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 7th 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. <u>BZA Exhibit 55</u>. 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. <u>BZA Exhibits 47, 47A-J.</u>

I. <u>BRIEF PERMIT HISTORY</u>

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.

Board of Zoning Adjustment District of Columbia CASE NO.19550 EXHIBIT NO.58

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. 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. <u>ARGUMENT</u>

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

¹ 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.

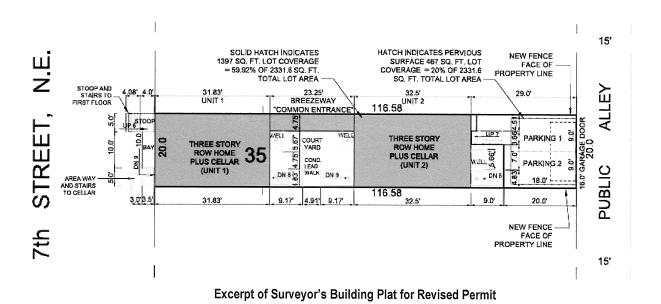
any role in determining whether the Building Permits issued to Atlas by DCRA comply with the Zoning Regulations.

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.



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 7th 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 7th 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 <u>not</u> 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. <u>EXHIBITS</u>

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. <u>CONCLUSION</u>

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 matthew.legrant@dc.gov

Esther McGraw, Esquire General Counsel Department of Consumer and Regulatory Affairs esther.mcgraw2@dc.gov

Patricia B. Donkor, Esq. Interim Deputy General Counsel Department of Consumer and Regulatory Affairs Patricia.Donkor2@dc.gov

Adrianne Lord-Sorensen, Esquire Assistant General Counsel Department of Consumer and Regulatory Affairs adrianne.lord-sorensen@dc.gov

Anna Kaprelova, Esquire Deatiled to Department of Consumer and Regulatory Affairs anna.kaprelova@dc.gov

Mark Eckenwiler, Esquire ANC 6C04 6C04@anc.dc.gov

Kevin Cummins Intervenor 1123 7th St. NE kevin.cummins11@gmail.com

John Patrick Brown, Jr.

EXHIBIT A



TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.

Department of Consumer and Regulatory Affairs Permit Operations Division

Permit Operations Division 1100 4th Street SW Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862





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. B170	6219					Е	xpiration D	ate: 03	3/31/2018		
Address of Project:					Zone:	Ward	Sanaro	Suffix:	Lof:		
1125 7TH ST NE					20110.	6	. O886	Suilix.	0035		
Description Of Work: Revision to building permit B160 dwelling unit to a 2-unit separate	6543 and building townhouse.	g permit B1512853 reflec	ting underpin	ning. Reno	ovation of an			ly			
Permission Is Hereby Granted	To:	Owner Address:					DEDMITE				
Stony Creek Homes			ME				PERMIT F	EE:	•		
		20002	125 7TH STREET NE 0002					\$36.30			
Permit Type:	Existing Us	e:		Proposed	d Use:				Plans:		
Alteration and Repair	Single Far	nily	Family)								
Agent Name: Stephanie Erwin	Agent Address	Existing Dw		Proposed Dwell Units;			Floor(s)				
•	Stephanic Livin				2		3				
Conditions/ Restrictions: APPLY FOR A WALL CHECK FOR This Permit Expires if no Construction Done According As a condition precedent to the work authorized hereby in with all applicable laws and re to inspect all work authorized with the permit and with all tone(1) year of the date appear must be made within six months Lead Paint Abatement Whenever any such work related to thi paint activities provisions of the 'Lead regarding lead-based include adherent	To The Current of the issuance of the accordance with guiations of the by this permit he applicable reing on this periof the date appears of the date appears and Prevention	Within 1 Year or if the Ins Building Codes And Zon his permit, the owner in the approved applicat District of Columbia. and to require any of egulations of the Distri- mit or the permit is a uring on this permit. Let in the disturbance of lead and Elimination Act of 2008 of practices. For more inform	ling Regulation agrees to contion and plan The District on ange in contict of Columbutomatically of the continuity of th	ns; nform with s on file vo of Columbi struction vo oia. Work roid. If wo	with the Dist a has the rig which may be authorized u rk is started er shall abide b	rict Go ght to se nece inder ti l, any a	vernment a enter upon ssary to e nis Permit application	nd in ac the prop nsure co	cordance perty and mpliance		
Director: Melinda Bolling Permit Clerk Joseph Bembry											
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TO REPORT WASTE, FRAUD OR A FOR CONSTRUCTION INSPECTION	ABUSE BY ANY D ON INQUIRIES CA	C GOVERNMENT OFFIC ALL (202) 442-9557	IAL, CALL THE	E DC INSPE	CTOR GENE	RAL AT	1-800-521-1	639			

