



Advisory Neighborhood Commission 1C

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Representing Adams Morgan

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Stacey Moyer (1C01)
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Chris Otten (1C02)

Bryan Weaver (1C03)

M. Mindy Moretti (1C04)

J. Michael Logsdon
(1C05)

Nancy Shia (1C06)
Secretary

Wilson Reynolds (1C07)
Chairperson

Katherine Boettrich
(1C08) Treasurer

July 8, 2010

Meredith H. Moldenhauer, Chairperson

Board of Zoning Adjustment

441 4th St., NW Suite 200 – S

Washington, DC 20001

Re: Remand of Appeal 17109-B Kalorama Citizen’s Association

Dear Ms. Moldenhauer:

At a duly-noticed public meeting of ANC 1C held on July 7, 2010, with a quorum of six of eight Commissioners present, Advisory Neighborhood Commission 1C approved by a vote of 6-0 a motion in reference to this case, as follows: “Regarding BZA Case No. 17109-B

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Motion to submit a memorandum as requested by the BZA regarding Definition of ‘attic’ in response to Procedural Order of Remand regarding BZA case 17109-B, in which ANC 1C would incorporate by reference the Memorandum submitted by the Kalorama Citizens Association submitted July 2, 2006.

And further move to include additional materials appended to this motion.”

Accordingly, please find enclosed (1) *Memorandum of Advisory Neighborhood Commission 1C regarding Definition of “attic”, in Response to Procedural Order on Remand*, (2) a copy of the email that confirmed our permission to file by July 9, 2010.

This correspondence concludes the request for the July 2 filing waiver submitted to you on July 1 by US mail and electronically on July 2.

Sincerely,

Wilson Reynolds
Chair
Advisory Neighborhood Commission 1C
Attachments

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17109

EXHIBIT NO. 105-A

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of Kalorama Citizens Association, pursuant to)
11 DCMR § 3100, from the administrative decision of)
David Clark, Director, Department of Consumer and)
Regulatory Affairs issuing Building Permits Nos. B455571)
and B455876 respectively, to Montrose, LLC, to adjust) BZA No. 17109-B
the building height to 70 feet and to revise penthouse)
roof structure plans to construct an apartment building)
in the R-5-D District at 1819 Belmont Road, N.W., and)
from the issuance of the original Building Permit No.)
B449218, dated March 11, 2003.)

MEMORANDUM OF ADVISORY NEIGHBORHOOD COMMISSION 1C
REGARDING DEFINITION OF "ATTIC",
IN RESPONSE TO PROCEDURAL ORDER ON REMAND

ANC 1C hereby incorporates by reference the memorandum submitted on July 2, 2010 by Kalorama Citizens Association regarding definition of 'attic' in response to the Board's Procedural Order of Remand regarding BZA case 17109-B. Further, ANC 1C would note the following:

ANC 1C and KCA sought to have the Court determine that the seventh level was not an attic. The Court declined to do this, but instead remanded the issue to the Board, at the same time conjecturing about the conceivable applicability of one or more of the definitions. (The Court of course made no finding on whether any of the possible definitions was applicable -- had it done so, there would have been nothing to remand -- but stated that "[t]hese are questions that the BZA, not we, must resolve in the first instance (and we imply nothing about how they should be answered)." *Kalorama Citizens Association v.*

District of Columbia Board of Zoning Adjustment, D.C. App. No. 06-AA-486 (2007), p. 25. (Emphasis added) For example, the Court conjectured about the possibility of the area in question being “wholly or partly within the roof framing”, stating:

“conceivably, it appears to us, the collar ties that form the ceiling of the sixth level are part of the roof framing”, and noting that the dictionary defines ‘collar tie’ as ‘a board used to prevent the roof framing from spreading or sagging.’ If that is so, then, it might be argued, the sixth level is to some extent ‘within’ the roof framing. “ Ibid. (Emphasis added)¹

However, the relevant plans and testimony in the BZA record make clear that the structural function of the collar ties in this building was not to prevent roof spread, as with a gabled roof, or otherwise to support the roof, but to brace the whole building against lengthwise stress or racking. Nothing in the record indicates any connection between the collar ties, which also served as some of the seventh level ceiling beams, and the roof or the roof rafters. See Order, p. 5, Paragraphs 31 and 32.

