

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

**Appeal of ANC 6C**

**BZA Appeal No. 19550  
Hearing Date: September 19, 2018  
ANC 6C**

**PROPERTY OWNER, ATLAS SQUARED, LLC  
PRE-HEARING STATEMENT IN OPPOSITION APPEAL NO. 19550**

The Property Owner, Atlas Squared, LLC (“Atlas”), by and through undersigned counsel, respectfully submits this Pre-Hearing Statement in Opposition to the Revised Appeal of ANC 6C of the Department of Consumer and Regulatory Affairs (“DCRA”) issuance of Building Permit No. 1805207 (April 18, 2018) authorizing “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” in the RF-1 zone (“Revised Permit”) at 1125 7<sup>th</sup> Street, N.E. (Square 886, Lot 35 (“Property”). Exhibit A. (Original Permit) and Exhibit B (Revised Permit). For the Revised Permit, the approved Surveyor’s Building Plat and approved Plans are attached as Exhibits C and D, respectively.

**I. PERMITTED DEVELOPMENT**

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. As permitted, the redevelopment created a single-building or structure. The existing structure incorporated a third floor addition which was connected to the three-story rear addition. The front dwelling unit was joined with the rear

dwelling unit by a fully above grade, enclosed, heated and lit connection or communication which provided both common space shared by the users of both dwelling units and space designed and used to provide free and unrestricted passage between the separate portions of the single building. Each of the dwelling units had separate roof top decks accessed by roof hatches. The existing front façade trim or element located approximately sixteen (16) inches below the rooftop was approved for removal to allow the addition of a three-story bay window located entirely in public space and separately permitted by DDOT. Two parking spaces were located at the rear of the Property and accessed from the existing fifteen (15) foot wide public alley. The permitted development complied with lot occupancy, height, rear yard and the twenty-percent (20%) pervious surface requirement.

The completed project will be subject to a recorded Condominium regime which define the single family use and configuration of each of the dwelling units and the common elements for shared use by the two unit owners, including the above-grade connection and common space and access.

## **II. EXECUTIVE SUMMARY**

In opposition to this Appeal, Atlas states:

1. The Permitted Rear Addition is Not Subject to Ten Foot Limit of E 205.4
2. The Permitted Project is Physically and Functionally a Single Building
3. Removal of the Façade Trim is Not Prohibited Under E-206.1(a)
4. Roof Hatch Approved in Original Permit Complies with Penthouse and Setback Requirements

### **III. PERMITTING HISTORY**

- September 18, 2015:** Atlas electronically filed and DCRA “Projectdox Accepted” as complete Building Permit Application B1512853 for “excavation, underpinning and foundation only - of existing single family row house. Application to demolish detached garage will be submitted on different application.” (“Application B1512853”). Exhibit E. (DCRA Permit Application Status Tracking). Application B1512853 was under active review, comment and revision by DCRA and Atlas for more than one (1) year (September 2015 to October 2016). Exhibit E.
- April 4, 2016:** Atlas electronically filed and DCRA “Projectdox Accepted” as complete 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.” (“Application B1606543”). Exhibit E. Application B1606543 was under active review, comment and revision by DCRA and Atlas for six (6) months (April 2016 to October 2016). Exhibit E.
- October 3, 2016:** DCRA unilaterally and without notice, explanation or good cause “cancelled” Applications B1512853 and B1606543. Exhibit E.
- March 23, 2017:** After consultation with DCRA regarding the “cancelled” permit applications, Atlas was instructed to refile the permit applications as a single new application. Atlas filed electronically and DCRA “Projectdox Accepted” as complete Building Permit Application B1706219. In order to correct the unilateral cancellation of Applications B1512853 and B1606543, Atlas incorporated both applications with no substantial changes into a consolidated set of permit plans for resubmission to DCRA, including the rear addition. As a result of the extensive prior review, comment, revisions and DCRA approvals, expedited issuance of this permit was completed by DCRA.
- March 31, 2017:** DCRA issued Building Permit B1706219 to Atlas (“Original Permit”). Exhibit A.
- April 4, 2017:** DCRA issued a Stop Work Order to Atlas based on a complaint from Mr. Kevins Cummins at 1123 7<sup>th</sup> Street, N.E. (“1123 Property”) that he had not received a Proper Neighbor Notification under 12A DCMR §3307.1 (“First Stop Work Order”). Atlas filed a timely appeal of the First Stop Work Order. Prior to filing Application No. 1606543, Atlas provided the required §3307.1 Notice to Mr. Cummins on March 1, 2016. By letter dated March 24, 2016, Mr. Cummins acknowledged receipt and responded to the March 1, 2016 §3307 Notice from Atlas

with a lengthy and largely irrelevant and unsubstantiated list of complaints.

