

DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT  
441 4<sup>th</sup> Street, N.W.  
Washington, D.C. 20001

Appeal of Advisory Neighborhood Commission 6C

BZA Appeal No. 19550

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS’**  
**PRE-HEARING STATEMENT**

The D.C. Department of Consumer and Regulatory Affairs (DCRA) respectfully requests that the Board of Zoning Adjustment (Board) deny this appeal for the following reasons:

Appellant Advisory Neighborhood Commission 6C (ANC 6C) alleges that the Zoning Administrator (ZA) erroneously issued permit B1805207 (Revised Permit), which allowed the Permit Holder, Atlas Squared, LLC, to renovate and convert 1125 7th Street, N.E. (Property) from an existing single-family dwelling to a two-unit townhouse. (Attachment A – the Revised Permit.) In support of its allegation, Appellant claims that five provisions of the 2016 Zoning Regulations<sup>1</sup> were violated.<sup>2</sup> DCRA’s position is that the Zoning Administrator correctly issued the Revised Permit after determining that the drawings and supporting documents were compliant with the Zoning Regulations.

**FACTUAL AND PROCEDURAL BACKGROUND**

On March 31, 2017, DCRA issued building permit B1706219 (Permit), which authorized the Permit Holder, Atlas Squared, LLC, to renovate 1125 7th Street, N.E. from “an existing single family dwelling unit to a 2-unit separate townhouse.” (Attachment B –Permit.) On May 31, 2017, shortly after the issuance of the Permit, Appellant filed this appeal alleging that the Permit was issued erroneously.<sup>3</sup> On October 20, 2017, the Board granted Intervenor status to

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<sup>1</sup> Title 11 of the District of Columbia Municipal Regulations.

<sup>2</sup> BZA Appeal 19550 - Exhibit 46.

<sup>3</sup> BZA Appeal 19550 - Exhibit 3.

Mr. Cummins (Intervenor), the owner of 1123 7th Street, N.E., which is an adjoining row home to the Property. On February 16, 2018, the Permit Holder applied for a revision to the Permit, where the gross square footage of the Property was identical to the Permit.<sup>4</sup>

On April 18, 2018, Appellant filed its Pre-Hearing Statement based solely on the Permit.<sup>5</sup> On that same day, DCRA issued the Revised Permit B1805207, which changed the manner in which the construction on the Property would occur. Following the issuance of the Revised Permit, DCRA filed a Motion to Incorporate the Revised Permit into this appeal and a Motion to Continue the May 9 Hearing to allow the Appellant and the Intervenor an opportunity to review the Revised Permit.<sup>6</sup> On May 9, 2018, the Board incorporated the Revised Permit into this appeal. On June 25, 2018, Appellant filed his second pre-hearing statement<sup>7</sup> and raised the following issues:

- (i) Whether two roof hatches are impermissible penthouses on the roof of the Property;
- (ii) Whether the roof hatches trigger 1:1 penthouse setback requirement;
- (iii) Whether the existing cornice is a rooftop architectural element that cannot be removed from the Property;
- (iv) Whether the rear tower of the townhouse is a second principal building on the Property; and
- (v) Whether the rear tower of the townhouse exceeds the maximum depth permissible by the Zoning Regulations in effect on the date of the Revised Permit's issuance.

DCRA asserts that the Revised Permit was issued in accordance with the Zoning Regulations.

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<sup>4</sup> A minor exception being the bay window projections, which were located in the public space and were not subject to the Zoning Regulations.

<sup>5</sup> BZA Appeal 19550 - Exhibit 35.

<sup>6</sup> BZA Appeal 19550 - Exhibit 36.

<sup>7</sup> BZA Appeal 19550 - Exhibit 46.

## ARGUMENT

Contrary to the Appellant’s assertions, the Zoning Administrator correctly issued the Revised Permit after reviewing the drawings associated with the Revised Permit and the applicable Zoning Regulations.

