
John Patrick Brown, Jr.
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January 23, 2018

BY IZIS

Mr. Frederick L. Hill
Chairperson
Board of Zoning Adjustment
One Judiciary Square
441 4th Street, N.W.
Suite 210 - South
Washington, D.C. 20001

Re: BZA Appeal No. 19550
1125 7th Street, N.E.
(Square 886, Lot 35) ("Property")

Dear Chairperson Hill and Members of the Board:

This firm is counsel for Atlas Squared LLC, the Property Owner in this Appeal and the directly related OAH Appeal of the Notice to Revoke Building Permit No. B1706219 ("Notice to Revoke"). Exhibit A. Atlas Squared, LLC v. DCRA, OAH Case No. 2017-DCRA-00207.

Mr. Kevin Cummins, the Intervenor at 1123 7th Street, N.E., has filed an opposition to the pending Motion for Continuance that has been consented to by all other parties, including the Appellant (ANC 6C), DCRA, and the Property Owner. For the record, and full understanding of the Board, the Property Owner is compelled to provide this brief background demonstrating that the OAH case should be resolved prior to proceeding with the BZA Appeal. Although raised in both the OAH and BZA cases, the underlying existence and legality of the chimney/vent on the roof of 1123 7th Street, N.E. can only be resolved by OAH.



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The Notice to Revoke issued by DCRA was directly responsive to complaints raised by Mr. Cummins and alleged:

The construction of the third floor addition will be less than 10 feet from the neighbor's chimney at 1123 7th Street, NE, resulting in noncompliance with the building code pursuant to 12A DCMR 3307.6 and IBC, Section 2113.9. DCRA determined that the permit owner should have obtained the adjoining property owner's consent to raise the chimney or flue, or cap it before the issuance of the permit.

DCRA has determined that the Building Permit was issued in error. Accordingly, Building Permit No. B1706219 is hereby revoked.

Notice to Revoke, Exhibit A.

The Property Owner appealed the Notice to Revoke claiming, inter alia, that the chimney at 1123 7th Street, N.E. was illegally installed by Mr. Cummins without the required building permits. DCRA attempted to investigate the chimney at 1123 7th Street, N.E., but on at least three occasions Mr. Cummins refused access to DCRA. As a result, DCRA requested and was granted an Administrative Search Warrant by the DC Superior Court. Exhibit B. On or about November 17, 2017, DCRA executed the search warrant at 1123 7th Street, N.E. On information and belief, DCRA identified an illegal and unsafe pellet heater connected to the unpermitted chimney/vent and issued a corrective order to Mr. Cummins.

The Property Owner, through FOIA, requested the search warrant inspection reports and related records, but that request was denied by DCRA citing Mr. Cummins' privacy. As a result, the records will have to be obtained through discovery in the OAH Case.

Subsequent to the search warrant, Mr. Cummins obtained a remedial building permit for the pellet heater. DCRA issued Permit No. B1802724 "to remove existing pellet heater and install new ETL listed pellet heater, connect to existing flue." Exhibit C. Upon realizing that this permit had been issued over the counter without proper information or review, DCRA issued a Summary Cancellation finding that "a permit was not issued for an installation of a flue at your property. Therefore, the existing flue was illegally constructed... less than 10 feet from the neighboring property at 1125 7th Street, N.E., in violation of the [Construction Code]." Exhibit D.



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Under these circumstances, it is in the interest of all the parties and the Board to allow OAH to exercise its exclusive jurisdiction under the Building Code to determine the underlying status of the chimney at 1123 7th Street, N.E.

Sincerely,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____

John Patrick Brown, Jr.

Enclosures

Electronically

cc: Mr. Matthew Le Grant, DCRA
Maximillian L.S. Tondro, Esq., DCRA
Doris Parker-Woolridge, Esq., DCRA
Mark Eckenwiler, Esq., ANC 6C04
Mr. Kevin Cummins