

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

Appeal of ANC 6C

**BZA Appeal No. 19550
Hearing Date: May 9, 2018
ANC 6C**

**MOTION OF THE PROPERTY OWNER, ATLAS SQUARED, LLC TO DISMISS
APPEAL NO. 19550 AS MOOT**

The Property Owner, Atlas Squared, LLC (“Atlas”), by and through undersigned counsel, respectfully submits this Motion to Dismiss the current Appeal as Moot. ¹Pending the resolution of this Motion and the other pending Motions, Atlas specifically reserves the right to subsequently file a Pre-Hearing Statement in this Appeal.

I. BACKGROUND

1. On March 31, 2017, DCRA issued to Atlas Building Permit No. B1706219 (“Original Permit”) for 1125 7th Street, N.E.
2. On May 30, 2017, ANC 6C filed this Appeal of the Original Permit.
3. On October 20, 2017, the Board granted Intervenor status to Mr. Kevin Cummins (“Intervenor”) at 1123 7th Street, N.E.
4. The Board granted several consent and partially contested requests for continuances from DCRA with the hearing currently scheduled for May 9, 2018.

¹ Atlas requested the other parties’ consent to this Motion. DCRA, ANC 6C and Atlas are in ongoing and good faith discussions related to the Motion and whether consent can be achieved. Intervenor has not responded.

5. On Friday April, 13, 2018, DCRA's long standing counsel in this Appeal, Mr. Maximilian Tondro, left the service of the DC government without a designated successor counsel in place.

6. On April 18, 2018, ANC 6C filed its Pre-Hearing Statement with the Board based solely on the Original Permit.

7. On April 18, 2018, DCRA issued Building Permit No. 1805207 to Atlas for "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." ("Revised Permit"). The Revised Permit is attached as Exhibit A and the Approved Revised Plans for the Revised Permit are attached as Exhibit B.

8. On April 23, 2018, DCRA filed a Motion to Incorporate the Revised Permit in this Appeal and to Continue the May 9 hearing to allow ANC 6C and Intervenor to review and respond to the Revised Permit in the context of this Appeal.

9. Both ANC 6C and Intervenor have opposed DCRA's Motion to Incorporate and Continue the hearing arguing the right to the permitted sixty days period to investigate and appeal the Revised Permit. Subsequently, ANC 6C has also raised with Atlas new issues related to the Revised Permit not included in the current Appeal.

10. On May 2, 2018, Intervenor filed a Pre-Hearing Statement which also raised new issues (alleged "cornice" and rear setback restrictions) related to the Revised Permit, not part of the current Appeal.

II. ARGUMENT

In its opposition to the Motions to Incorporate and Continue, ANC 6C specifically suggested that DCRA file a Motion to Dismiss as Moot. See, ANC 6C Memorandum in Opposition, p.5 (BZA Exhibit 37). In this very limited circumstance, Atlas agrees with ANC 6C that the current Appeal of the Original Permit is moot and should be dismissed.


Based on the issuance of the Revised Permit, the Original Permit no longer exists standing alone. See DCRA Motions, p.1-2 (BZA Exhibit 36). 12A DCMR 105.3.8 governing the Amendment to a Permit states “[o]nce such amendments are approved and the revised permit is issued, it shall be deemed part of the original permit and kept therewith in the official records of the Department.” As a result, the Original Permit no longer exists independently and there is no basis for the Board to consider an Appeal that does not include the Revised Permit.

Dismissal of the current Appeal will not prejudice ANC 6C and/or Intervenor’s right to the 60 day period they have demanded to fully investigate the Revised Permit and file a timely Appeal of that permit. Although rejected by both ANC 6C and Intervenor, DCRA’s Motion to Incorporate (with an agreed upon timetable) would have achieved the same result with the desired judicial economy and preservation of all the parties time and resources.

For the foregoing reasons, Atlas respectfully requests the Board to dismiss Appeal No. 19550 as MOOT.

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

By:



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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2018, I served a copy of the foregoing Motion to Dismiss Appeal No. 19550, along with attachments, on the following persons by electronic mail:

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