Similarly, the Court conjectured that the level in question “conceivably qualifies as the ‘room or rooms behind’ a ‘low story’ that is the attic.” *Ibid.*, p.24. (Emphasis added) Again, the record indicates that there is no “story” (or for that matter “wall”) that the seventh level is behind, but only open space. The so-called “attic” does not extend to the front wall of the building, but rather is set a substantial distance away from it and overlooks the floor below. See KCA Submission, Attachment 2; see also Record Exhibit 29, Appellant’s Statement, p. 6 and Exhibit 8, “attic” floor plan drawing. The seventh level has three rooms, and the second and third are indeed behind the first, but this is irrelevant absent a showing that the first room qualifies as an attic. In any event the issue is not whether the seventh level of the building – all of which was excluded from gross floor area -- not one of the rooms on that level, constitutes an “attic”.

As to the first dictionary definition: “a low story or wall above the main order or orders of a façade in the classical styles”, we believe the fact that this building’s façade bears no remote resemblance to a “façade in the classical styles”, as KCA has noted, is determinative. Further, the seventh level cannot reasonably be said to be “above the main order or orders” of the façade. The plane of the façade at the sixth and seventh levels of this seven-level building differs from that of levels 1-5 only in that it is tilted slightly off horizontal, by an apparent 2.5 degrees. There is no set-back at the sixth or seventh level or other structural break. At most this portion of the façade should be regarded as one of the “main orders” of the façade, if not a part of *the* main order.

Therefore ANC 1C submits that the seventh level of the subject building does not qualify as an “attic” under any legally applicable definition of the term.

¹ The claimed “attic” is the sixth interior level of the building not counting the ground floor, but seventh if the ground floor is counted.

Respectfully submitted,



Wilson Reynolds
Chair
Advisory Neighborhood Commission 1C

Certificate of Service

A copy of this instrument on this ninth day of July, 2010 was sent by US Mail, first class, prepaid to:

Meredith H. Moldenhauer, Chairperson
Board of Zoning Adjustment
441 4th St., NW Suite 200-S
Washington, DC 20001

Kalorama Citizens Association
c/o Anne Hughes Hargrove
1827 Belmont Road, NW
Washington, DC 20009

Harriet Tregoning, Director
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Montrose, LLC
c/o Carolyn Brown, Esq.
Holland & Knight
2099 Pennsylvania Ave., NW, Suite 100
Washington, D.C. 20006-6801

ATTESTED BY: Wilson Reynolds, Chair, ANC 1C

A handwritten signature in black ink, appearing to read "W Reynolds", with a long horizontal flourish extending to the right.

-----Original Message-----

From: Rose, Tracey (DCOZ) <tracey.rose@dc.gov>

To: wreynoldsanc@aol.com <wreynoldsanc@aol.com>

Cc: Moy, Clifford (DCOZ) <clifford.moy@dc.gov>; Nero, Richard (DCOZ) <richard.nero@dc.gov>

Sent: Wed, Jun 30, 2010 11:28 am

Subject: RE: Procedural Order on Remand: 17109-B of KCA issued June 14, 2010

Good morning Mr. Reynolds,

I talked with Mr. Nero and he said to:

1. File your document with the Board as soon as you can;
2. File a waiver of the July 2nd filing deadline;
3. Serve the parties with both – copies of your document and the waiver request.
4. File a statement indicating who you served & what documents

If you have further questions, please contact me, or contact Mr. Moy when he returns on July 6th

Thank you.

Tracey Rose