

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**Appeal No. 19550
(In re 1125 7th St. NE)**

**MEMORANDUM OF ANC 6C
IN OPPOSITION TO THE PROPERTY OWNER'S
MOTION TO DISMISS THE APPEAL AS MOOT**

ANC 6C submits this memorandum in opposition to the motion of property owner Atlas Squared, LLC (“Property Owner”) to dismiss the appeal as moot.

We agree with the Property Owner that at the present time the Property Owner enjoys no legal right to construct according to Permit B1706219 (“Original Permit”). As stated expressly on page 2 of DCRA’s parallel Motion to Stay Deadline to File Pre-Hearing Statement (“Motion to Stay,” case exhibit 41), “the Permit Holder is not allowed to choose between the Original Permit and the Revised Permit [B1805207]” issued on April 18.

However, there remains a related but unanswered question. ANC 6C anticipates taking an appeal from the issuance of the Revised Permit; if the Revised Permit (or any successor to it) were to be invalidated as a result, it is unclear to us whether the Original Permit could at that point spring back into existence.

Accordingly, we posed this question in writing to DCRA on May 2 in the hopes of receiving a definitive answer. As reflected at Tab A, however, the agency declined to provide any additional clarification, responding instead that the statements in the Motion to Stay speak for themselves.

Were DCRA to provide the requested explicit assurances, ANC 6C would consent to the Motion to Dismiss, rendering the other pending motions irrelevant and clearing the way for the filing of a new appeal of the Revised Permit.

If, on the other hand, DCRA were to clarify that the Original Permit *could* spring back into existence upon invalidation of any successor revised permit—or even if DCRA continued to offer no opinion on the question—ANC 6C would request that the Board make clear on the record that this appeal could be re-opened after dismissal. It would be fundamentally unfair for this appeal to be dismissed as moot, with no way to revive or refile it, if the supposedly moot Original Permit could come back to life at some future date. ANC 6C cannot consent to dismissal absent assurances from DCRA or the Board.

We remain open to further communication from DCRA between now and our scheduled appearance on May 9, and will advise the Board promptly of any change in our position. Until

that happens, however, ANC 6C opposes the granting of the Property Owner's Motion to Dismiss.

Respectfully submitted,



Mark Eckenwiler
Commissioner, ANC 6C04
(as authorized representative
for ANC 6C)

May 7, 2018

CERTIFICATE OF SERVICE

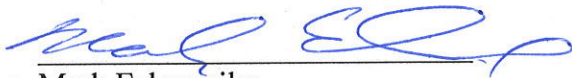
I hereby certify that on May 7, 2018 I served a copy of ANC 6C's Memorandum in Opposition to the Property Owner's Motion to Dismiss the Appeal as Moot on the following persons by electronic mail:

Matt LeGrant
Zoning Administrator
DCRA
matthew.legrant@dc.gov

Esther McGraw, Esq.
Interim General Counsel
esther.mcgraw2@dc.gov
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adrienne.lord-sorensen@dc.gov
Anna Kaprelova, Esq.
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DCRA

John Patrick Brown, Jr., Esq.
jpb@gdllaw.com
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lmb@gdllaw.com
Greenstein DeLorme & Luchs, P.C.
(counsel for Atlas Squared, LLC)

Kevin Cummins
Intervenor
1123 7th St. NE
kevin.cummins11@gmail.com


Mark Eckenwiler

Attachment A

RE: RE: BZA Appeal No. 19550

Kaprelova, Anna P. (DCRA)

Wed 5/2/2018 4:49 PM

To: Eckenwiler, Mark (SMD 6C04) <6C04@anc.dc.gov>; John Patrick Brown Jr. <JPB@gdllaw.com>; Kevin Cummins <kevin.cummins11@gmail.com>;

Cc: Lord-Sorensen, Adrienne (DCRA) <adrienne.lord-sorensen@dc.gov>; McGraw, Esther (DCRA) <Esther.McGraw2@dc.gov>; Wyke-Ransome, April (DCRA) <april.wyke-ransome@dc.gov>;

Commissioner Eckenwiler,

Thank you for your prompt response.

We believe the language of Paragraph 3 of DCRA's Motion to Stay Deadline sufficiently explains the Agency's position on this point and eliminates any lingering subjective uncertainty.

Good luck at the meeting tonight!

Respectfully,

Anna P. Kaprelova | Adviser to OCI

Office of Civil Infractions

Detailed to Office of General Counsel

Department of Consumer and Regulatory Affairs

Admitted to practice in Maryland

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From: Eckenwiler, Mark (SMD 6C04)

Sent: Wednesday, May 02, 2018 4:17 PM

To: Kaprelova, Anna P. (DCRA); John Patrick Brown Jr.; Kevin Cummins

Cc: Lord-Sorensen, Adrienne (DCRA); McGraw, Esther (DCRA); Wyke-Ransome, April (DCRA)

Subject: Re: RE: BZA Appeal No. 19550

Ms. Kaprelova,

Thank you. That answers most of it.

Can you address the question about the prospect of the original permit springing back to life in the event the revised permit (or any subsequent revision) is invalidated, revoked, surrendered, etc.? Paragraph 3 seems to imply that the original permit would not be revived in those--or, indeed, any--circumstances, but I'd appreciate it if you could eliminate any lingering uncertainty on this point.

