

**BEFORE THE ZONING COMMISSION  
OF THE DISTRICT OF COLUMBIA**

**Appeal of ANC 6C**

**BZA Appeal No. 19550  
Closing Arguments: October 31, 2018  
ANC 6C**

**PROPERTY OWNER, ATLAS SQUARED, LLC  
POST-HEARING SUBMISSION IN OPPOSITION TO APPEAL NO. 19550**

The Property Owner, Atlas Squared, LLC (“Atlas”), by and through undersigned counsel, respectfully submits this Post-Hearing Submission in Opposition to the Revised Appeal of ANC 6C of the Department of Consumer and Regulatory Affairs (“DCRA”) issuance of Building Permit B1706219 (March 31, 2017) (“Original Permit”), Building Permit No. 1805207 (April 18, 2018) (“Revised Permit”), and Building Permit B1811245 (August 2, 2018) (“Second Revised Permit”) authorizing renovation, addition to and conversion of an existing, vacant and uninhabitable single-family dwelling to a two-unit flat (“Project”) in RF-1 Zone at 1125 7<sup>th</sup> Street, N.E. (Square 886, Lot 35 (“Property”).

**I. CURRENT APPEAL**

ANC 6C filed this Appeal on May 30, 2017 based on the Original Permit raising a lengthy list of alleged violations of the Zoning Regulations. As a result of the Revised Permit and Second Revised Permit, the issues in this Appeal have been narrowed by ANC 6C to include only the following issues as set forth in its September 5, 2018 Reply Memorandum (BZA Exhibit 59):

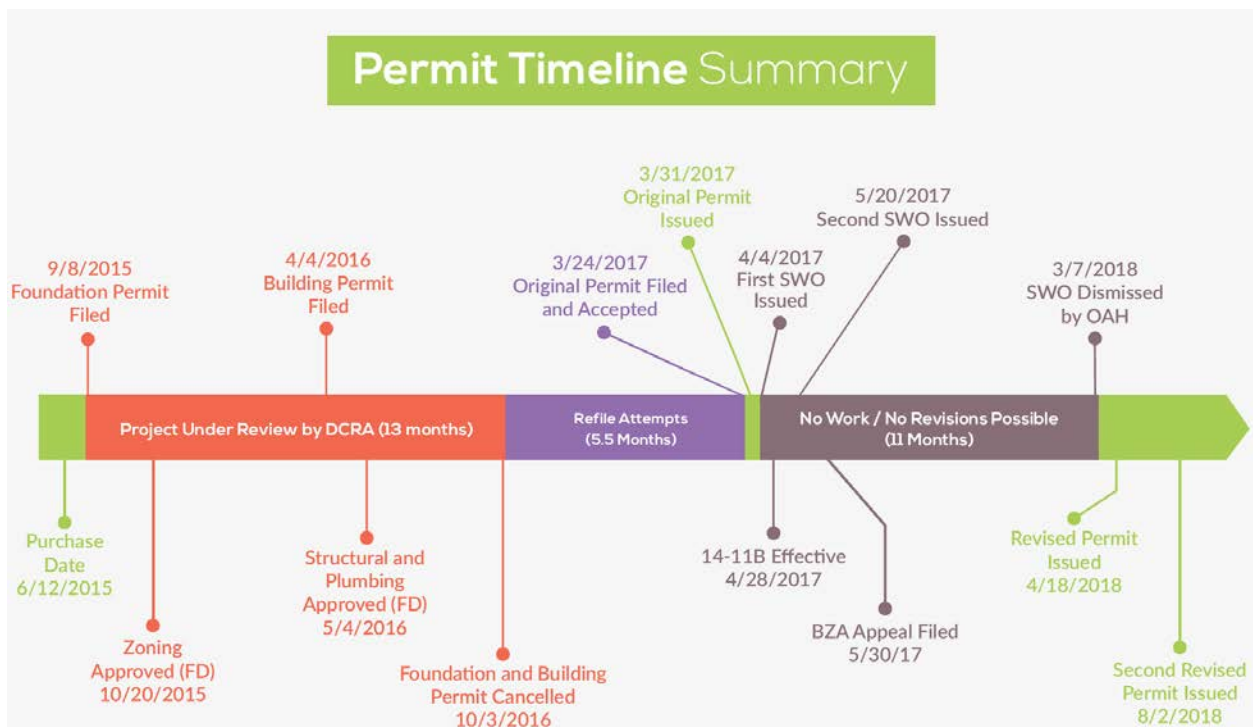
1. The Roof Guardrail(s) violate the Penthouse Setback Requirements;
2. Removal of the Rooftop Architectural Element violates E §206;
3. Illegal construction of a Second Principal Building; and
4. Illegal Construction of Rear Addition Greater than 10 Feet.

## II. EXECUTIVE SUMMARY

In opposition to this Appeal, Atlas states:

1. The Roof Guardrail and Façade Trim Removal Appeals are Untimely and Must be Dismissed.
2. The Permitted Rear Addition is Not Subject to Ten Foot Limit of E 205.4
3. The Permitted Project is Physically and Functionally a Single Building
4. Removal of the Façade Trim is Not Prohibited Under E-206.1(a)
5. Roof Guardrail(s) is Not subject to Penthouse Setback Requirements

## III. PERMITTING HISTORY



In **June 2015**, Atlas acquired the Property – a vacant and uninhabitable two-story single family row dwelling. Almost immediately, Atlas began the design and phased, lengthy and exhaustive permitting process in accordance with the applicable RF-1 restrictions to convert the existing single-family dwelling to a two-unit flat.

On **September 18, 2015**, Atlas electronically filed Building Permit Application B1512853 for “excavation, underpinning and foundation only - of existing single family row house (“Foundation Permit Application”). The Foundation Permit Application was under active review, comment and revision by DCRA and Atlas for more than one (1) year (September 2015 to October 2016), including approval by Zoning (10/20/2015), Structural and Plumbing. BZA Exhibit 47E.

On **April 4, 2016**, Atlas electronically filed as Building Permit Application B1606543 for “Renovation and addition to existing single-family to include mechanical, electrical and plumbing upgrades. Changed from single-family to two family flat.” (“2016 Permit Application”). The 2016 Permit Application was under active review, comment and revision by DCRA and Atlas for six (6) months (April 2016 to October 2016). Id.