- April 13, 2017:** DCRA issued a Notice to Revoke the Original Permit based on allegations by Mr. Cummins that the approved third floor addition was located less than ten (10) feet from the chimney/vent at the 1123 Property under 12A DCMR §3307.6 (“Notice to Revoke”). Atlas filed a timely appeal of the Notice to Revoke with the Office of Administrative Hearings (“OAH”). Atlas Squared, LLC v. DCRA, 2017-DCRA-00207.
- May 18, 2017:** DCRA released the First Stop Work Order after Atlas provided a new §3307 Notice to Mr. Cummins dated May 1, 2017. By letter dated May 30, 2017, Mr. Cummins acknowledged receipt and responded to the May 1, 2017 §3307 Notice again raising numerous irrelevant issues.
- May 20, 2017:** DCRA issued a Second Stop Work Order to Atlas alleging “construction plans to cause adverse impact on adjoining roof vent at 1123 Property under 12A DCMR §3307.6 (“Second Stop Work Order”). Atlas filed a timely appeal of the Second Stop Work Order to OAH. Atlas Squared, LLC. V. DCRA, 2017-DCRA-00207.
- May 30, 2017:** ANC 6C filed BZA Appeal 19550 of the Original Permit.
- September 7, 2017:** Atlas provided DCRA compelling evidence (including seller disclosure records, aerial photographs, and expert reports) that the chimney/vent at the 1123 Property was installed after March 22, 2016 without obtaining the required building permit.
- November 8, 2017:** At DCRA’s request, the DC Superior Court issued an Administrative Search Warrant for the 1123 Property. DCRA was forced to undertake this extraordinary enforcement action based on Mr. Cummins repeated refusal to cooperate with the investigation of the chimney/vent at the 1123 Property. On at least three separate occasions from May to September 2017, Mr. Cummins refused DCRA’s request to voluntarily inspect the 1123 Property.
- November 17, 2017:** DCRA and the Metropolitan Police executed the Administrative Search Warrant at the 1123 Property. Based on the search of the 1123 Property, DCRA issued a Notice of Infraction and Correction Order to Mr. Cummins for performing work without the required permit for installation of roof top chimney/vent and interior installation of an illegal (and unsafe) maritime, solid fuel heater.

- December 6, 2017 and February 9, 2018:** Mr. Cummins obtained “over the counter” remedial permits for the illegally constructed and unsafe interior heater and chimney/vent. DCRA promptly cancelled both permits.
- February 13, 2018:** Mr. Cummins obtained a demolition permit and removed the illegal chimney/vent and heater at the 1123 Property.
- February 13, 2018:** DCRA filed a Motion at OAH to withdraw the Notice to Revoke and Second Stop Work Order.
- March 7, 2018:** OAH granted DCRA’s Motion and issued an Order of Dismissal for the Notice to Revoke and Second Stop Work Order.
- 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 at the Property and/or any construction activity by Atlas.
- April 18, 2018:** DCRA issued Revised 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. Exhibits B and E.
- June 14, 2018:** DCRA issued Permit B1810239 as the first extension to Permit B1706219 [Original Permit] to expire on 9/31/2018. (“Extension of Original Permit”) Exhibit F.
- July 5, 2018:** Atlas filed and DCRA “Projectdox Accepted” as complete Building Permit Application 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”). Exhibit E.

#### **IV. ARGUMENT**

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

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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.

and/or the 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.

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

It is undisputed that Application B1606543 requested and both the Original Permit and Revised Permit approved a rear addition greater than ten (10) feet. Critically, in enacting E 205.4, the Zoning Commission included a very 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 B1606543 was filed electronically by Atlas and DCRA “Projectdox Accepted” as complete on April 4, 2016. Exhibit C. For at least six (6) months, this permit application, including the rear addition, was under active review, comment and revision by DCRA and Atlas. The unilateral, unexplained and unauthorized cancellation of the permit application on October 3, 2016 cannot defeat the established vesting in April 2016 of that application under A301.14.

