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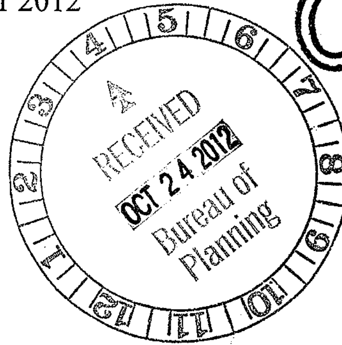
24 October 2012



COPY

BY HAND DELIVERY
TO BZA SECRETARY

Chair and Members
Board of Zoning Adjustment
City of Atlanta
68 Mitchell Street, S.W., Suite 3350
Atlanta, Georgia 30335-0308

Re: Argument and Materials on behalf of the Atlanta Preservation Center, Inc. and others regarding Superior Court Consent Order in V-08-195 / 771 Spring Street, N.W. a/k/a Crum & Forster Building

Dear Chair and Board Members:

I. INTRODUCTION

Three years ago, this Board heard an appeal from a decision of the Office of Planning ("Planning"). The appeal was taken by the Georgia Tech Foundation ("Foundation"). The Foundation challenged Planning's decision to deny a Special Administrative Permit (SAP-08-024) for the above property. The SAP application was to demolish the building on the site, known as the Crum & Forster Building, and replace it with surface pay parking. Planning denied the request because if the building were to be demolished, the parking requested by the Foundation would become the principal use, and surface parking is prohibited as a principal use in SPI-16/SA1. After a lengthy hearing and consideration of a large volume of written materials, this Board unanimously denied the Foundation's appeal 3-0 with 2 abstentions. (Two members had arrived late.)

The Foundation then appealed this Board's decision in Superior Court. This Board was a named defendant. That lawsuit languished for three years. (See II below for chronology). Minutes before this Board's 2009 decision was to finally be reviewed by the Superior Court, the City Attorney's Office signed a "settlement" agreement with the Foundation's lawyers. That agreement was then signed by the Superior Court in the form of a "Consent Order." There was no court hearing. The settlement agreement reversed this Board's 2009 decision and ordered this Board, in turn, to order Planning to issue the 2008 SAP. This settlement did not occur because the Court had decided this Board had acted arbitrarily (the Superior Court's review standard of your decisions) nor because any facts or law had changed, but rather because the City Attorney's Office simply yielded to whatever political pressure it was experiencing and decided to reverse this Board's decision by "settlement."

We submit this "settlement" was unlawful, and should be repudiated by this Board in the strongest possible terms. The City Attorney's Office does not have authority to reverse a decision of this Board. Assuming the City Attorney was directed to do so by the Mayor's Office, that office also lacks unilateral authority to reverse this Board's quasi-judicial decisions by ordering the City Attorney to do so. We urge this Board to determine that the Consent Order is unlawful, void and ultra vires and will not be followed. We support this request by the three legal arguments (and the attached legal opinion) which are addressed below after a chronology of events.

II. CHRONOLOGY[1]

- 11 July 2008. Office of Planning denies Georgia Tech Foundation's application for SAP (SAP-08-024). The SAP request was to demolish the Crum & Forster Building and replace it with surface parking. The SAP was denied because SPI-16 regulations prohibit surface parking as a principal permitted use. (See Code § 16-18P.022.1.b.) If the building was removed, parking would become the principal use, rather than a use that is accessory to the building, and hence would clearly violate the zoning. (Courtesy copy from record attached as 2.)

- 12 March 2009. The Board of Zoning Adjustment ("BZA") denies Foundation's appeal of the SAP denial. (Courtesy copy of BZA Transcript and APC's previous submission attached as 3.)

- 9 April 2009. Foundation sues the "BZA" and the "City of Atlanta" in Fulton Superior Court (2009-CV-167390).

- 25 August 2009. City Council unanimously approves and Mayor Franklin signs legislation 09-O-0806 designating Crum & Forster Building to the Landmark Building or Site ("LBS") category.

- September 2009. Foundation sues the "City of Atlanta" over the LBS designation by amending their pending lawsuit.