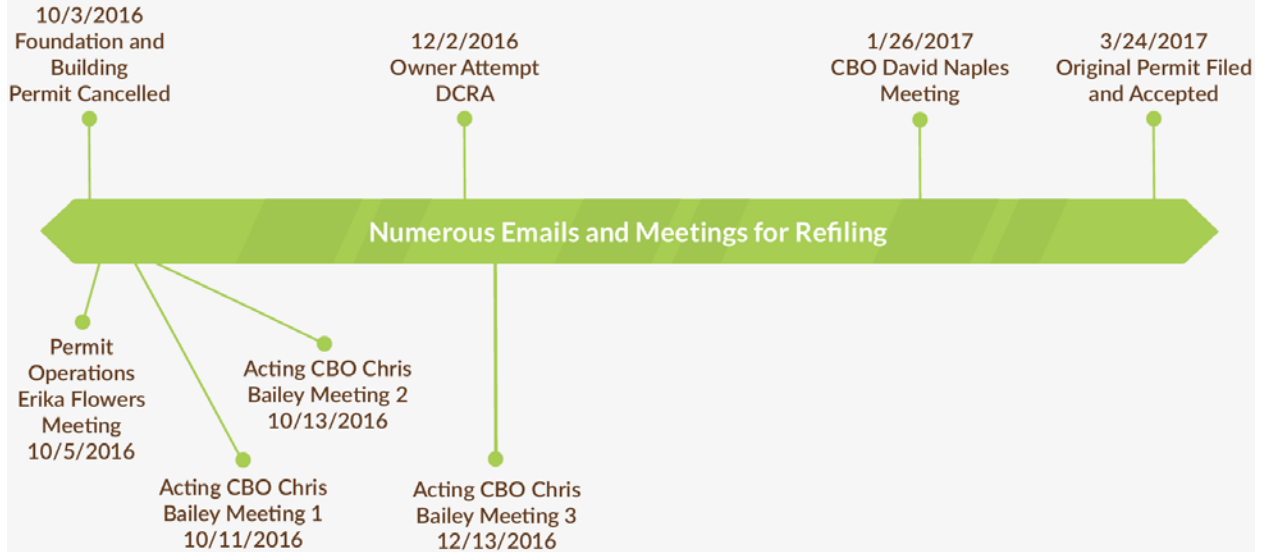
On **October 3, 2016**, DCRA unilaterally and without notice, explanation or good cause “cancelled” the Foundation Permit Application and 2016 Permit Application. Id.

From **October 5, 2016 through March 23, 2017**, Atlas met numerous times with Senior DCRA Permitting officials attempting to refile the two cancelled permit applications.

Finally, after consultation with DCRA regarding the “cancelled” permit applications, Atlas was instructed to refile the permit applications as a single new application.

# REFILE ATTEMPTS

## Permit Cancellation to Original Permit Filing



On **March 23, 2017**, Atlas filed electronically and DCRA “Projectdox Accepted” Building Permit Application B1706219. In order to correct the unilateral cancellation of the Foundation Permit and 2016 Permit Applications, Atlas incorporated both applications with no substantial changes into a consolidated set of permit plans for resubmission to DCRA, including the rear addition.

On **March 24, 2017**, DCRA determined that Building Permit Application B1706219 was “complete”. Testimony of Zoning Administrator on September 19, 2018.

On **March 31, 2017**, DCRA issued Building Permit B1706219 to Atlas (“Original Permit”). As a result of the extensive prior review, comment, revisions and DCRA approvals, expedited issuance of this permit was completed by DCRA.

<b>“ORIGINAL PERMIT”</b>
B1706219
Issued March 31, 2017
Accepted as Complete March 24, 2017
“Revision to Building Permit B1606543 and Building Permit B1512853 reflecting underpinning. Renovation of existing single-family dwelling unit to a 2-unit separate townhouse.”
<b>HIGHLIGHTS:</b> <ul style="list-style-type: none"> <li>▪ Removal of Façade Trim</li> <li>▪ Rear Addition</li> <li>▪ Above grade meaningful connection</li> <li>▪ Rooftop Guardrail</li> </ul>

On **May 30, 2017**, ANC 6C filed BZA Appeal 19550 of the Original Permit.

From **April 4, 2017 through March 7, 2018**, For at least eleven (11) months, the First and Second Stop Work Orders and Notice to Revoke constituted a “hold” on any permit approvals and/or revisions at the Property and/or any construction activity by Atlas.

On **April 18, 2018**, DCRA issued Building Permit B1805207 for “REVISION: REVISE Building Permit B1706219 [Original Permit] to renovate the converted single-family dwelling to a two-unit flat. No change or expansion to the building or zoning envelope. (“Revised Permit”).

<b>“REVISED PERMIT”</b>
B1805207
Issued April 18, 2018
“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.”
<p><b><u>No Change to Approved:</u></b></p> <ul style="list-style-type: none"> <li>▪ Rear Addition</li> <li>▪ Footprint of Above grade connection</li> <li>▪ Building Footprint</li> <li>▪ Removal of Façade Trim</li> <li>▪ Rooftop Guardrail</li> </ul> <p><b><u>Revised:</u></b></p> <ul style="list-style-type: none"> <li>▪ Interior unit reconfiguration</li> <li>▪ Lobby stair design</li> <li>▪ Removed wetbar and laundry</li> <li>▪ Revised roof hatch style</li> <li>▪ Relocated roof top mechanical</li> <li>▪ Bay projection extended</li> <li>▪ Facade materials changed to brick</li> </ul>

On **August 2, 2018**, DCRA issued Building Permit B1811245 as a Revision to B1706219 [Original Permit] and B1805207 [Revised Permit]” to: 1) incorporate the footers and underpinning in the Original Permit; 2) update site conditions for the newly constructed rear addition at 1127 7<sup>th</sup> Street, NE;<sup>1</sup> and 3) incorporate the roof hatches approved in the Original Permit (“Second Revised Permit Application”).

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<sup>1</sup> The rear addition at 1127 7<sup>th</sup> Street, N.E. was fully permitted and constructed after the Original Permit was issued to Atlas.