In response to the “cancellation” of B1606543, the substance of that application was specifically incorporated into Building Permit Application B1706219 which was filed electronically by Atlas and “Projectdox Accepted” as complete on March 23, 2017. Exhibit C. 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. Notwithstanding Mr. Tondro’s gratuitous comments, DCRA’s records clearly establish that this application was accepted as complete on March 23, 2017. Exhibit C. Also, the Original Permit was issued on March 31, 2017, before the ten foot rear addition restriction became effective on April 28, 2017.

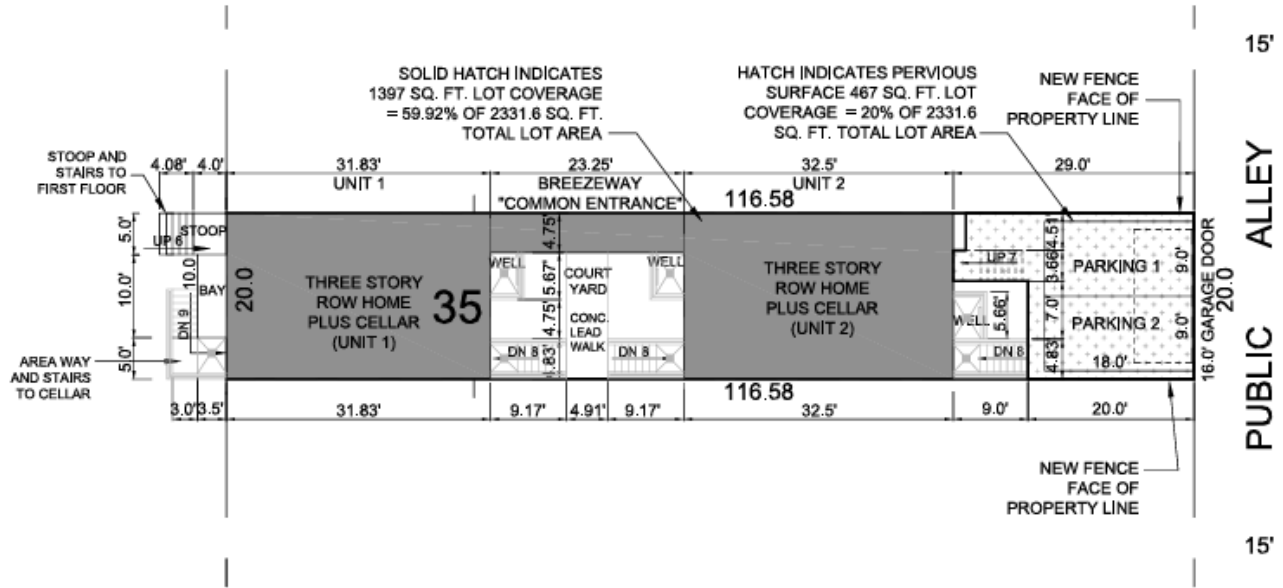
Finally, the Revised Permit specifically revised the vested Original Permit in a very limited manner set forth: “No change or expansion of the building zoning envelope.” Specifically, the revision approved incorporated the same rear addition as vested in Application B1606543 and the Original Permit. In the context of the vested and previously approved rear addition, the changes claimed by ANC 6C, including interior reconfiguration of the dwelling units and above grade connection, and redesign of the bay window in public space do not constitute a substantial change that would impose the 10 foot rear yard addition limitation.

**2. 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. Exhibits C and D.

7th STREET, N.E.



Excerpt of Surveyor's Building Plat for Revised Permit

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.

**LEVEL BY LEVEL ANALYSIS**

	Unit #1 (Front)	Unit #2 (Rear)
3 <sup>rd</sup> Level	Bedroom #3 Bedroom #4 Bathroom #3 Bathroom #4 Den	Bedroom #3 Bedroom #4 Bathroom #3 Den
2 <sup>nd</sup> Level	Owner's Suite Owner's Bathroom Bedroom #2 Washer/Dryer Mechanical Equipment	Owner's Suite Owner's Bathroom Bedroom #2 Bathroom #2 Washer/Dryer Mechanical Equipment



First Level	Dining Room Living Room Kitchen Powder Room Above Grade Connection	Dining Room Living Room Kitchen Powder Room Above Grade Connection
Cellar Level	Bedroom #5 Recreation Room Basement Bathroom Common Courtyard Common Corridor	Bedroom #5 Recreation Room Basement Bathroom Common Courtyard Common Corridor

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.