- 6 December 2010. Foundation's claim for $11 million in damages due to this Board's denial of V-08-195 is denied by City Council. (10-R-2048)

- Early 2012. Foundation and City Attorneys agree to allow Foundation to (i) attempt to secure Type IV (demolition) Certificate of Appropriateness ("CA") from the

[1] APC assumes that the entire BZA record in V-08-195, a certified copy of which is a part of the Superior Court record in CAFN 2009-CV-1673900, is before this Board since this is a continuation of the same case. Attachment 1 to this submission is a courtesy copy of this Board's record certified to the Court. APC hereby incorporates by this reference into this record all 2009 submissions in V-08-195, including all constitutional and standing submissions.

Atlanta Urban Design Commission ("AUDC"); and (ii) attempt to secure passage of legislation by City Council de-designating portions of Crum & Forster site, even though litigation is still pending. Evidently, the thinking was that if these events occurred, the litigation would become moot.

- 8 August 2012. AUDC unanimously denies Type IV CA for demolition after 2 hearings and months of review.

- 17 August 2012. Foundation's legal counsel writes letter to Superior Court Judge asking for hearing, characterizing the AUDC's decision as "political" ("...the matter was then caught up in the political process again") (attached as 4). The Foundation's counsel goes on to state: "I believe the parties agree that the appropriate final hearing is on the pending appeal from the Board of Zoning Appeals (sic), which is based on the record."

- 24 September 2012. The hearing on the BZA appeal of V-08-195 in Superior Court is specially set for 9:30 a.m. Just before the case was called, and before any evidence was reviewed or argument heard by the Court, the Foundation's legal counsel and the City Attorney's Office presented a signed "settlement" in the form of a "consent order" to the Court. The Court signed the Consent Order (attached as "5"). It orders the BZA to order Planning "to grant SAP-08-024" within 10 days of the BZA hearing, which SAP would allow the demolition of the Crum & Forster Building and replacement with surface parking. This is the hearing now before this Board.

III. ARGUMENT AND CITATION OF AUTHORITY

APC's position is that this Board is not required or authorized to follow paragraph 5 of the Consent Order for at least three reasons:

1. The Law Department had no authority from the BZA – its client – to reverse the Board's decision in V-08-195.

Upon information and belief, neither this Board nor the Atlanta City Council authorized the City Attorney to settle the pending appeal on their behalf. This Board obviously is not required to follow its legal counsel's decision when such decision is: (i) directly contrary to the Board's prior ruling; and (ii) performed without the permission or agreement of the client – in this case, this Board. Lawyers serve the interests of their client; not vice-versa. No client is required to follow the action of their lawyer when such actions are taken without the permission of the client, or worse, are taken in direct conflict of that client's wishes.

There is a series of cases addressing the authority of City Attorneys settling cases. In *City of Atlanta v. Black*, 265 Ga. 425 (1995) the Atlanta City Council refused to accept a

settlement of its city attorney in a police department lawsuit. The court ruled that public sector attorneys are public officers. As such, they do not have plenary authority to settle cases, but rather, such authority "is defined and prescribed by law, including municipal ordinance." *Black*, 265 Ga. at 429. *See also, Buckner v. Douglas County*, 273 Ga. App. 765 (2005).

In addition to the ordinance prescriptions on settlement addressed in points 2 and 3 below, the Ordinances of the City of Atlanta vest the city attorney only with exclusive legal authority over the executive branch of government. Code Section 2-396 attached hereto as 6. The BZA is **not** an executive branch Board – it is a quasi-judicial independent Board created and appointed by the City Council (which, of course, constitutes the legislative branch and "governing body" by Charter section 1-103). See Charter § 3-401 regarding Council authority to create boards, and Code sections 6-4020 and 6-4022 regarding creation of and appointments to the BZA by Council. (Tab 6.) Because the City Attorney has no plenary settlement powers, and otherwise has no independent power under the code to settle cases for clients outside the executive (e.g. Mayoral) branch, this settlement, absent BZA approval, was without authority and void. It therefore should not be followed by this Board.