<b>“SECOND REVISED PERMIT”</b>
B1811245
Issued August 2, 2018
Revision to B1805207 to REVISE FOOTERS AND ROOF TOP HATCHES, FOOTERS PREVIOUSLY APPROVED UNDER B1706219. AS BUILTS UPDATED TO REFLECT CONDITIONS IN THE FIELD.
<p><b><u>No Change to Approved:</u></b></p> <ul style="list-style-type: none"> <li>▪ Rear Addition</li> <li>▪ Above grade connection</li> <li>▪ Building Footprint</li> <li>▪ Removal of Façade Trim</li> <li>▪ Rooftop Guardrail</li> </ul> <p><b><u>Revised:</u></b></p> <ul style="list-style-type: none"> <li>▪ Roof hatch Style</li> <li>▪ Showed new construction at 1127 7<sup>th</sup> Street</li> </ul>

#### IV. ARGUMENT

**1. The Roof Guardrail and Façade Trim Removal Appeals are Untimely and Must Be Dismissed.**

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The D.C. Court of Appeals has established that the Board is required to consider the threshold jurisdictional issue of timeliness prior to the merits of an appeal. *See Basken v. D.C. Bd. of Zoning Adjustment*, 946 A.2d 356, 364 (D.C. 2008) (upholding the Board’s decision to dismiss an appeal as untimely at a preliminary hearing where the Board did not hear the merits of the case).

Further, D.C. Court of Appeals case precedent is clear that “if the appeal was not timely filed, the Board was without power to consider” the merits of the case. *See Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 1121-1122, (2001); *see also Mendelson v. D.C. Bd. of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994) (“The timely filing of an appeal with the BZA is mandatory and jurisdictional.”); *see also Woodley Park Community Assoc. v. D.C. Bd. of Zoning Adjustment*, 490 A.2d 628, 635 (D.C. 1985) (When an appeal is untimely filed the Board is “without power to consider it.”) *See Woodley Park Community Assoc. v. D.C. Bd. of Zoning Adjustment*, 490 A.2d 628, 635 (D.C. 1985).

The facts and the law are clear that Appellant, Advisory Neighborhood Commission 6C failed to comply with Subtitle Y §§ 302.2 and 302.5 and file this appeal with respect to the roof guardrail and removal of the façade trim within the required sixty days of **March 31, 2017** – the date DCRA issued the Original Permit. The Original Permit included approval for both the rooftop guardrail running perpendicular to the parapet wall and removal of the façade trim and put ANC 6C on actual notice.

Based on the Original Permit, ANC 6C filed this Appeal on May 30, 2017. In its appeal Statement, ANC 6C raised four alleged violations (pervious surface, chimney setback, excessive number of units, and construction of a second illegal principal building). BZA Exhibit 3. On September 7, 2017, ANC 6C filed its first Prehearing Statement which recognized that the Original Permit approved “total removal of the front façade”, but did not allege that this violated the Zoning Regulations. Also, ANC 6C did not discuss or allege any violation related to the perpendicular roof guardrail approved by the Original Permit. BZA Exhibit 20. Again, in its April 18, 2018 Revised Prehearing Statement, ANC 6C failed to raise the removal of the facade trim and the rooftop guardrail as violations of the Zoning Regulations. BZA Exhibit 35. Not



until its Second Prehearing Statement on June 25, 2018 did ANC 6C first challenge the removal of the façade trim and roof guardrail first approved by the Original Permit.

Raising these issues for the first time almost fifteen (15) months after the Original Permit was issued and thirteen (13) months after filing its Appeal is unquestionably untimely. Based on clear D.C. Court of Appeals case law, the Board does not have the power to consider the merits of these issues on appeal, and they should be dismissed.

The timeliness of the Appeals must comply with both the sixty (60) day rule of Y §302.2 and the “first writing” rule of Y §302.5.

Y §302.2 provides:

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, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier.

Y §302.5 modifies Y §302.5 and provides:

302.5 A zoning appeal may only be taken from the first writing that reflects the administrative decision complained of to which the appellant had notice. No subsequent document, including a building permit or certificate of occupancy, may be appealed unless the document modifies or reverses the original decision or reflects a new decision

Y §§302.2, 302.5 (ZR2016) (Emphasis added)

In this case, the “first writing” that reflects the administrative decision complained of occurred on March 31, 2017, when the Original Permit was issued. Nothing in the Revised Permit and Second Revised Permit altered or in any way disturbed the approval granted in the Original Permit for removal of the façade trim and perpendicular roof guard rail that would allow ANC 6C a second and untimely bite of the apple.

Under the clear facts of the Original Permit as the “first writing”, the 60-day time for appeal began on March 31, 2017 and expired on May 31, 2017. Both Appeal issues were raised after the March 31, 2017 deadline and are untimely. As a result, the Board lacks jurisdiction to hear the Appeals and they must be dismissed with prejudice.

In this case, the Board’s finding of untimeliness is entirely consistent with its recent dismissal of BZA Appeal No. 19839 of ANC 8A (October 3, 2018) under very similar relevant circumstances. Although a written order has not been issued, the video of the Public Meeting, shows that Board found the appeal untimely under Y-302.2 and 302.5. Specifically, the 60-day appeal clock began to run with the issuance of the first building permit and was not tolled or extended by subsequent permit modifications that made no material or substantial modifications.

#### **Appellant’s Burden of Proof**

In bringing this Appeal, ANC 6C bears the exclusive and heavy burden to show that DCRA and the Zoning Administrator acted unreasonably or in an arbitrary or capricious manner, abused its discretion or otherwise committed an error in determining that the Original Permit, Revised Permit and/or Second Revised Permit complied with the Zoning Regulations. In reviewing this Appeal, the Board is well aware of the limited scope of its inquiry. This is not properly a review of the design, impact or desirability of the permitted project; the DCRA permitting operations; compliance with the Building Code; or any other dispute with DCRA and/or Atlas.

As more fully analyzed below, ANC 6C has failed to establish by clear and convincing evidence any of the alleged violations of the Zoning Regulations.