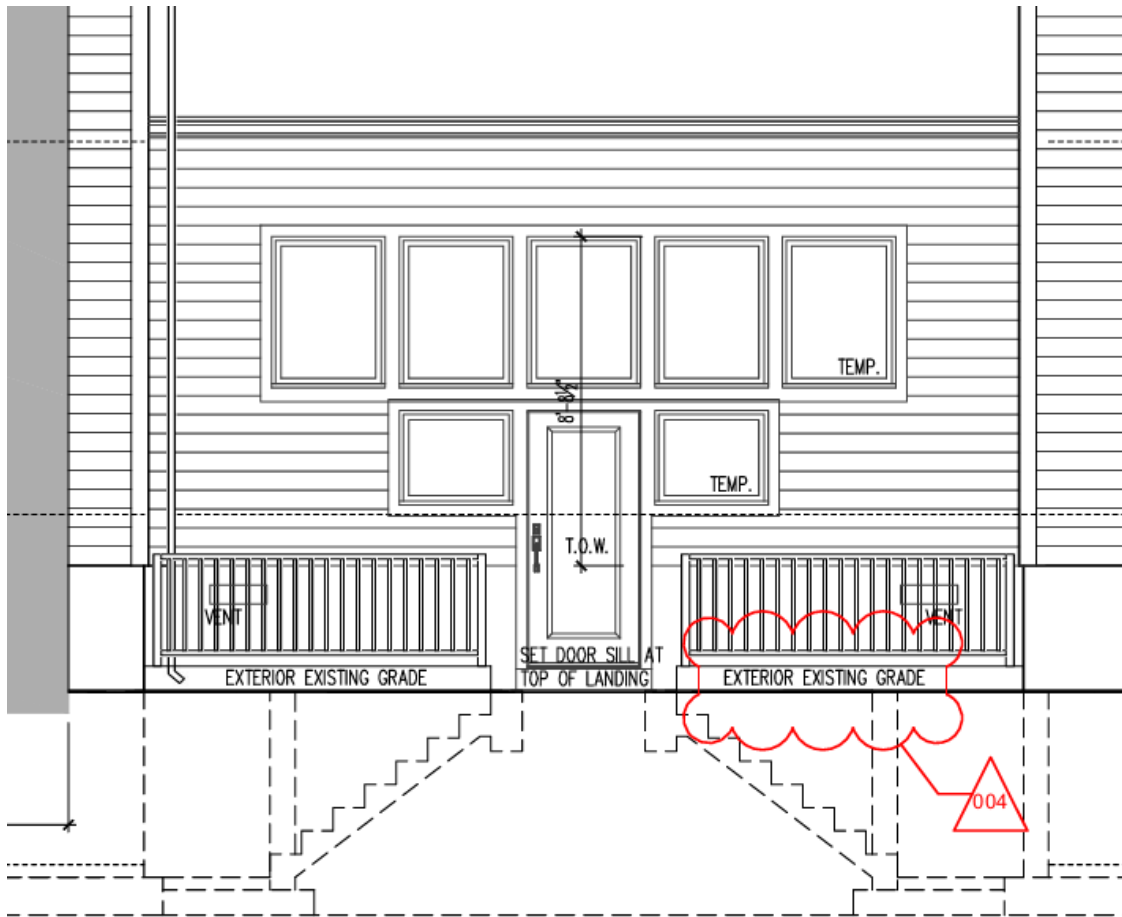
Specifically, B309 provides:

- 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.

