

**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 RESPONSE TO THE REVISED  
PREHEARING STATEMENT OF INTERVENOR, KEVIN CUMMINS**

The Property Owner, Atlas Squared, LLC (“Atlas”), by and through undersigned counsel, respectfully submits this brief Response to the Revised Prehearing Statement of the Intervenor, Mr. Kevin Cummins, in Support of 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”) and Building Permit No. 1805207 (April 18, 2018) (“Revised Permit”) authorizing renovation and conversion of an existing single-family dwelling to a two-unit flat in the RF-1 zone at 1125 7<sup>th</sup> Street, N.E. (Square 886, Lot 35 (“Property”).

In addition to the Original Permit and Revised Permit, on August 2, 2018, DCRA issued to Atlas Building Permit B1811245 (Second Revised Permit”). Atlas has filed a Partial Consent (ANC6C and DCRA consented) Motion to Incorporate the Second Revised Permit into this Appeal. BZA Exhibit 55. The Original Permit, Revised Permit and Second Revised Permits are collectively referred to as "Building Permits."

In addition to this Response, Atlas specifically incorporates by reference its Prehearing Statement filed on July 11, 2018. BZA Exhibits 47, 47A-J.

**I. BRIEF PERMIT HISTORY**

**B1706219  
("Original Permit")**

**March 23, 2017:** Application accepted as complete by DCRA. The permit application incorporated and consolidated building permit applications B1512853 and B1606543 into a new, complete and stand alone permit application.

**March 31, 2017:** Original Permit Issued by DCRA. Exhibit A.

**B1805207:**  
**(“Revised Permit”)**

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

**B1810239:**  
**(“Extension of Original Permit”)**

**June 14, 2018:** Extension of Original Permit issued by DCRA to expire on September 31, 2018.<sup>1</sup> Exhibit C.

**B1811245:**  
**(“Second Revised Permit”)**

**August 2, 2018:** Second Revised Permit issued by DCRA for “Revision to B1805207 [Revised Permit] to REVISE FOOTERS AND ROOF TOP HATCHES, FOOTERS PREVIOUSLY APPROVED UNDER B1706219 [Original Permit]. AS BUILTS UPDATED TO REFLECT CONDITIONS IN FIELD.” Exhibit D.

## **II. ARGUMENT**

In his Revised Prehearing Statement, Mr. Cummins has raised seven (7) claims which are factually and legally incorrect, irrelevant and beyond the scope of the Board’s limited jurisdiction to determine whether the Building Permits issued by DCRA to Atlas comply with the Zoning Regulations. Mr. Cummins prefaces his unsubstantiated arguments by alleging that the permitted construction will “negatively impact[s] my property’s access to light and air.” Not only is Mr. Cummins’ argument factually incorrect and without basis, but more importantly it is entirely irrelevant to the Board’s adjudication of this Appeal. Legitimate claims of impact on light and air may be relevant in a special exception or variance application, but should never play

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<sup>1</sup> As a result of Stop Work Orders issued by DCRA (and later withdrawn or dismissed), Atlas was prohibited from any construction activities at the Property for almost one year and obtaining an automatic extension of the Original Permit. Subsequently, DCRA issued the Extension of Original Permit pursuant to 12A DCMR §§105.5(4) and 105.5.1.