2. The "settlement" violates this Board's enabling authority and due process review procedures and is ultra vires.

APC, Inc. has retained litigation counsel Mary Huber as co-counsel in this case. Ms. Huber was asked to opine on the lawfulness of the settlement in question. Since Ms. Huber's legal opinion (tab 7 herein) provides legal analysis for this second argument, only a brief summary is warranted here.

This Board holds only those powers and duties specifically given to it by the City Council. On an appeal from an administrative decision such as V-08-195, public notice must be had, argument and evidence considered, and a decision made strictly under the following standard which is well known to this Board:

> 16-30.010 (d) The board shall decide the appeal within a reasonable time. An appeal shall be sustained upon an expressed finding by the board that the administrative official's action was based on an erroneous finding of a material fact, or that he acted in an arbitrary manner.

This Board, with all due respect, has no authority whatsoever to "order" the Director of the Office of Planning to do anything **unless and until** there has been an "expressed finding" by this Board that the Director's action was based on an "erroneous finding of a material fact" or "arbitrary." This Board has the sole authority to make such findings and has never done so in the matter at bar. To the contrary, the Board expressly determined in 2009 that the Planning Director has acted properly.

Neither the Law Department nor the Mayor's office has any authority or right to order this Board to exercise authority it does not have. Absent an express finding of erroneous fact or arbitrary conduct, this Board lacks legal authority to "order" Planning to issue SAP-08-024, which is what the City Attorney's Office agreed to (see paragraph 5 of Consent Order at tab 5). If this Board has no such authority to make such an order, clearly this Board's legal counsel had no authority to order it to do so. This type of unlawful conduct is referred to as "ultra vires" by the judicial system. Ultra vires actions are null and void, and can not be followed or enforced. Accordingly, paragraph 5 of the Consent Order can not and should not be implemented by this Board, as it purports to order this Board to take action that exceeds this Board's authority.

3. The "settlement" attempted to confer authority upon the Superior Court that it does not have and is accordingly ultra vires.

A third reason the Consent Order should not be followed is that it was an ultra vires attempt by the Law Department to confer a scope of review upon the Superior Court that that Court does not have. Ms. Huber's opinion also addresses this point, which can be summarized as follows.

Following a decision by this Board – such as in V-08-195 – city code dictates how such decisions can be reviewed. §16-26.007 and §16-30.010(e). *See, Jackson v. Spalding County*, 265 Ga. 792 (1995). Appeals from BZA decisions go directly to Superior Court on the record and that Court "shall" then determine whether the Board's decision was correct "as a matter of law." *Id.* Supreme Court decisions involving this very Board have refined this limited judicial review authority of such quasi-judicial decisions of this Board : the court, sitting in its appellate capacity, may only decide "(1) whether there was any evidence to support the findings of the BZA, and (2) whether the BZA had abused its discretion." *City of Atlanta Board of Zoning Adjustment v. Kelly*, 238 Ga. App. 799, 801 (1999).

The court below made no such determinations. The court never even heard the case. It instead relied on the BZA's legal counsel by signing a consent order which said counsel had prepared and executed. That settlement is ultra vires and should not be followed because in presenting the settlement to the Court, the City Attorney attempted to confer upon the Superior Court a scope of review that exceeds the very limited judicial review set out in city code and in cases like *Kelly*. The Law Department had no authority to agree to a "reversal" of this Board's 2009 decision without a finding that that decision had no evidence to support it or constitutionally abused its authority. Neither required finding occurred. Ordering this Board, without a judicial review or finding, to take specific action that reverses its prior decision, and further ordering it, in turn, to order the Planning Director to take specific action to issue the SAP in question, are actions that clearly exceed the limited review authority of the Law Department and the Superior Court. Therefore, the action was ultra vires, and can not and should not be implemented by this Board.

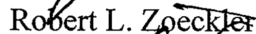
IV. CONCLUSION

This Board's decision in V-08-195 was sound and supported by an ample record. It was never judicially reviewed or reversed. Nothing since the time of that decision has changed, except, evidently, the degree of political pressure that has been exerted on the City Attorney's Office.