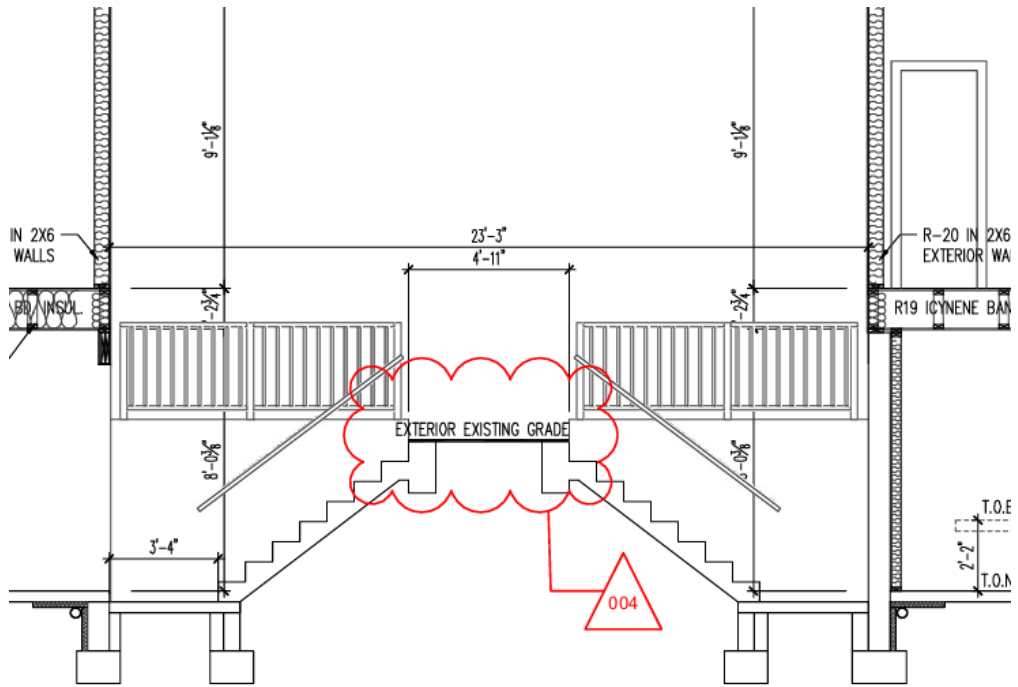
309.2 Notwithstanding Subtitle B, § 309.1, a single building shell may contain multiple uses or dwelling units that do not share access.

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

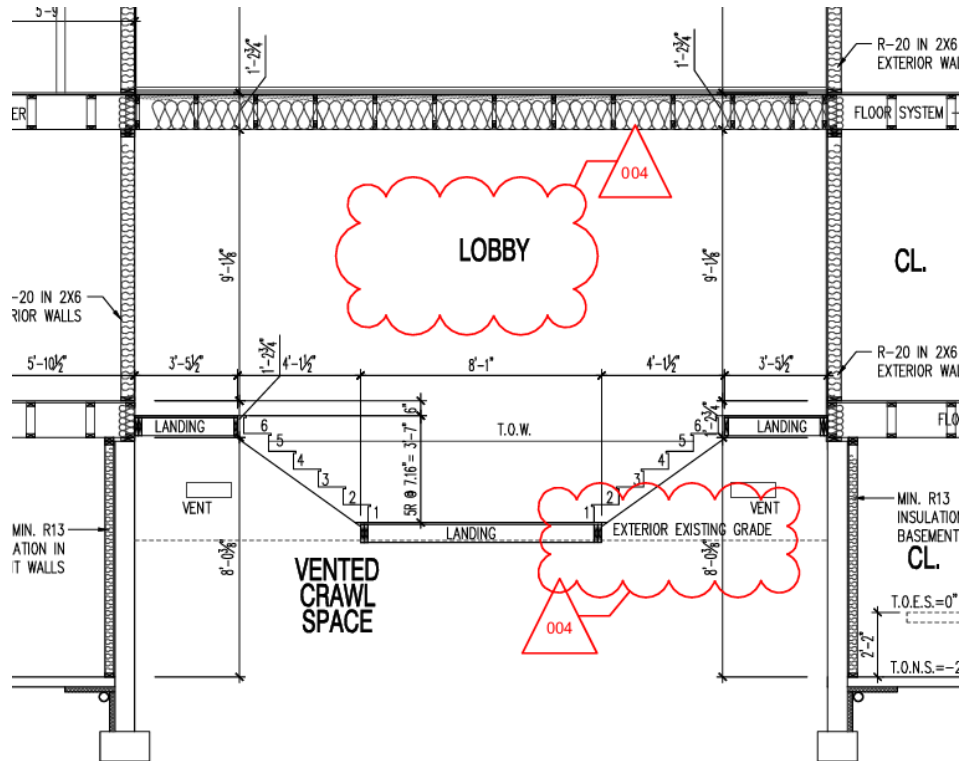
ANC 6C has not challenged and it is clearly shown that the connection is fully above grade, enclosed and heated and artificially lit. Exhibit D (Sheets A4.2, A4.3, A5.1, A5.2, A, E.01 (lighting) and M.01 (mechanical/conditioning)).