### **I. Construction of Roof Structures Lower than Four Feet Is Permissible.**

Appellant alleges that the Revised Permit impermissibly allowed construction of two penthouses on the roof of the Property in violation of 11-C DCMR § 1500.4. Appellant is incorrect.

The roof structures, consisting of two roof hatches, are exempt from the requirements of Section C<sup>8</sup> and, therefore, are permissible under the Zoning Regulations. Specifically, 11-C DCMR § 1500.2 establishes that “a penthouse that is less than four feet (4 ft.) in height above a roof or parapet wall shall not be subject to the requirements of this section.”

In the instant case, the parapet wall of the Property is approximately three feet and six inches in height. Both roof hatches<sup>9</sup> are four feet in height, in their closed position, when the hatch is measured vertically from the roof. The hatch is approximately six inches above the parapet wall on the Property.<sup>10</sup> Since both roof hatches are less than the four feet above the parapet wall, both roof hatches are not subject to the penthouse regulations.

For this reason, the Zoning Administrator correctly determined that construction of both roof structures is permissible and issued the Revised Permit.

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<sup>8</sup> All references to a “Section” refer to the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations) unless otherwise specifically indicated.

<sup>9</sup> Depicted as “daylighter roof access hatch” on Sheet A5.2 of the drawings and Sheet A5.1 of the drawings.

<sup>10</sup> Height of the parapet walls is three feet and six inches, as depicted on Sheet A5.3 of the Revised Permit drawings.

**II. The Penthouse Setback Dimensions Are Still Under Review.**

The Property Owner has submitted another revised plan for the roof hatch, which is under Agency review. In the instant case, the Property Owner noticed an error in the plans and submitted revised plans for the construction of the hatch on July 5, 2018. At the time of this writing, the plans have not been approved. Therefore, DCRA reserves the right to amend this argument after the Zoning Administrator has had the opportunity to review the most recent plans and render a decision.

**III. The Permit and the Revised Permit Correctly Allowed the Removal of the Alleged “Cornice.”**

Appellant alleges that the plans contemplate removal of an alleged “cornice” and alleges that the “cornice” is a rooftop architectural element prohibited from removal by 11-E DCMR § 206.1(a). Appellant is incorrect for several reasons.

As an initial matter, Appellant failed to timely raise this issue, and thus the Board should reject this argument.<sup>11</sup> Pursuant to 11-Y DCMR § 302.2, “a zoning appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of.” Here, the Permit authorizing the removal of the cornice on the Property was issued on March 31, 2017. (Attachment C – Sheet A4.1 of the Permit drawings.) Appellant did not raise this issue until its second pre-hearing statement filed on June 25, 2018, well over one year after the Permit was issued.<sup>12</sup> Pursuant to 11-Y DCMR §§ 302.16 through 302.19, Appellant is precluded from introducing new information and documents in an untimely manner, absent permission from the Board. Because Appellant failed to timely raise the issue of the alleged “cornice” removal, Appellant is time-barred from presenting this new argument now.

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<sup>11</sup>BZA Appeal 19550 - Exhibit 20.

<sup>12</sup> Nor did Appellant raise this issue in its first pre-hearing statement filed on September 7, 2017.

Second, the alleged “cornice” on the Property is not a roof top architectural element. The photos included in Appellant’s second pre-hearing statement demonstrate that the “cornice” on the Property is actually a façade element because it is located on the façade approximately one foot below the roof top.<sup>13</sup> Therefore, Appellant’s assertion is without basis because the element at issue is not a roof top element but a façade element.

Third, the Permit complied with the Zoning Regulations in effect at the time of issuance. The Permit was issued on March 31, 2017. At that time, 11 DCMR § 400.24 (1958 Zoning Regulations), as amended by the Zoning Commission (ZC),<sup>14</sup> was in effect and provided that “a roof top architectural element original to the building such as a turret, tower or dormers, shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size.” “Cornice” is not defined in the 1958 Zoning Regulations and is not included in the enumerated list of features prohibited from removal. Thus, there was no prohibition on removal of cornices under the 1958 Zoning Regulations.