2. **The Permitted Rear Addition is Not Subject to the Ten (10) Foot Limit of E-205.4.**

It is undisputed that the Original Permit approved a rear addition greater than then (10) feet. The Original Permit was issued on March 31, 2017, before the ten foot rear addition restriction became effective on April 28, 2017 under Z.C. 14-11B. Issuance of the Original Permit fully vested Atlas' right to construct the rear addition as approved under the Vesting Rule of A-§301.4 which provides:

301.4 Except as provided in Subtitle A §§ 301.9 through 301.15, any construction authorized by a permit may be carried to completion pursuant to the provisions of this title in effect on the date that the permit is issued, subject to the following conditions:

- (a) The permit holder shall begin construction work within two (2) years of the date on which the permit is issued; and
- (b) Any amendment of the permit shall comply with the provisions of this title in effect on the date the permit is amended.

As a result, B-301.4 authorized Atlas to complete all the work authorized by the Original Permit, to final completion. This absolute vesting is subject only to the two enumerated conditions. First, the deadline for beginning work will not expire until March 30, 2019. Second, there has been no amendment to the Original Permit that would trigger compliance with the subsequently enacted 10 foot limit on rear additions (or "cornice" rule).

As the Zoning Administrator, and the former Zoning Administrator, clearly testified, the 301.4(b) provision of the general vesting rule was never intended to and has not been interpreted or applied to any and/or all amendments to a vested building permit. The 301.4(b) limitation must be understood and is limited by the context of the controlling vesting rule – **“any construction authorized by a permit may be carried to completion pursuant to the provisions of this title in effect on the date the permit is issued.”**

Specifically, the rule itself, common sense and practice dictate that not all permit amendments rise to the level requiring compliance with any subsequent change to the Zoning Regulations. As a result, the restriction of 301.4(b) has been routinely and dating back to similar to provisions in the 1958 Regulations limited to only “substantial” or “material” changes to the previously approved permit.

Applied to this specific situation, the Zoning Administrator correctly determined that the rear addition approved by the Original Permit was vested and that the Revised Permit and Second Revised Permit did not include material or substantial changes that would trigger the retroactive application of the 10 foot rear addition restriction to work that was allowed to be carried to completion. Significantly, the two permit revisions did not change the approved building or zoning envelope and more to point made no change in the rear addition previously authorized. The changes sought and approved were minor and related to the interior design and configuration of the building, exterior materials, work in public space, mechanical equipment and design of the roof hatch (not the perpendicular guardrail) – all determined to not be material or substantial. A more detailed side-by-side comparison of the permit revisions is provided by Teass/Warren Architects, Exhibit A, Sheets 2-13.

In addition to the general vesting Rule of A-301.4, the Original Permit was also fully vested under the additional vesting rule specific to the 10 foot restriction on rear additions.

Critically, in enacting E 205.4, the Zoning Commission included a very additional specific vesting provision in A 301.14

301.14 Notwithstanding Subtitle A § 301.4, Subtitle D §§ 306.3, 306.4, 706.3, 706.4, 1006.2, 1006.3 1206.3, and 1206.4, and Subtitle E §§ 205.4 and 205.5, a rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any

adjoining principal residential building on an adjoining property **provided that the building permit application for such construction was filed and accepted as complete by the Department of Consumer and Regulatory Affairs on or before March 27, 2017 and not substantially changed after filing.** (Emphasis Added)

Building Permit Application B1706219 which was filed electronically by Atlas on March 23, 2017 and accepted as complete by DCRA on March 24, 2017. On its face, this permit application was also vested prior to March 27, 2017. ANC 6C incorrectly claims that this application was not accepted as complete by DCRA until March 29, 2017. Significantly, DCRA's official records and sworn testimony clearly establish that this application was accepted as complete on March 24, 2017.

**3. The Permitted Project is Physically and Functionally a Single Building.**

In the RF-1 zone, a flat or two dwelling units in a single principal structure is permitted as a matter-of-right. U-301.1(b). As shown on the approved plans, the Revised Permit authorizes two-dwelling units (3 stories with cellar and roof top decks) connected by an above grade connection. Unit #1 (front) is a five bedroom, four and a half bathroom single-family dwelling unit. Similarly, Unit #2 (rear) is a five bedroom, four and a half bathroom single-family dwelling unit. The Board has found these types of "family-sized" larger dwelling units as desirous, in demand and neighborhood benefiting in the RF-1 Zone.

To assist the Board, Atlas has created a short video simulation demonstrating the design, function and benefit of the "meaningful connection" in the single-building created. The video can be accessed at this link <https://tinyurl.com/yaxfuook><sup>2</sup>

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<sup>2</sup> Given the size of this document (250 + MB), it could not be filed through IZIS. Under separate cover, the video simulation has been provided to the Office of Zoning on a thumb drive.