Excerpt of Sheet A4.2



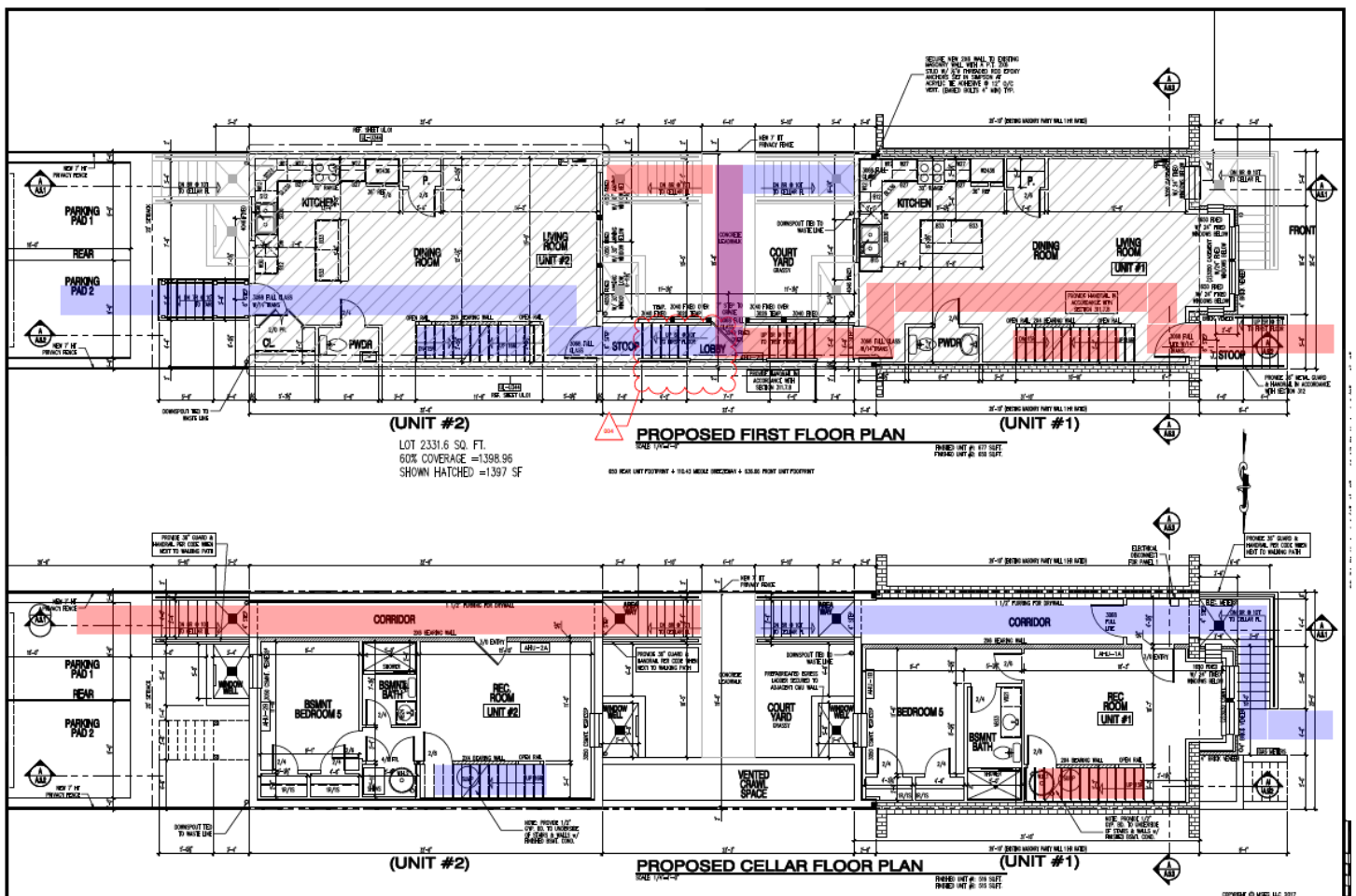
Excerpt of Sheet A5.1



Excerpt of Sheet A5.2

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 travel path drawing below highlights that the above grade connection is common space that:



Travel Path Drawing

Exhibit G.