The City Attorney's Office seriously erred when it succumbed to that pressure and undertook to reverse this Board's decision by "settlement." It had no client authority to do so, and it had no legal authority to do so.

This Board should not allow this kind of manipulation of due process to occur. And since the actions of the Law Department were ultra vires, this Board has no legal requirement to do so. We therefore respectfully urge this Board to refuse to follow this Consent Order because it is wrong as well as ultra vires. We further respectfully urge the Board to secure independent legal counsel to protect it from the contempt claims that the plaintiff is likely, regrettably, to pursue.

Respectfully submitted,



Robert L. Zoeckler

Thomas A. Bowman
Attorneys for Atlanta Preservation Center, Inc.

RLZ/mbc

cc: Brandy N. Crawford, Urban Planner, Principal, BZA Secretary (for placement in official record)
Boyd Coons, Executive Director, Atlanta Preservation Center, Inc.
Mary Huber, Esq., Co-Counsel, Atlanta Preservation Center, Inc.

Enclosures: Exhibits 1 through 7. Full copies of all originals are contained in the official record submission in V-08-195.

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October 24, 2012

Board of Zoning Adjustment
City of Atlanta, Ga.
c/o Office of Planning
55 Trinity Ave., S.W. Suite 3350
Atlanta, Georgia 30303

Via hand delivery

Re: Georgia Tech Foundation Real Estate Holding Corp. v. City of Atlanta & City of Atlanta Bd. of Zoning Adjustment, Superior Court of Fulton County, Georgia, Civil Action #2009-cv-167390; BZA Case #V-08-195

Dear Board members:

The Atlanta Preservation Center, Inc. and their counsel, Robert Zoeckler, recently requested my opinion as to the legality of a Consent Order entered into between the City Law Department and counsel for the Georgia Tech Foundation [hereinafter: the Foundation] in the case of Georgia Tech Foundation Real Estate Holding Corp. v. City of Atlanta & City of Atlanta Bd. of Zoning Adjustment, Superior Court of Fulton County, Georgia, Civil Action #2009-cv-167390. In an *ante litem* noticed issued earlier this week to the Mayor and Council President, I set out my opinion that the City's action was *ultra vires*. See enclosed letter dated October 22, 2012. I am now writing to you to summarize the reasoning behind my opinion.

The City of Atlanta is a municipal corporation. "Municipal corporations are creations of the state, possessing only those powers that have been granted to them, and allocations of power from the state are strictly construed." Kemp v. City of Claxton, 269 Ga. 173, 176 (1998). A municipality acts *ultra vires* when it takes an action "beyond the scope of the powers that have been expressly or impliedly conferred on the municipality." Newsome v. City of Union Point, 249 Ga. 434, 437 (1982). See also City of Atlanta v. North by Northwest Civic Ass'n, 262 Ga. 531, 539 (1992).

Georgia home rule statutes grant the "governing authority" of a municipal corporation the power to enact legislation in the form of ordinances, resolutions, and regulations. O.C.G.A. §36-35-3(a). The "governing authority" of the City of Atlanta is the City Council. City of Atlanta Charter Sec. 1-103. See Savage v. City of Atlanta 242 Ga. 671, 675 (1978) (interpreting 1973 Charter and holding that the mayor is not a member of the governing authority). Pursuant to the zoning authority granted by the Georgia Constitution, Art. IX, §II, Para. IV, the City Council enacted ordinances establishing the Board of Zoning Adjustment [hereinafter: the BZA]. City Code Sec. 6-4021 et seq. See also City Code Sec. 3-401 (power of the council to establish boards). The powers and duties of the BZA are set out in detail in City Code Sec. 6-4029. Among other things, the processes for appeals to the BZA are designed to provide due process meaning notice and an opportunity for affected parties to be heard. City Code Sec. 6-4028. See Jackson v. Spalding County, Ga., 265 Ga. 792, 794-95 (1995). The City Council also has specified the standard of review for appeals from decisions of the BZA: City Code Secs. 16-30.010 & 16-26.007. Under the latter ordinance, the Superior Court of Fulton County is authorized to determine only "whether the decision of the [BZA] is correct as a matter of law." Consistent with the ordinance, the Georgia courts have held that, on appeals from decisions of the BZA, the Superior Court of Fulton County is authorized to consider only the following two matters: "(1) whether there was any evidence to support the findings of the BZA and (2) whether the BZA had abused its discretion." City of Atlanta Bd. of Zoning Adjustment v. Kelly, 238 Ga. App. 799, 801 (1999).

