be deemed to have authorized limited access to your property in the following circumstances:

1. Where a wall or foundation located on a party line or on the premises requires underpinning as a result of the proposed work;
2. Where I/we can provide the underpinning by undertaking the work from my/our property, even if the footing extends onto your property; and
3. Where extension of the footing is required to stabilize and support your building, and to avoid unreasonable delay in excavation and development of the permitted project.

Your written permission to provide underpinning for your adjoining structure is not required where the work will impact the use or stability or structural support of a party wall. In such situations, proper underpinning of existing adjoining or party walls which require underpinning will be provided by me/us in accordance with applicable sections of this code.

Please provide your response by completing the appropriate lines below, and providing your response within 30 days after delivery of this letter.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Signature of Owner

2

This form has been provided by DCRA for the purpose of demonstrating a permit applicant's compliance with the notification and property access requirements of Section 3307 of the Building Code. Compliance with these requirements does not relieve a permit holder, or person causing the work, of any obligations or responsibilities under civil or criminal law to protect an adjoining property from damage.

DCRA/POD/2014

Adjoining Owner's Response

Address of Proposed Work: 1125 7th St NE

Adjacent Property Address: 1123 7th St NE

I do not object to the proposed work plan _____.

Requested access to my property is:

Granted _____
Granted with Conditions _____
*Denied _____

I object to the proposed work plan on the grounds that the proposed work plan will not protect my adjoining property, and I have attached technical support for my objection _____. Following resolution of my objection under Section §3307.2.2.2 of the Building Code, I understand that I will have an opportunity to decide whether or not access to my property will be granted.

_____ Date: _____
Adjoining Owner's Signature

*If access is denied, I understand that (1) I will be responsible for making safe my own property without delay so as not to impede or materially delay the proposed construction; and (2) limited access will still be authorized in the following circumstances:
(a) where a wall or foundation located on a party line or on my property requires underpinning as a result of the proposed work;
(b) where the owner causing the work can provide the underpinning by undertaking the work from his/her/its property, even if the footing extends onto my property; and (c) where extension of the footing is required to stabilize and support my building, and to avoid unreasonable delay in excavation and development of the permitted project.

3 *This form has been provided by DCRA for the purpose of demonstrating a permit applicant's compliance with the notification and property access requirements of Section 3307 of the Building Code. Compliance with these requirements does not relieve a permit holder, or person causing the work, of any obligations or responsibilities under civil or criminal law to protect an adjoining property from damage.*

DCRA/POD/2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 11, 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

Esther McGraw
Interim General Counsel
Department of Consumer and Regulatory Affairs
esther.mcgraw2 @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