This interpretation is supported by subsequent amendments made by the Zoning Commission. Zoning Commission Order No. 14-11B, which was issued on March 27, 2017 and became effective on April 28, 2017, amended 11-E DCMR § 206.1(a)—the 2016 Zoning Regulations successor to 11 DCMR § 400.24 (1958 Zoning Regulations)—by adding “cornice” to the enumerated list of protected features. If the 1958 Zoning Regulations clearly prohibited the removal of cornices, then the Zoning Commission would have no need to add “cornice” to the list of enumerated protected features.

Here, the Permit was issued on March 31, 2017, almost a month before Zoning Commission Order No. 14-11B went into effect on April 28, 2017. Therefore, pursuant to 11-A

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<sup>13</sup> BZA Appeal 19550 - Exhibit 46, p.6.

<sup>14</sup> Zoning Commission Order No. 14-11, issued on June 8, 2015, amending Section § 400.24 of the 1958 Zoning Regulations.

DCMR § 301.4, the Permit was in compliance with the provision of the Zoning Regulations in effect on the date that the Permit was issued. Nor is there any defect with the Revised Permit. Because the Revised Permit did not include any amendments to the removal of the “cornice,” the requirements of Zoning Commission Order No. 14-11B and 11-A DCMR § 301.4(b) were not triggered. Both permits—the Permit and the Revised Permit—complied with the Zoning Regulations.

For these reasons, the Zoning Administrator correctly determined that removal of the “cornice” was permissible and issued the Revised Permit accordingly.

**IV. The Rear Tower of the Townhouse Is a Portion of the Single Joint Building.**

Appellant alleges that the rear tower of the townhouse is a separate building and thus constitutes an illegal second principal building. Appellant is incorrect. The front and rear towers of the townhouse have a meaningful connection between them, which makes it a single building under 11-B DCMR § 309.1.

11-B DCMR § 309.1 provides:

Structures or sections shall be considered parts of a single building if they are joined by a connection that is:

- (a) Fully above grade;
- (b) Enclosed;
- (c) Heated and artificially lit; and
- (d) Either:
  - (1) Common space shared by users of all portions of the building, such as a lobby or recreation room, loading dock or service bay; or
  - (2) Space that is designed and used to provide free and unrestricted passage between separate portions of the building, such as an unrestricted doorway or walkway.

In the instant case, the connection between the front and rear towers satisfies all four zoning requirements, and therefore the two towers comprise a single building. The lobby connecting the towers is designed and intended to provide free and unrestricted passage between the front and rear towers. The connection is enclosed, fully above grade, and heated. The



connection is an artificially lit breezeway with a handrail, providing unrestricted passage between the front and rear towers.<sup>15</sup>

For these reasons, the Zoning Administrator correctly determined that the connection between the front and rear towers satisfies 11-B DCMR § 309.1 and thus the two towers “shall be considered” parts of a single building.

**V. The Rear Tower Is a Permissible Rear Addition.**

Appellant alleges that the rear tower of the townhouse exceeds the maximum allowable depth in an RF-1 zone. Appellant is incorrect. The Permit authorized construction of the rear tower extending further than ten (10) feet beyond the farthest rear wall of the adjacent building because such construction was permitted under the Zoning Regulations in effect at the time that the Permit was issued.

11-E DCMR § 205.4 prohibits buildings in an RF-1 zone from having a rear extension further than ten feet beyond the farthest rear wall of an adjoining property. The Permit authorizing construction of the rear tower was issued on March 31, 2017. At the time the Permit was issued, the Zoning Regulations did not limit rear extensions. Zoning Commission Order No. 14-11B adopted the 10-foot limitation on new rear additions found in 11-E DCMR § 205.4, but it did not become final and effective until April 28, 2017, almost one month after the Permit was issued on March 31, 2017.<sup>16</sup>

Nor is there any defect with the Revised Permit. Because the Revised Permit did not include any amendments to the authorized construction of the rear tower, the requirements of Zoning Commission Order No. 14-11B and 11-A DCMR § 301.4(b) were not triggered. Both permit—the Permit and the Revised Permit—complied with the Zoning Regulations.