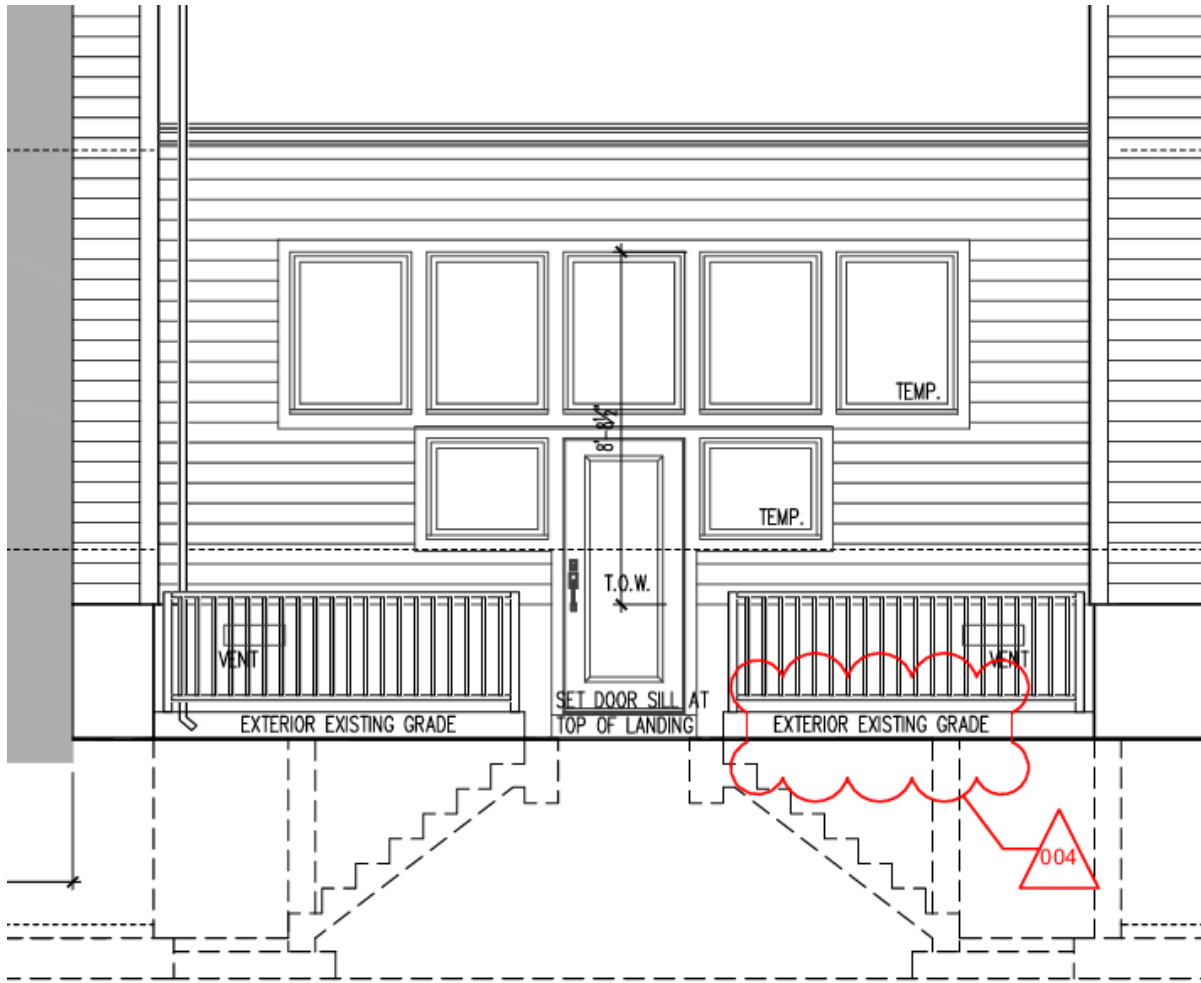
The creation of a single building or structure using an above-grade connection or communication was a common, useful and well accepted practice under the 1958 Zoning Regulations. The 2016 Zoning Regulations specifically recognized and continued this zoning concept, but provided specific guidance on the requirements for creating a single building.

Specifically, B309 provides:

- 309.1 For purposes of this chapter, structures that are separated from the ground up by common division walls or contain multiple sections separated horizontally, such as wings or additions, are separate buildings. 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.
- 309.2 Notwithstanding Subtitle B, § 309.1, a single building shell may contain multiple uses or dwelling units that do not share access.

The Project fully satisfies each of the criteria for a single-family connection under B309:

ANC 6C has not challenged and it is clearly shown that the connection is fully above grade, enclosed and heated and artificially lit. (Sheets A4.2, A4.3, A5.1, A5.2, A, E.01 (lighting) and M.01 (mechanical/conditioning)).



Excerpt of Sheet A4.2

Instead, ANC 6C incorrectly challenges the design, use and functionality of the above grade connection. Careful review by the Board of the above grade connection provided will show both that the common space established is shared by all users of the single building and the space is used to provide free and unrestricted passage between separate portions of the building.

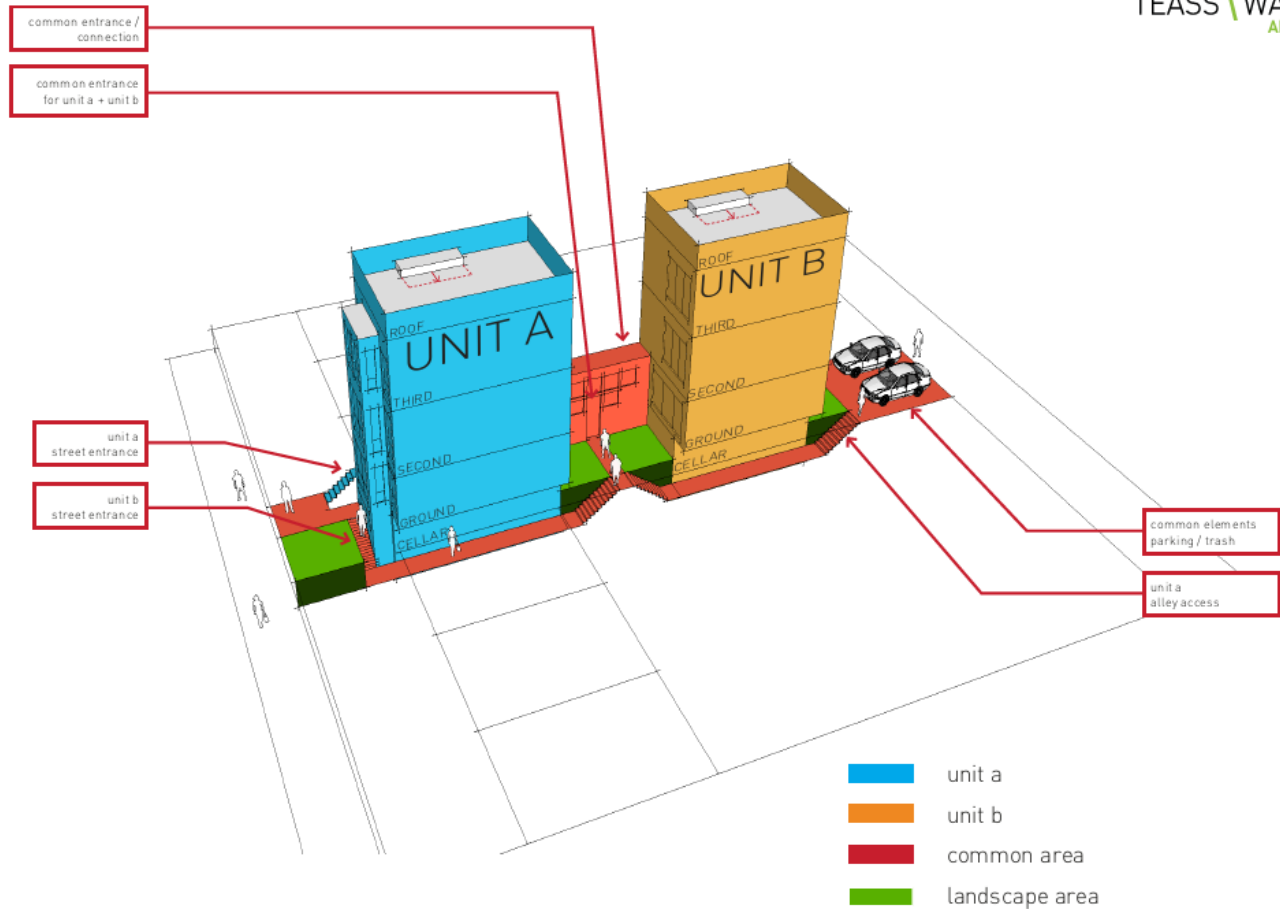
The above grade connection is common space that:

- a. Allows use by all the owners, occupants and visitors of the front or rear units to access both the common courtyard and the front and rear of the building by way of the connected corridors; and
- b. Allows free, unrestricted and reciprocal access for the owners, occupants and visitors of each dwelling unit to other portions of the building.

The video simulation clearly demonstrates that the owners of both dwelling units can freely enter the front of the building from 7<sup>th</sup> Street, travel through the cellar level corridor, take the stairs up to the above grade connection to access each dwelling unit or the common courtyard or, cross this common space, descend the stairs to the cellar level corridor and travel to rear of the building and exit to the parking area. Similarly, both unit owners can enter the building from the rear parking area and alley and travel the same unrestricted and common path to the common courtyard, the front unit or travel to the front of the building and 7<sup>th</sup> Street.

The unit circulation diagram below (Exhibit A, Sheet 14) also demonstrates that the Project operates physically and functionally as a single building.

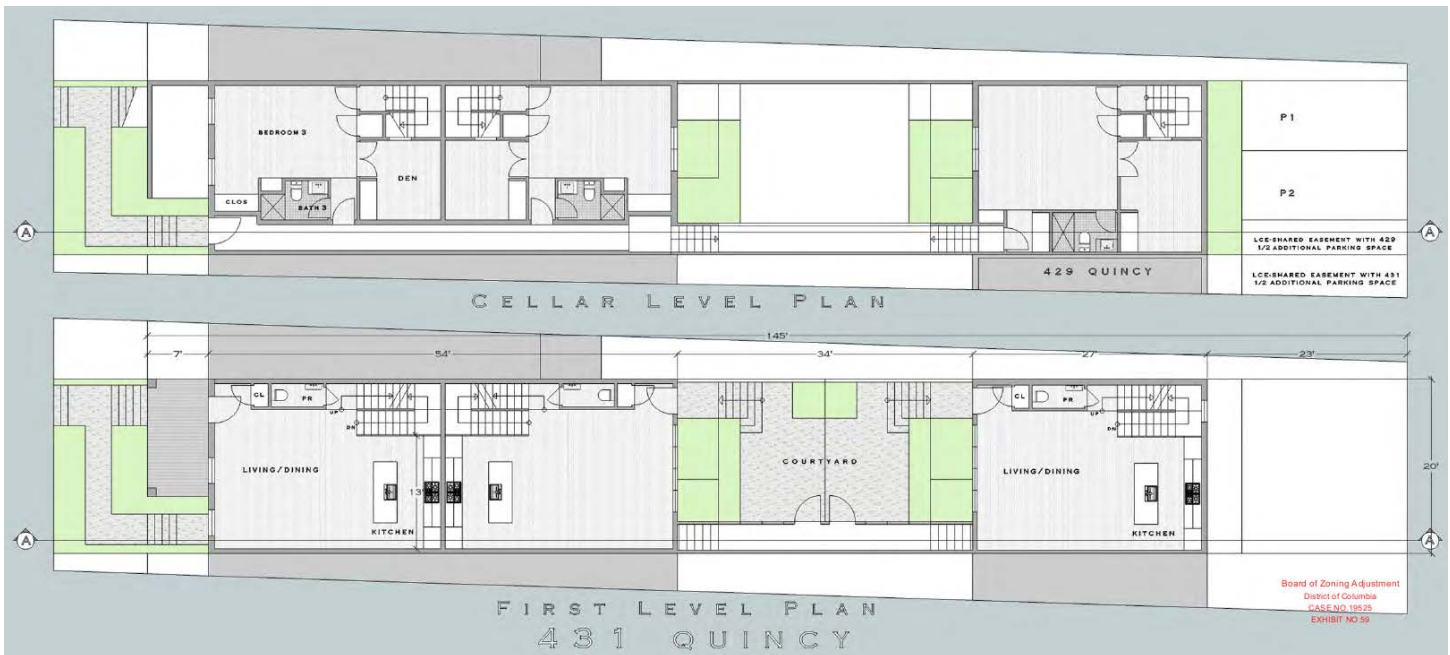




Finally, B309.2 clearly provides that the single-family shell established by the Revised Permit can contain the two dwelling units, but there is no requirement that each of the units have shared access to the other dwelling units.

ANC 6C has repeatedly mischaracterized the approved above grade connection as a radical attempt to improperly circumvent the single building requirements of the Zoning Regulations (e.g. Rube Goldberg, fig leaf). ANC 6C is incorrect legally, factually and practically. In reality, the type of above grade connection approved is not new or uncommon and has been permitted by DCRA and more importantly accepted and embraced by the Board.