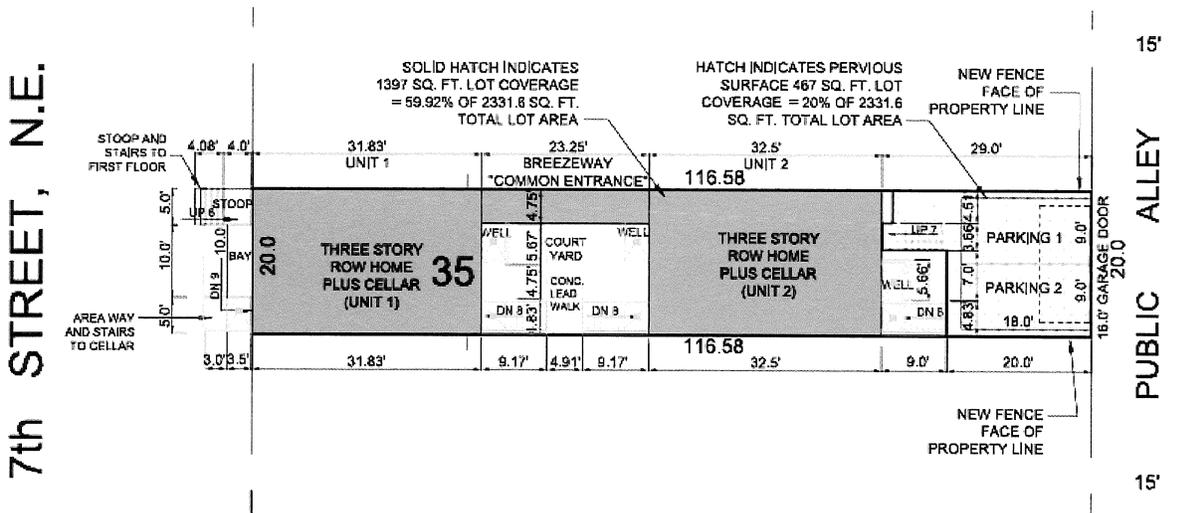
any role in determining whether the Building Permits issued to Atlas by DCRA comply with the Zoning Regulations.

In response to Mr. Cummins’ seven enumerated claims below, Atlas responds as follows:

**1. The Original and Revised Permits do not accurately depict existing site conditions.**

At all times, the Building Permits issued to Atlas included the total demolition or razing of the existing garage. See Sheet AO.1 of DCRA Approved Plans for Original Permit (“Garage To Be Razed”). Exhibit E. The garage was partially razed, but completion was halted by the Stop Work Orders issued by DCRA. The current existence of the partially-razed garage is totally irrelevant to the Building Permits issued and compliance with the Zoning Regulations.

Similarly, the location of neighbors’ fences located on abutting properties has no relevance to this Appeal. The approved Surveyor’s Plat showing the approved footprint provides an accurate location of the approved improvements within the established private property boundaries of the Property.



Excerpt of Surveyor’s Building Plat for Revised Permit

A separate public space permit was issued by DDOT for the approved improvements in public space (bay window projection) and is not subject to the Board’s limited jurisdiction.

The rear addition at 1127 7<sup>th</sup> Street, N.E., (“1127 Property”) was constructed by the adjoining property owner after the Original Permit was issued. The Second Revised Permit accurately reflects the construction at 1127 Property.

**2. The Permits authorize new construction that would partially occupy what is currently publicly-maintained alley.**

The Building Permits authorize construction only on the private property owned by Atlas. The approved improvements will not encroach on the existing fifteen foot-wide public alley as shown on the Surveyor’s Plat.

**3. The permit drawings do not accurately show impacts to adjoining property.**

As fully discussed above, the Second Revised Permit shows the rear addition at the 1127 Property that was constructed after the Original Permit was issued. Further, Mr. Cummins has not identified any relevance or direct impact on his property at 1123 7<sup>th</sup> Street, N.E., or non-compliance with the Zoning Regulations arising from the work completed at the 1127 Property.

**4. Permit B1706219 was approved as a “revision” to non-existent permits.**

As previously detailed, the Original Permit was not issued as a revision to any permit. The Original Permit application incorporated and/or consolidated the previously submitted and erroneously cancelled applications B1512853 and B1606543 into a new, complete and stand alone permit application which was reviewed and approved by DCRA.