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<sup>15</sup> As shown on Sheet A1.1 of the Revised Permit drawings.

<sup>16</sup> Zoning Commission Order No. 14-11B, p. 9, issued on March 27, 2017.

Appellant argues that the construction of the rear tower is impermissible because the vesting provision in 11-A DCMR § 301.14 is inapplicable. This argument is without merit. The Permit authorizing construction of the rear tower was issued on March 31, 2017, well before the ten-foot limitation became final and effective on April 28, 2017. Given that the Permit Holder did not submit any amendments to the construction of the rear tower, the Revised Permit correctly allowed for the construction of the rear tower.

**VI. DCRA Reserves the Right to Supplement or Amend Its Pre-Hearing Statement.**

As mentioned above in Part II, the Property Owner submitted revised plans to DCRA on July 5, 2018. These revised plans may affect the Agency’s arguments outlined above. Accordingly, DCRA reserves the right to supplement or amend this Pre-Hearing Statement after the Zoning Administrator has had an opportunity to review the revised plans and render a decision. In conjunction with this Pre-Hearing Statement, DCRA has filed a “Motion For Extension of Time to File an Amended Pre-Hearing Statement Until August 3, 2018.”

**CONCLUSION**

For the foregoing reasons, DCRA respectfully requests that the Board (1) affirm that the Zoning Administrator correctly issued the Revised Permit B1805207; and (2) deny this appeal.

Respectfully submitted,

ESTHER YONG MCGRAW  
General Counsel  
Department of Consumer and Regulatory Affairs

Date: 07/11/2018

/s/ Adrienne Lord-Sorensen  
ADRIANNE LORD-SORENSEN (DC Bar # 493865)  
Assistant General Counsel  
Department of Consumer and Regulatory Affairs  
Office of the General Counsel



1100 4th Street, S.W., 5th Floor  
Washington, D.C. 20024  
(202) 442-8401 (office)  
(202) 442-9447 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of July 2018 a copy of the foregoing DCRA’s Pre-hearing Statement was served via electronic mail to:

Mark Eckenwiler, Single Member Advisory  
Neighborhood Commissioner, ANC 6C04  
312 E Street, N.E.  
Washington, D.C. 20002  
[6C04@anc.dc.gov](mailto:6C04@anc.dc.gov)  
*Appellant*

Karen Wirt, Chair  
Advisory Neighborhood Commission 6C  
234 E Street, N.E.  
Washington, D.C. 20002  
[6C02@anc.dc.gov](mailto:6C02@anc.dc.gov)  
*Appellant*

John Patrick Brown, Jr., Esq.  
Greenstein DeLorme & Luchs, P.C.  
1200 19<sup>th</sup> Street, N.W., 3<sup>rd</sup> Floor  
Washington, D.C. 20036  
[jpb@gdllaw.com](mailto:jpb@gdllaw.com)  
*Counsel for Permit Holder*

Heather Edelman, Single Member Advisory  
Neighborhood Commissioner, ANC 6C06  
1152 5th Street, N.E.  
Washington, D.C. 20002  
[6C06@anc.dc.gov](mailto:6C06@anc.dc.gov)  
*Appellant*

Kevin Cummins  
1123 7th Street N.E.  
Washington, D.C. 20002  
[kevin.cummins11@gmail.com](mailto:kevin.cummins11@gmail.com)  
*Intervenor*