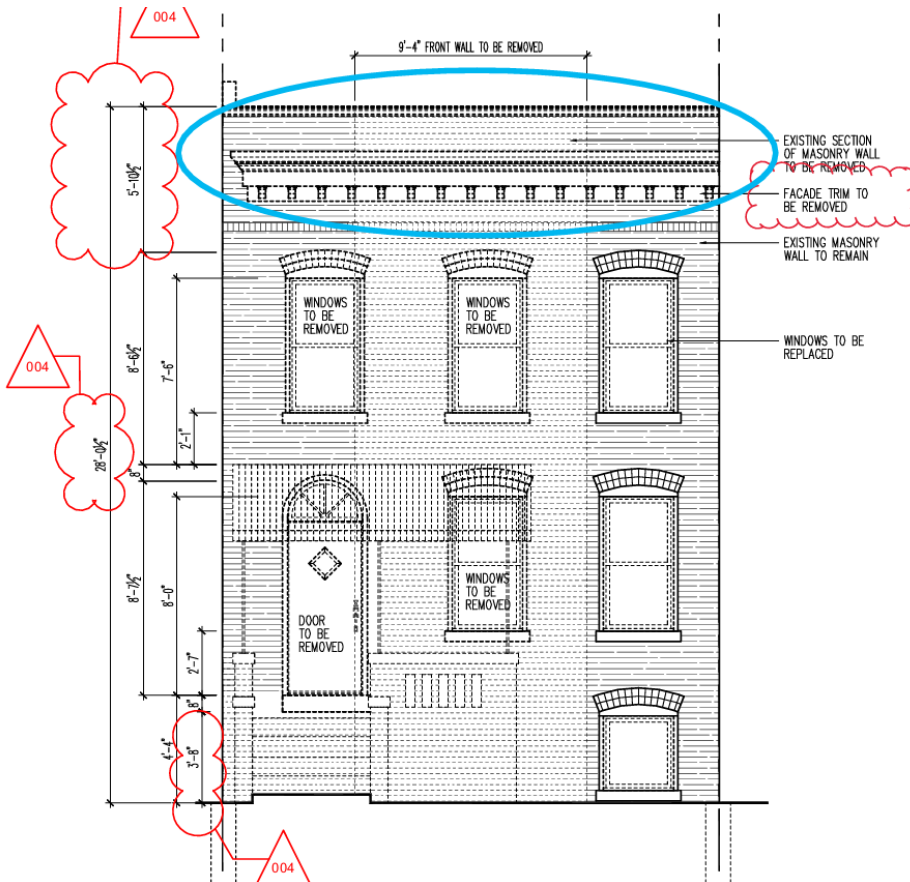
- a. Allows use by all the owners, occupants and visitors of the front or rear units to access both the common courtyard and the front and rear of the building by way of the connected corridors; and
- b. Allows free, unrestricted and reciprocal access for the owners, occupants and visitors of each dwelling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

For instance, the owner of the rear dwelling unit can freely enter the front of the building, travel through the cellar level corridor, take the stairs up to the above grade connection to access his 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, the owner of the front unit can enter the building from the rear and travel the same unrestricted and common path to the common courtyard, the front unit or travel to the front of the 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.

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

Both the Original Permit and Revised Permit approved the removal of a façade trim or feature on the front of the existing building.



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 provision is clearly limited to restricting the removal of a “rooftop architectural element” and similar elements like “cornices, porch roofs, a turret, tower or dormers.” 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>2</sup> as:

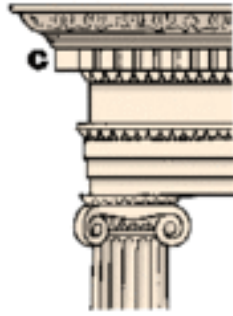
- a. the typically molded and projecting horizontal member that **crowns** an architectural composition; specifically : the **uppermost** of the three members of a classic entablature. See Illustration.
- b. the **top course** of the wall when treated as a finish or crowning member.

Emphasis Added.

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<sup>2</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.