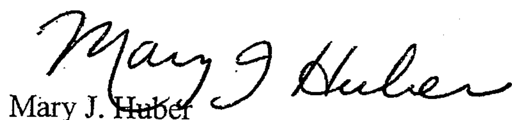
The powers and duties of the BZA are at issue in this case, as is the legislative authority of the City Council. As you know, in March 2009 the BZA reviewed the Foundation's appeal from the decision of the Office of Planning, denying SAP-08-024 for the demolition of the Crum & Forster building. After following the procedures set out in Code Sec. 6-4029, the BZA denied the appeal. Thereafter, the Foundation filed an appeal from the decision of the BZA to the Superior Court of Fulton County: Georgia Tech Foundation Real Estate Holding Corp. v. City of Atlanta & City of Atlanta Bd. of Zoning Adjustment, Superior Court of Fulton County, Georgia, Civil Action #2009-cv-167390. On September 24, 2012, the date that the Foundation's appeal finally was set for hearing before the Superior Court, the City Law Department, purportedly acting on behalf of both the City and the BZA, entered into an agreement with the Foundation. The agreement took the form of a Consent Order signed by the attorneys for the parties and approved by the assigned judge. See City of Centerville v. City of Warner Robins, 270 Ga. 183, 187 (1998) (a consent order is an agreement of the parties that is sanctioned by a court).

Paragraph 5 of the Consent Order provides that "[a]t its next regularly scheduled hearing, the BZA shall order, with or without conditions, not inconsistent with this Order, the Director of the Office of Planning to grant SAP-08-024 within 10 days of its hearing." Paragraph 5 is *ultra vires* because the BZA lacks authority to issue directives to the Office of Planning other than through the procedures set out in City Code 6-4030. In directing the BZA to exercise powers that it does not have, the Law Department usurped the powers of the City Council, as only the Council may enact legislation setting out the powers of the BZA. In yet another *ultra vires* act, the Law Department attempted to confer upon the Superior Court authority to exercise a scope of review broader than the limited review set out in City Code. In so doing, the Law Department acted *ultra vires.*

Whether the members of the BZA approved the Law Department's decision to enter into the Consent Order is not a matter that I can address. The bottom line is that the City Council has exclusive authority to set out the powers and duties of the BZA and to establish the procedures for appeals from decisions of the BZA. Neither the BZA itself nor any agent of the executive branch can re-write the ordinances enacted by the City Council. This, however, is exactly what happened in this case.

I urge the members of the BZA to review this matter with legal counsel independent of the City Law Department.

Very truly yours,



Mary J. Huber
Encl.
Cc: Robert L. Zoeckler
Counsel for Atlanta Preservation Center, Inc.

ATLANTA
Preservation Center

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October 22, 2012

The President and Members of the Atlanta City Council
The Chair and Members of the Board of Zoning Adjustment
The Chair and Members of the Atlanta Urban Design Commission

Re: Concerns over the Crum & Foster Case

Dear President, Chairs, and Members:

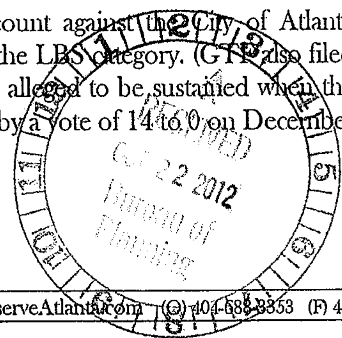
The Atlanta Preservation Center ("APC") is deeply concerned over recent developments in the Crum & Forster case. These concerns go well beyond the preservation of one Landmark Building in the City of Atlanta. It is the APC's belief that you will be similarly concerned upon your careful review of the events described below.