/s/ Adrienne Lord-Sorensen  
Adrienne Lord-Sorensen

# **ATTACHMENT A**



Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



B

BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 04/18/2018

PERMIT NO. B1805207

Expiration Date: 04/18/2019

<b>Address of Project:</b> 1125 7TH ST NE	<b>Zone:</b> RF-1	<b>Ward:</b> 6	<b>Square:</b> 0886	<b>Suffix:</b>	<b>Lot:</b> 0035
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<b>Description Of Work:</b> REVISION: REVISE Building Permit B1706219 to renovate the converted single-family dwelling to a two-unit flat. No change or expansion to the building or zoning envelope ****Route to DDOT per Sarah B-Carr
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<b>Permission Is Hereby Granted To:</b> Atlas Squared Llc	<b>Owner Address:</b> 7926 JONES BRANCH DR STE 600 MC LEAN, VA 22102-3373	<b>PERMIT FEE:</b> \$36.30
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<b>Permit Type:</b> Alteration and Repair	<b>Existing Use:</b> Two-Family Flat - R-3	<b>Proposed Use:</b> Two-Family Flat - R-3	<b>Building Construction Type</b> TYPE V - Any Materials Permitted	<b>Plans:</b>
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<b>Agent Name:</b> Stephanie Erwin	<b>Agent Address:</b> 9413 Gamba Ct Vienna, VA 22182	<b>Existing Dwell Units:</b> 2	<b>Proposed Dwell Units:</b> 2	<b>No. of Stories:</b> 3	<b>Floor(s) Involved:</b> All
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**Conditions/ Restrictions:**  
 Owner must have a wall check approved before calling DCRA for either a foundation or a framing inspection.

**This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year.**  
**All Construction Done According To The Current Building Codes And Zoning Regulations;**  
 As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.

**Lead Paint Abatement**  
 Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to <http://ddoe.dc.gov>, Lead and Healthy Housing.

<b>Director:</b> Melinda Bolling	<i>Melinda Bolling</i>	<b>Permit Clerk:</b> Tiffny Carrington
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TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639  
 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557  
 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.

# **ATTACHMENT B**





Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



B

BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 03/31/2017

PERMIT NO. B1706219

Expiration Date: 03/31/2018

Address of Project: 1125 7TH ST NE	Zone:	Ward: 6	Square: 0886	Suffix:	Lot: 0035
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Description Of Work:  
Revision to building permit B1606543 and building permit B1512853 reflecting underpinning. Renovation of an existing single family dwelling unit to a 2-unit separate townhouse.

Permission Is Hereby Granted To: Stony Creek Homes	Owner Address: 1125 7TH STREET NE 20002	PERMIT FEE: \$36.30
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Permit Type: Alteration and Repair	Existing Use: Single Family	Proposed Use: Flat (Two Family)	Plans:
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Agent Name: Stephanie Erwin	Agent Address: 22182	Existing Dwell Units: 1	Proposed Dwell Units: 2	No. of Stories: 3	Floor(s) Involved:
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Conditions/ Restrictions:

APPLY FOR A WALL CHECK FOR PROPOSED NEW ADDITION.

This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year.

All Construction Done According To The Current Building Codes And Zoning Regulations;

As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.

Lead Paint Abatement  
Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to <http://ddoe.dc.gov>, Lead and Healthy Housing.

Director: Melinda Bolling	Permit Clerk: Joseph Bemby
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TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639  
FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557  
TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.

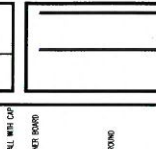
# **ATTACHMENT C**



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
 PERMIT OPERATIONS DIVISION  
 PLANNING AND DESIGN SECTION  
 Permit No. **20220010001**  
 These plans are considered to be prepared by a registered professional and are submitted for review and approval only. They are subject to the provisions of the rules and regulations of the Department of Planning and Design, and are subject to all applicable laws, codes, and regulations. Changes to these plans, including those made in response to the Department's review, shall be made only by a registered professional. All necessary permits are required for the construction of the project.