**5. Permit B1706219 may have been issued in error due to concern about pending approval of Rule 14-11B limiting “pop-back” rear additions.**

The Original Permit was fully vested and issued prior to the effective date of the 10 foot restriction on rear additions in E-§205.4. As previously established, the Original Permit application was accepted by DCRA as complete on March 23, 2017 in compliance with the specific vesting provision later adopted by the Zoning Commission. More importantly, the Original Permit was issued on March 31, 2017 – twenty-eight (28) days before Zoning

Commission Order 14-11B became final and effective on April 28, 2017. It is also undisputed that the Revised Permit and Second Revised Permit made no changes in the approved rear addition that would trigger compliance with the new provisions of E-§205.4.

**6. Stoney Creek Homes is not a licensed business in the District of Columbia.**

Atlas Squared, LLC is the record owner of the Property and the Building Permits were properly issued to that entity. The corporate or licensing status of Stony Creek Homes is not relevant and not within the Board's limited jurisdiction.

**7. DCRA acted on behalf of, or as an agent of, property owner in sending owner notification for permit B1706219.**

The Neighbor Notification requirements arise under the Building Code, 12A DCMR §3307. Enforcement of the Building Code is within the exclusive jurisdiction of the Office of Administrative Hearings ("OAH"), not the Board. Atlas has repeatedly provided Mr. Cummins §3307 Neighbor Notification for the various building permit applications and permits on March 24, 2016, May 30, 2017 and July 20, 2018. Mr. Cummins has repeatedly challenged the Building Permits issued to Atlas, including §3307 Neighbor Notifications provided by Atlas. Specifically, Mr. Cummins has filed appeals at OAH in Cummins v. DCRA, 2017-DCRA-00203, Cummins v. DCRA, 2018-DCRA-00092 and Cummins v. DCRA, 2018-DCRA-00133.

**III. EXHIBITS**

- Exhibit A: Permit B1706219 (Original Permit).
- Exhibit B: Permit B1805207 (Revised Permit).
- Exhibit C: Permit B180239 (Extension of Original Permit).
- Exhibit D: Permit B1811245 (Second Revised Permit).
- Exhibit E: Sheet AO.1 of Approved Plans for Original Permit.

IV. CONCLUSION

For the foregoing reasons, ANC 6C as Appellant and Mr. Cummins as Intervenor have not met their burden of proof to establish that the Original Permit, Revised Permit and Second Revised Permit were issued by DCRA in violation of the Zoning Regulations and Appeal No. 19550 must be DENIED.

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

By: \_\_\_\_\_



John Patrick Brown, Jr. (DC Bar No. 17566)  
1620 L Street, N.W., Suite 900  
Washington, D.C. 20036  
Telephone: (202) 452-1400  
Counsel for Atlas Squared, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2018, I served a copy of the foregoing Property Owner's Response to the Revised Prehearing Statement of Intervenor, Mr. Kevin Cummins, along with attachments, on the following persons by electronic mail:

Mr. Matthew Le Grant  
Zoning Administrator  
Department of Consumer and Regulatory Affairs  
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Esther McGraw, Esquire  
General Counsel  
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Kevin Cummins  
Intervenor  
1123 7th St. NE  
kevin.cummins11@gmail.com



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John Patrick Brown, Jr.

# **EXHIBIT A**



Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



**B**

**BUILDING PERMIT**

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 03/31/2017

PERMIT NO. B1706219

Expiration Date: 03/31/2018

Address of Project: 1125 7TH ST NE		Zone:	Ward: 6	Square: 0886	Suffix:	Lot: 0035
Description Of Work: Revision to building permit B1606543 and building permit B1512853 reflecting underpinning. Renovation of an existing single family dwelling unit to a 2-unit separate townhouse.						
Permission Is Hereby Granted To: Stony Creek Homes		Owner Address: 1125 7TH STREET NE 20002		PERMIT FEE: \$36.30		
Permit Type: Alteration and Repair	Existing Use: Single Family	Proposed Use: Flat (Two Family)			Plans:	
Agent Name: Stephanie Erwin	Agent Address: 22182	Existing Dwell Units: 1	Proposed Dwell Units: 2	No. of Stories: 3	Floor(s) Involved:	
Conditions/ Restrictions:  APPLY FOR A WALL CHECK FOR PROPOSED NEW ADDITION.  This Permit Expires if no Construction is Started Within 1 Year or If the Inspection Is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.  Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to <a href="http://ddoe.dc.gov">http://ddoe.dc.gov</a> , Lead and Healthy Housing.						
Director: Melinda Bolling <i>Melinda Bolling</i>		Permit Clerk Joseph Bemby				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						