I have a cmte mtg to chair tonight & will be occupied for the rest of the afternoon & evening, so please understand if I don't reply further until tmw morning. Thanks. (If it puts respondents' minds at ease, I'll consent to extend the time for filing your PHSes by one day so nobody feels anxious about today's deadline.)

Regards,

Mark Eckenwiler
Commissioner, ANC 6C04
www.anc6c.org

From: Kaprelova, Anna P. (DCRA)
Sent: Wednesday, May 2, 2018 3:27 PM
To: Eckenwiler, Mark (SMD 6C04); John Patrick Brown Jr.; Kevin Cummins
Cc: Lord-Sorensen, Adrienne (DCRA); McGraw, Esther (DCRA); Wyke-Ransome, April (DCRA)
Subject: RE: RE: BZA Appeal No. 19550

Commissioner Eckenwiler,

Please take a look at DCRA's Motion to Stay the Deadline, specifically third paragraph, which, we believe, addresses the questions you have raised.

Respectfully,

Anna P. Kaprelova | Adviser to OCI
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From: Eckenwiler, Mark (SMD 6C04)
Sent: Wednesday, May 02, 2018 3:19 PM
To: John Patrick Brown Jr.; Kevin Cummins
Cc: Kaprelova, Anna P. (DCRA); Lord-Sorensen, Adrienne (DCRA); McGraw, Esther (DCRA); Wyke-Ransome, April (DCRA)
Subject: Re: RE: BZA Appeal No. 19550

Pat,

I'd first need to see DCRA put a statement into the record along the lines we discussed. Until then, I'm not able to consent. (Also, I think it's more accurate to say that the motion was your suggestion, not ours.)

So it's expressly reflected in this email chain, here's the operative language from my earlier reply to your proposal:

if DCRA states on the record that the ability to build in conformity with the original permit, standing alone, has been permanently extinguished. That is, a) Atlas Squared may not now build according to it (apart from the ability to build under the revised/amended permit), and b) the original permit would not spring back to life if the revised permit (or any successor) were later revoked/held to be improperly issued.

Thanks.

Mark Eckenwiler
Commissioner, ANC 6C04
www.anc6c.org

From: John Patrick Brown Jr. <JPB@gdllaw.com>
Sent: Wednesday, May 2, 2018 3:06 PM
To: Kevin Cummins; Eckenwiler, Mark (SMD 6C04)
Cc: Kaprelova, Anna P. (DCRA); Lord-Sorensen, Adrienne (DCRA); McGraw, Esther (DCRA); Wyke-Ransome, April (DCRA)
Subject: RE: RE: BZA Appeal No. 19550

All, Based on ANC 6C's suggestion, I am preparing a Motion to dismiss as moot on behalf Atlas Squared, LLC. Please feel free to consent or not. Thanks, Pat

John Patrick Brown, Jr., Esq.
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administrator@gdllaw.com <<mailto:administrator@gdllaw.com>>

THANK YOU.

From: Kevin Cummins [<mailto:kevin.cummins11@gmail.com>]
Sent: Wednesday, May 2, 2018 2:33 PM

To: Eckenwiler, Mark (SMD 6C04)

Cc: Kaprelova, Anna P. (DCRA); John Patrick Brown Jr.; Lord-Sorensen, Adrienne (DCRA); McGraw, Esther (DCRA); Wyke-Ransome, April (DCRA)

Subject: Re: RE: BZA Appeal No. 19550

Ms. Kaprelova, Mr. Brown,

For the reasons provided in my written opposition to DCRA's two recent motions, I do not consent to the proposed stay of the deadline to file a pre-hearing statement.

Regards,

Kevin

Kevin Cummins

On Tue, May 1, 2018 at 3:41 PM, Eckenwiler, Mark (SMD 6C04) <6C04@anc.dc.gov> wrote:
Ms. Kaprelova,

For the reasons given in our written opposition to DCRA's two recent motions, ANC 6C does not consent to the proposed stay.

Mark Eckenwiler
Commissioner, ANC 6C04
www.anc6c.org

From: Kaprelova, Anna P. (DCRA)

Sent: Tuesday, May 1, 2018 3:29 PM

To: Eckenwiler, Mark (SMD 6C04); jpb@gdllaw.com; kevin.cummins11@gmail.com

Cc: Lord-Sorensen, Adrienne (DCRA); McGraw, Esther (DCRA); Wyke-Ransome, April (DCRA)

Subject: RE: BZA Appeal No. 19550

Commissioner Eckenwiler, Mr. Brown, and Mr. Cummins,

DCRA's due date for filing its Pre-Hearing Statement is tomorrow. Since DCRA's Partial Consent Motion to Continue Hearing to May 23, 2018 and DCRA's Partial Consent Motion to Incorporate by Reference Revised Permit will be addressed by the Board on May 9, 2018, DCRA will be filing a Motion to Stay Deadline to File Agency's Pre-Hearing Statement until Resolution of Pending Motions today.

Please advise as to whether you consent to a requested stay of the deadline to file DCRA's Pre-Hearing Statement.

Respectfully,

Anna P. Kaprelova | Adviser to OCI

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