D.C. ENGINEERING, INC.  
 10530 WARWICK AVENUE, #200  
 FARMINGTON, VA 22040  
 PHONE: (703) 942-2254  
 FAX: (703) 942-2254  
 WWW.DCEINC.COM

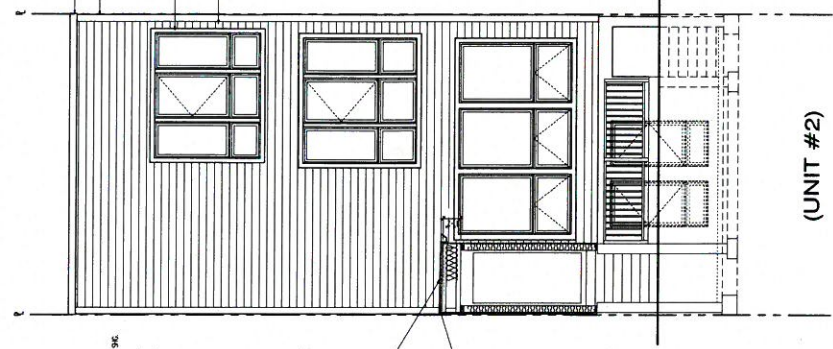
1225 7th St NE - STONY CREEK HOMES  
 FRONT & REAR ELEVATIONS  
 22x34 Plotted at 1/4"=1'-0" - 11x17 Plotted at 1/8" = 1'-0"



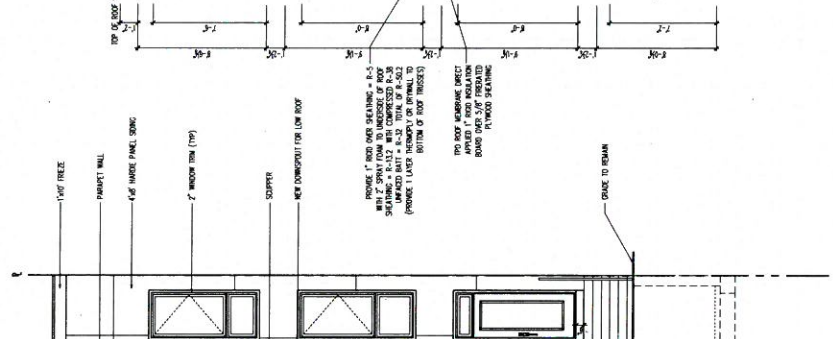
BOARD: METR	DATE: 02/02/17
REV. No. 001	SHEET NO. 001
REV. No. 001	SHEET NO. 001

01.01.17

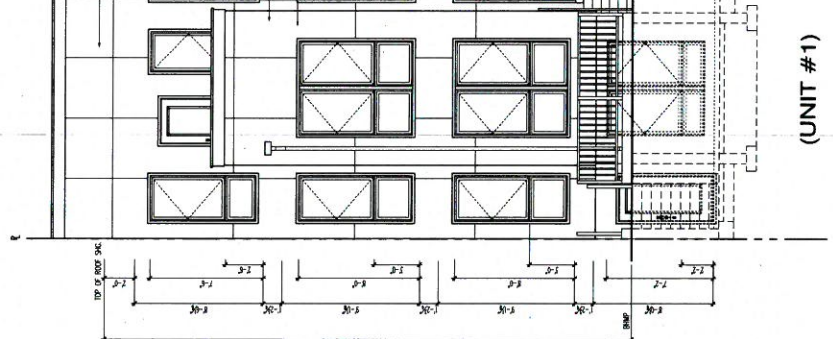
PRET No. A41



(UNIT #1)



(UNIT #2)



EXISTING FRONT ELEVATION  
 SCALE: 1/8"=1'-0"

PROPOSED FRONT ELEVATION  
 SCALE: 1/8"=1'-0"

PROPOSED FRONT ELEVATION  
 SCALE: 1/8"=1'-0"