



**ATLANTA**  
Preservation Center

October 22, 2012

EXECUTIVE COMMITTEE  
Howell E. Adams III, President  
Belle Turner Lynch, Vice President  
William E. Pennington, Treasurer  
Penny Hart, Secretary  
Sally K. Bayless  
Michael Bishop  
Alida Cooper Silverman

EXECUTIVE DIRECTOR  
F. H. Boyd Coons

BOARD OF TRUSTEES  
Howell E. Adams III  
Sally K. Bayless  
Michael Bishop  
Albert Caproni III  
Rodolfo Castro  
Laura Howard DePree  
Bryan M. Grant III  
Suzanne R. Gwynn  
Mary L. Leslie  
Elaine Luxenburger  
Belle Turner Lynch  
James McManus  
Brandy Morrison  
Ralph R. Morrison  
Neal G. Patton  
Leon R. Robbins  
Ronald W. Rogers  
Barbara B. Slick  
Rebekah Stewart  
Rainey Rembert Woodward

HONORARY TRUSTEES  
Boyce Ansley  
Shepard Ansley  
Jean Astrop  
Dameron Black III  
Timothy J. Crimmins  
Arch Davis  
Rawson Foreman  
Harry L. Gilham, Jr.  
Nowland B. Gwynn II  
Penny Hart  
Rep. John Lewis  
Ellen K. Nemhauser  
Mary Norwood  
William E. Pennington  
Kathy K. Rainer  
Ginny Rather  
Alida Cooper Silverman  
Elizabeth Morgan Spiegel  
Chrissie Stevens Wayt  
Mtamanika Youngblood

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:

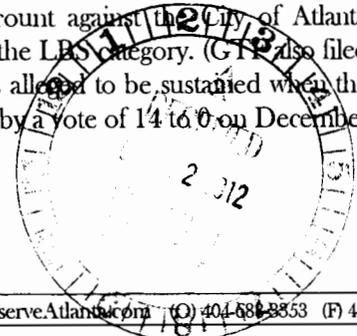
The Atlanta Preservation Center ("APC") is deeply concerned over recent developments in the Crum & Foster case. These concerns go well beyond the preservation of one Landmark Building in the City of Atlanta. It is the APC's belief that you will be similarly concerned upon your careful review of the events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



ATLANTA PRESERVATION CENTER 327 ST. PAUL AVENUE SE ATLANTA GA 30312-3129 www.PreserveAtlanta.com (O) 404-688-3353 (F) 404-688-3357

THE PURPOSE OF THE ATLANTA PRESERVATION CENTER IS TO PROMOTE THE PRESERVATION OF ATLANTA'S ARCHITECTURALLY, HISTORICALLY AND CULTURALLY SIGNIFICANT BUILDINGS, NEIGHBORHOODS AND LANDSCAPES THROUGH EDUCATION AND ADVOCACY.

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 pendency 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.

City of Atlanta: Zoning, BZA, AUDC  
October 22, 2012

Page Four

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