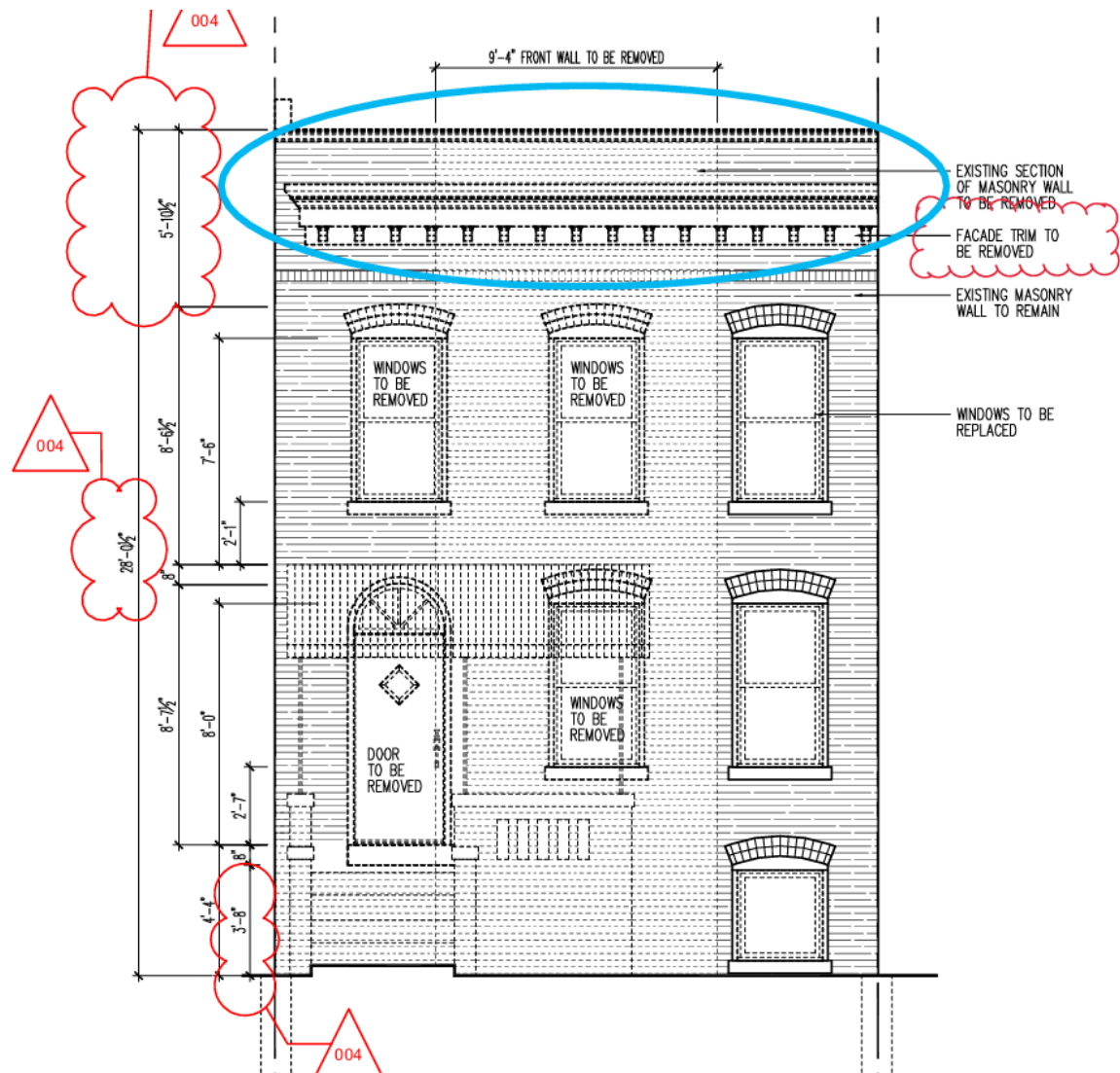
In companion BZA Applications 19524 and 19525 at 429-431 Quincy Street, N.W. in the RF-1 Zone, the Board granted zoning relief to construct a rear addition to and, convert an existing one-family dwelling to a three-unit apartment building, BZA Orders 19524 and 19525 (July 31, 2017). Significantly, the existing structure was connected to the rear addition by an above grade connection and courtyard configuration and cellar corridor almost identical to the above grade connection in this Project. This Project shown in the Plans below was supported by the ANC and Office of Planning and the Board (Board Members Hill, Hart and White and Commissioner Miller). Specific praise was given by the Board for the benefits of the courtyard and above grade connection design and the “family-sized” housing created. See also, Exhibit A, Sheets 15-17.



Additionally, in April 2017, DCRA issued Building Permit B1702214 for a “new two family flat 3 story” at 831 Rock Creek Church Road, N.W. in RF-1 Zone. This permit approved the connection of a front and rear dwelling unit with an above grade connection and courtyard configuration similar to this Project. Exhibit A, Sheets 18-20.

**4. Removal of the Façade Trim is not Prohibited under E-206.1(a)**

The Original Permit, approved the removal of a façade trim or feature on the front of the existing building based on the “roof top architectural element” restriction that existed on March 31, 2017. This approval to remove the façade trim was vested under A-301.4 at that time. The Revised Permit and Second Revised Permit did not change the approval previously granted and did not trigger compliance with the subsequently amended “cornice” restriction.



Existing Front Elevation, Excerpt of Sheet A4.1



The façade trim is not a “rooftop architectural element” or “cornice” under the plain meaning of E-206.1(a) which provides:

206.1 In an RF zone district, the following provisions shall apply:

- (a) **A roof top architectural element original to the building such as [cornices], porch roofs, a turret, tower, or dormers,** shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure’s rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;

Emphasis Added.

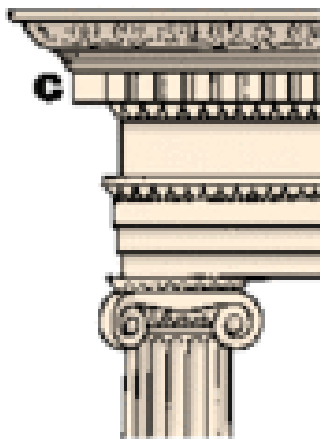
This original provision is clearly limited to restricting the removal of a “rooftop architectural element” and similar elements like “porch roofs, a turret, tower or dormers.”, but did not include cornices. In this case, the façade element is not located at the “roof top”. As shown in the front elevation and photograph, this element is located approximately sixteen (16) inches below the top of the parapet wall and clearly separate, distinct and unrelated from the top of the parapet wall or roof top. Among the examples of roof top architectural elements set forth, there is a common theme that all involve features located at or part of the roof top of the building.