# **EXHIBIT B**



# Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



# B

## BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 04/18/2018

PERMIT NO. B1805207

Expiration Date: 04/18/2019

<b>Address of Project:</b> 1125 7TH ST NE		<b>Zone:</b> RF-1	<b>Ward:</b> 6	<b>Square</b> 0886	<b>Suffix:</b>	<b>Lot:</b> 0035
<b>Description Of Work:</b> 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  ****Route to DDOT per Sarah B-Carr						
<b>Permission Is Hereby Granted To:</b> Atlas Squared Llc		<b>Owner Address:</b> 7928 JONES BRANCH DR STE 600 MCLEAN, VA 22102-3373			<b>PERMIT FEE:</b> \$36.30	
<b>Permit Type:</b> Alteration and Repair	<b>Existing Use:</b> Two-Family Flat - R-3	<b>Proposed Use:</b> Two-Family Flat - R-3	<b>Building Construction Type</b> TYPE-V - Any Materials Permitted		<b>Plans:</b>	
<b>Agent Name:</b> Stephanie Erwin	<b>Agent Address:</b> 9413 Gamba Ct Vienna, VA 22182	<b>Existing Dwell Units:</b> 2	<b>Proposed Dwell Units:</b> 2	<b>No. of Stories:</b> 3	<b>Floor(s) Involved:</b> All	
<b>Conditions/ Restrictions:</b> Owner must have a wall check approved before calling DCRA for either a foundation or a framing inspection.  This Permit Expires if no Construction Is Started Within 1 Year or if the Inspection Is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.  Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to <a href="http://ddoe.dc.gov">http://ddoe.dc.gov</a> , Lead and Healthy Housing.						
<b>Director:</b> Melinda Bolling <i>Melinda Bolling</i>		<b>Permit Clerk:</b> Tiffany Carrington <i>Tiffany Carrington</i>				
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# **EXHIBIT C**



# **EXHIBIT D**

Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



**B**

**BUILDING PERMIT**

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL WORK IS COMPLETED AND APPROVED



Issue Date: 08/02/2018

Expiration Date: 08/02/2019

PERMIT NO. B1811245

Address of Project: 1125 7TH ST NE		Zone: RF-1	Ward: 6	Square 0886	Suffix:	Lot: 0035
Description Of Work: Revision to B1805207 TO REVISE FOOTERS AND ROOF TOP HATCHES, FOOTERS PREVIOUSLY APPROVED UNDER B1706219. AS-BUILTS UPDATED TO REFLECT CONDITIONS IN THE FIELD.						
Permission Is Hereby Granted To: Atlas Squared Llc		Owner Address: 7926 JONES BRANCH DR STE 600 MC LEAN, VA 22102-3373			PERMIT FEE: \$36.30	
Permit Type: Alteration and Repair	Existing Use: Single Family Dwelling - R-3	Proposed Use: Two-Family Flat - R-3	Building Construction Type TYPE V - Any Materials Permitted		Plans:	
Agent Name: Stephanie Erwin	Agent Address: 9413 Gamba Ct Vienna, VA 22182	Existing Dwell Units: 2	Proposed Dwell Units: 2	No. of Stories: 3	Floor(s) Involved: All	
Conditions/ Restrictions:  This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.  Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint,the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to <a href="http://ddoe.dc.gov">http://ddoe.dc.gov</a> , Lead and Healthy Housing.						
Director: Melinda Bolling		Permit Clerk NRICE				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						

# **EXHIBIT E**