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





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 Expiration Date: 04/18/2019						
PERMIT NO. B							
Address of Project:			Zone:	Ward:	Square	Suffix:	Lot:
1125 7TH ST NE		RF-1	6	0886		0038	
Description Of Work: REVISION: REVISE Building Pe		the converted single-family dwelling to a two-unit fla	at. No change or expan	sion to the but	lding or zonli	ng envelope	
				, :			
Permission is Hereby G	ranted To:	Owner Address: 7928 JONES BRANCH DR STE 600 MC LEAN, VA 22102-3373		P	ERMIT FE \$	≣E: 36.30	
Permit Type: Alteration and Repair	Existing Use: Two-Family Flat - R	Proposed Use: Two-Family Flat - R-3	Building Co	nstruction y Materials	n Type Permitted		Plans
Agent Name: Stephanie Erwin	Agent Addre 9413 Gamba C Vienna, VA 22	y AS L Unite:	Proposed Dwall Units:	No. of	Stories:	Floor(s) Involved: A	
	- -	lling DCRA for either a foundation or a framin					
Owner must have a wall character in the Call Construction Done Accas a condition precedent the work authorized here with all applicable laws at the inspect all work authority and with one (1) year of the date a must be made within six must be made within six must be with work related Paint Abatement with the six must be with work related Paint activities provisions of the call that within the control of the call that within t	onstruction is Started cording To The Current to the Issuance of by in accordance with and regulations of the orized by this permit all the applicable appearing on this peronths of the date appeared to this Permit could reserve to the date appeared to this Permit could reserve to the date appeared to this Permit could reserve the test appeared to the test appea	Within 1 Year or if the inspection is Over 1 Equilding Codes And Zoning Regulations; this permit, the owner agrees to confort the approved application and plans to be District of Columbia. The District of and to require any change in constructions of the District of Columbia armit or the permit is automatically vol	I Year. The with all condition file with the Diction which may Work authorized d. If work is start	Istrict Gove right to er be neces: under this red, any ap reby all appliand Painting	ernment a nter upon sary to e s Permit oplication cable rule	nd in acc the prop nsure co must sta	ordan erty a mplian rt witi
Owner must have a wall character in the Call Construction Done Accas a condition precedent the work authorized here with all applicable laws at the inspect all work authority and with one (1) year of the date a must be made within six must be made within six must be with work related Paint Abatement with the six must be with work related Paint activities provisions of the call that within the control of the call that within t	onstruction is Started cording To The Current to the Issuance of by in accordance with and regulations of the orized by this permit all the applicable appearing on this peronths of the date appeared to this Permit could reserve to the date appeared to this Permit could reserve to the date appeared to this Permit could reserve the test appeared to the test appea	Within 1 Year or if the inspection is Over a Building Codes And Zoning Regulations; this permit, the owner agrees to confort the approved application and plans of bistrict of Columbia. The District of and to require any change in constructions of the District of Columbia with or the permit is automatically volvaring on this permit.	I Year. The with all condition file with the Diction which may Work authorized d. If work is start	Istrict Gove right to er be neces: under this red, any ap reby all appliand Painting	ernment a nter upon sary to e s Permit oplication cable rule	nd in acc the prop nsure co must sta	ordanderty aum

FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.

EXHIBIT C



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: 06/12/2018

PERIVITINO, B	1010239						Ex	piration Da	ate: 06/	12/2018
Address of Project:						Zone:	Ward:	Square	Suffix:	Lot:
1125 7TH ST NE						RF-1	6	0886		0035
Description Of Work: First extension to permit B17062	219, to expire on 9/31/2018.									
Permit Scope: Consolidation of permit application Associated permit application fee	ons B1503166, B1512853, ar es included.	nd B1606543. R	enovation of a	an existing single famil	iy dwell	ing unit to 2-unit	townhouse	including un	nderpinning.	
Permission Is Hereby G Atlas Squared Llc	ranted To:	Owner Add 7926 JONE MC LEAN,	S BRANCH	DR STE 600 73			;;F	ERMIT FI	EE: 36.30	
Permit Type: Alteration and Repair	Existing Use: Two-Family Flat - R-		roposed U wo-Family F			Building Cor Type I - Fire-F			ustible	Plans:
Agent Name: Ashley Brown	Agent Addres 1140 3rd St Ne Washington, Do	#2113		Existing Dwell Units: 2	32 S	posed ell Units: 2	No. of Stories: Floor(s) Involved:			
O	<u></u>			L	<u> </u>			<u> </u>		

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 http://ddoe.dc.gov, Lead and Healthy Housing.

Director: Melinda Bolling

Melinda Bolling

Permit Clerk

TiffIny Carrington

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.

Д собудан блотиле: ANTERNAUS инфестион

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											
PERMIT NO. B1811245										02/2019	
Address of Project:			······································			**********	Zone:	Ward:	Square	Suffix:	Lot:
1125 7TH ST NE							RF-1	6	0886		0035
Description Of Work: Revision to B1805207 TO REVISE CONDITIONS IN THE FIELD.	E FOOTER	S AND ROOF T	OP HATCHE	ES, FOOTERS PF	REVIOULY APPROVE	D UI	NDER B1706219. <i>F</i>	AS-BUILTS	S UPDATED T	O REFLEC	Г
Permission Is Hereby Gra	inted To	:	Owner A	ddress:				F	PERMIT FE	E:	
Atlas Squared Llc	7926 JONES BRANCH DR STE 600 MC LEAN, VA 22102-3373					\$36.30					
Permit Type: Alteration and Repair		· · · · · · · · · · · · · · · · · · ·						struction Type Plans: Materials Permitted			
Agent Name:	Ag	gent Addres	s:		Existing Dwell	Pr	oposed	No. of Stories: Floor(s)			
Stephanie Erwin		13 Gamba Ct enna, VA 2218		Units: 2	Dv	well Units: 2	3	3 Involved:			
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 Oscurment 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 http://ddoe.dc.gov, Lead and Healthy Housing.											

Director: Melinda Bolling Melinda Bolling

Permit Clerk

NRICE

EXHIBIT E