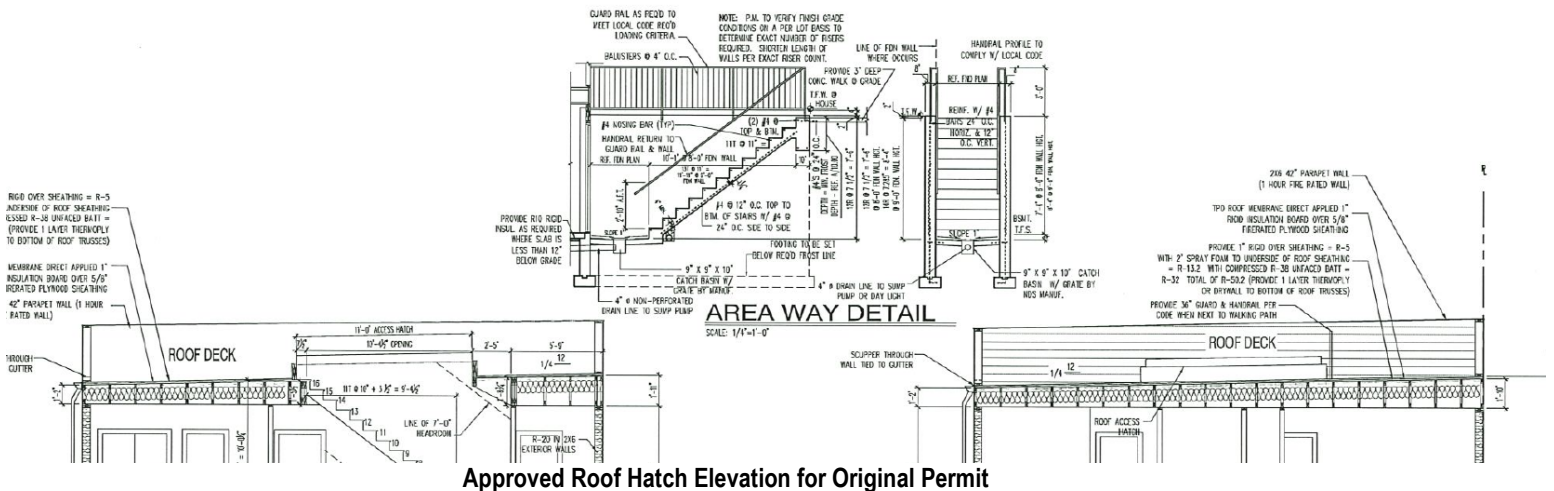
## Illustration of CORNICE



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

### 4. Roof Hatch Approved in Original Permit Complies with Penthouses and Setback Requirements.

ANC 6C's Revised Appeal alleges that the skylight style roof hatch approved in the Revised Permit violates the applicable Penthouse and Setback requirements. Atlas disagrees with that allegation, but believes that a better course of action and dispute resolution is to replace the skylight style roof hatch with the previously approved "coffin" style roof hatch approved by the Original Permit and not challenged by ANC 6C's Appeal.



### Exhibit I.



In order to re-incorporate the originally approved roof hatch design, Atlas, on July 5, 2018, filed the Second Revised Permit Application. Given the limited scope of this revision, Atlas expects prompt approval of this Application.

## **V. EXHIBITS**

- Exhibit A: Permit B1706219 (Original Permit).
- Exhibit B: Permit B1805207 (Revised Permit).
- Exhibit C: Surveyor's Building Plat for Revised Permit.
- Exhibit D: Approved Plans for Revised Permit.
- Exhibit E: DCRA Permit Application Status Tracking for Property.
- Exhibit F: Permit B180239 (Extension of Original Permit).
- Exhibit G: Travel Path Drawing.
- Exhibit H: Photograph of Front Façade and Façade Trim of Property.
- Exhibit I: Approved Roof Hatch Elevation for Original Permit.
- Exhibit J: Expert Witness Resumes.

## **VI. WITNESSES**

1. Tarique Jawed, Atlas Squared, LLC
2. Abrar Lohani, Atlas Squared, LLC
3. Mariah Rippe, Monument Engineering + Design (expert; resume)
4. Will Teass, AIA, Teas/Warren Architects (expert; resume)
5. Olutoye Bello, Bello, Bello & Associates, LLC (expert; resume)
6. Vincent L. Ford, Ford & Associates (expert; resume)

**VII. 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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Counsel for Atlas Squared, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on July 11, 2018, I served a copy of the foregoing Property Owner's Pre-Hearing Statement in Opposition to Appeal No. 19550, along with attachments, on the following persons by electronic mail:

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