In 2008, the Georgia Tech Foundation ("GTF") applied for a Special Administrative Permit ("SAP") from the Office of Planning. GTF sought to demolish the Crum & Foster Building ("C&F") at 771 Spring Street, NW for the purpose of creating surface parking on the entire site. To do so would have been in violation of Special Public Interest Midtown District Zoning regulations Sec. 16-18P.022.7. which specifically prohibits surface parking as a principal use. The Office of Planning accordingly denied the SAP application on July 11, 2008.

GTF appealed the Office of Planning's denial of the SAP to the Board of Zoning Adjustment ("BZA"). After a lengthy public hearing and consideration of numerous documents, the BZA upheld Planning's denial by a vote of 3 yeas, 0 nays and 2 abstentions on March 12, 2009. GTF then filed suit in Fulton County Superior Court, appealing the decision of the BZA and naming the BZA and the City of Atlanta as defendants in that litigation.

While the litigation was pending, the Atlanta Urban Design Commission ("AUDC") Staff, with urging from the public and the District City Council Member as well as the go-ahead from the Mayor's Office, sent out a Notice of Intent to Nominate the C&F pursuant to City preservation regulations. Following public notice and a hearing, the AUDC voted unanimously to nominate the building as a Landmark ("LBS" Designation). This action was supported by the Midtown Neighborhood Association, the Zoning Review Board, the Zoning Committee, and finally the City Council by a unanimous roll call vote of 14 yeas and 0 nays on August 17, 2009. Mayor Shirley Franklin signed that legislation rezoning C&F property to the LBS category on August 25, 2009.

GTF then amended its pending BZA lawsuit to add a count against the City of Atlanta challenging that legislative decision rezoning the property to the LBS category. (GTF also filed a separate claim against the City for $11 million in damages alleged to be sustained when the SAP was denied, which City Council adversed unanimously by a vote of 14 to 0 on December 6, 2010.)



While the litigation was pending, GTF and the City Attorney's Office secured the Superior Court's permission to allow GTF to apply to the AUDC for a demolition permit for the Crum & Forster Building based on a lack of reasonable economic return. That step also allowed GTF, despite the pendancy of the litigation, to have introduced, through the District Council Member's Office, heretofore unprecedented legislation to "de-designate" a portion of the LBS property. Evidently, the idea was that if the AUDC granted the demolition certificate and the property was partially or fully de-designated, the lawsuit would become moot except for any residual damages claims.

After two exhaustive public hearings, careful review of a huge volume of documents by all sides including recent appraisals and expert testimony, and consideration of an economic review panel (which recommended the demolition permit be issued) the full AUDC voted unanimously to refuse to accept the review panel's recommendation as it had not applied the correct legal criteria for review, and determined that GTF had failed to provide required data and had further failed to establish an economic hardship as required by the terms of the ordinance.

Having failed in its efforts to overturn the decisions of the City Council, the BZA, and the AUDC, GTF returned to Fulton County Superior Court asking that the pending litigation be activated and heard. The case was set down for hearing on GTF's appeal of the original BZA decision for 9:30 am on September 24, 2012. Until this point in time, APC believes that City procedures had been properly followed.

On the morning of September 24, 2012, however, before the case was called or heard by the Court, the interested parties outside the courtroom were informed that an "agreement" had been reached by legal counsel for GTF and the City Attorney's Office settling the case, and that a Consent Order had accordingly been signed by the Fulton County Superior Court. APC has been unable to identify any writing or other evidence that any members of the Defendant BZA or the City Council were even aware of this consent agreement being signed on their behalf by the City Attorney's Office. Because of the settlement, the case was never tried by the Fulton County Superior Court and no evidence from the BZA hearing or the AUDC decision was heard by the Court.