For instance, Webster’s Unabridged Dictionary defines “cornice”<sup>3</sup> as:

- a. the typically molded and projecting horizontal member that **crowns** an architectural composition; specifically : the **uppermost** of the three members of a classic entablature. See Illustration.
- b. the **top course** of the wall when treated as a finish or crowning member.

Emphasis Added.

#### Illustration of CORNICE



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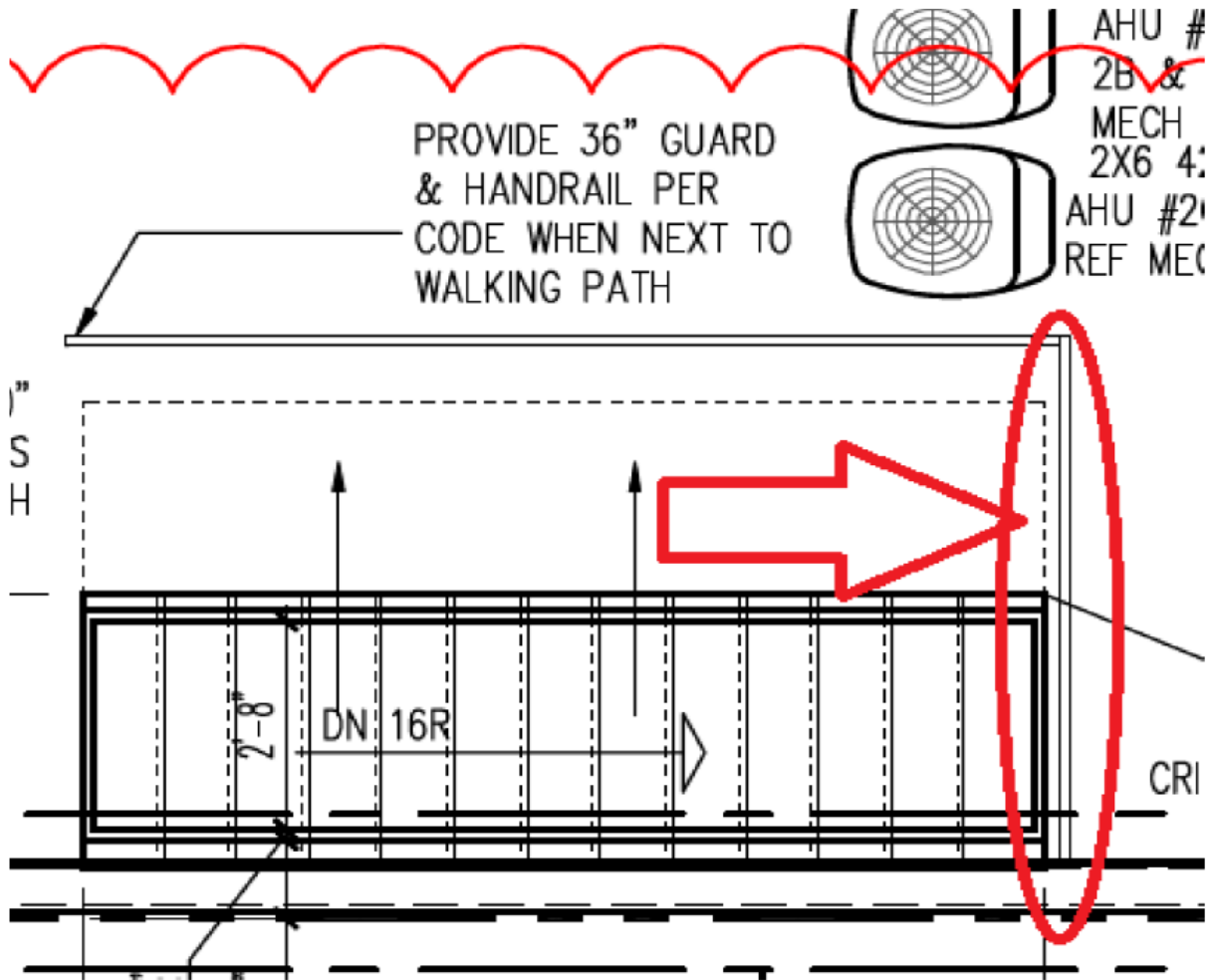
<sup>3</sup> E-206.1(a) was amended on April 28, 2017 to include “cornice”. The Original Permit was issued on March 31, 2017. The Revised Permit did not revise the previously approved removal of the façade trim or element.

While the façade trim may be molded, it cannot reasonably be characterized as roof top, crowning, uppermost or top course. As originally enacted and later amended to include “cornices”, 206.1 is limited in scope and was not intended to regulate all façade elements, including the Property.

**5. Roof Guardrail(s) is Not Subject to Penthouse Setback Requirements.**

The Original Permit, Revised Permit and Second Revised Permit each approved the 36 inch high guardrail running perpendicular to the 42 inch high parapet wall.

**GUARDRAIL NOT SUBJECT TO SETBACK**



**Detail from Sheet A3.1 (Tab A)**

The appeal of this issue is untimely. Further, the guardrail is properly setback from the front and rear of the roof as required. The guardrail is mandated by the Building Code for life safety purposes and no zoning or other purpose and is not visible or have any impact on the adjoining properties. Although it is the Zoning Administrator's long established policy not to require any setback in these very specific and limited circumstances, Atlas would also not object to and would immediately revise this element to show the guardrail setback from the parapet wall. This change would have absolutely no impact on the Project as previously approved.


**V. EXHIBITS**

Exhibit A: BZA Supplemental Filing, Teass/Warren Architects.

**VI. CONCLUSION**

For the foregoing reasons, ANC 6C as Appellant has not met its burden of proof to establish that the Revised Permit was issued by DCRA in violation of the Zoning Regulations and Appeal No. 19550 must be DENIED.

Respectfully submitted,  
GREENSTEIN DELORME & LUCHS, P.C.

By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 12, 2018, I served a copy of the foregoing Property Owner's Post-Hearing Submission in Opposition to Appeal No. 19550, along with attachment, on the following persons by electronic mail:

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