The agreement expressed by the Consent Order (attached) requires that "the BZA shall order, with or without conditions . . . the Director of the Office of Planning to grant SAP-08-024 within 10 days of its hearing." The BZA staff has scheduled this hearing before the BZA on November 1, 2012. At that hearing, the BZA will be put in the position of reviewing a Consent Order that they never consented to. They will be receiving legal advice on their options from the same City Attorney's Office that entered into the Consent Order reversing their prior decision without their prior approval or even knowledge. They will be required to make the difficult decision of either ordering that the SAP be approved by Planning even though there is no evidence to do so and absolutely no change in circumstances since their first decision in which they refused to do so, or to refuse to abide by the terms of the Consent Order on the grounds that it is ultra vires and unlawful, and was never consented to by the BZA. Issuance of the previously denied SAP (which showed C&F completely demolished) is likely to result in a demolition permit being issued by the Office of Buildings within a matter of days, if not hours, after the submission of GTF's application.

It is APC's contention that the City of Atlanta Law Department, with respect, did not have jurisdictional authority to reach an agreement with the Georgia Tech Foundation that orders the BZA to reverse its prior decision absent a judicial finding of arbitrary conduct, did not have authority to reach an agreement ordering the BZA to violate the City of Atlanta's Zoning Ordinance which prohibits surface parking in this zoning district, and did not have authority to reach an agreement that overrides the procedural rules governing appeals of these quasi-judicial decisions. It is important to understand that the Superior Court did not review the record from the prior BZA decision and thereafter rule that the BZA's decision was arbitrary or unlawful – the Court instead simply signed a Consent Order prepared and agreed to by the Defendants' legal counsel, presumably assuming, as Courts always do, that the attorneys involved had proper legal authority to do so. We believe that the City Attorney's Office did not have prior BZA or City Council approval to agree to anything. APC further believes that the City Attorney's Office did not have and could not vest the Court with jurisdictional authority to order a quasi-judicial body, the BZA, to act in contravention of its earlier decision without a proper judicial review of the evidence below and reversal of that decision.

All decisions by the City Council and two of the City's independent boards made over the course of the past four years were overturned without any court hearing on the merits by the City Attorney's Office, supposedly on behalf of, but without the knowledge of, the very clients they are charged with defending. We assume that the City Attorney's Office actions were taken at the direction of the Mayor's Office. If this assumption is correct, the City Attorney's Office now clearly appears to have a conflict of interest should it continue to advise the BZA about its options regarding the Consent Order on November 1, 2012, since the interests of the Mayor's Office are in direct conflict with those of the City Council, the BZA, and the AUDC at this point in time.

Preservation aside, the facts of this case demonstrate what APC believes is a very troubling intrusion into the procedures of the City. We are at a loss to understand how the City Attorney's Office can unilaterally and apparently without prior permission from the named Defendants "settle" a case in a manner that directly contravenes past decisions reached by those clients. Respectfully, neither the Mayor's Office nor the City Attorney's Office holds the power to usurp lawful decisions of the City Council, the BZA, and the AUDC. This situation is particularly egregious because, if left unchecked, it will result in the demolition of a Landmark Building without judicial review when every reviewing City body over a four year period has reached a contrary result.

We respectfully urge the BZA, a quasi-judicial board whose members are appointed by the City Council; the AUDC, also an independent quasi-judicial commission; and the City Council, which by Charter constitutes the legislative branch of the "City," to take all required steps to investigate through independent legal counsel what occurred here.

We further urge the BZA, with assistance from independent legal counsel, to refuse to follow what we believe to be an ultra vires and unlawful Consent Agreement/Order at its November 1, 2012 hearing, and respectfully urge the AUDC and the Atlanta City Council, prior to that hearing on November 1, 2012, to take all appropriate steps to support that course of action by the BZA.

We remain confident that upon your careful review of this unfortunate situation, you will act to maintain the separation of powers established by the City Charter and the procedures for the lawful review of Board and Commission decisions, and will challenge and reverse, in all ways lawfully permissible, the unlawful "settlement" in question.

Respectfully submitted,

F. H. Boyd Coons
Executive Director

Cc: Mayor Kasim Reed

Enclosure: Consent Order dated 09/24/2012