

Holland & Knight

2099 Pennsylvania Avenue, N.W., Suite 100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Mary Carolyn Brown
202.862.5990
carolyn.brown@hklaw.com

July 12, 2010

VIA E-MAIL

D.C. Board of Zoning Adjustment
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: BZA Case No. 17109-B
Remand from D.C. Court of Appeals

Dear Members of the Board:

On behalf of Montrose, LLC, the applicant in the above-reference case ("Applicant"), we submit the following reply to the memoranda submitted by the D.C. Department of Consumer and Regulatory Affairs ("DCRA"), the Kalorama Citizens Association ("KCA"), and Advisory Neighborhood Commission 1C.

The Applicant adopts the arguments of DCRA in their entirety. The sole question for the Board of Zoning Adjustment is whether the space labeled as "attic" on the construction drawings meets the Webster's Unabridged Dictionary definition of attic. (See copy of section drawing included as Attachment 2 to KCA's July 2, 2010 submission). Here, the space labeled attic on the drawing is "a low story above the main order of a façade." It is also "the part of the building immediately below the roof and is wholly within the roof framing" to serve as "storage space under the roof." See definition of *attic*, Webster's Unabridged Dictionary.

KCA nevertheless argues that a small sliver of space between two structural wood members above the attic ceiling, less than a foot in height, should be considered the attic space. (The space is denoted by an "X" on KCA's Attachment 2). KCA suggests that this space can indeed be used for storage and thus meets Webster's definition of "attic." KCA's argument fails for two reasons. First, that space is not accessible for storage. Second, even if the space were accessible, such an interpretation of the Zoning Regulations would lead to absurd consequences, which are to be avoided. See *Parreco v. District of Columbia Rental Housing Commission*, 567 A.2d 43, 46 (D.C. 1989) ("[c]ourts do not wallow in literalism where the plain language of a statute would lead to absurd consequences which the legislature could not have intended") (internal citations omitted). Even unreasonable results are to be avoided when they are "plainly

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17109-B

EXHIBIT NO. 106

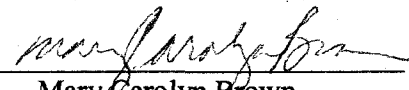
RECEIVED
D.C. OFFICE OF ZONING
2010 JUL 12 PM 3:08

at variance with the policy of the legislature as a whole.” *Id.* The most such a sliver of space could store would be golf balls, perhaps, which does not satisfy the reasonable understanding of attic storage space.

For the foregoing reasons, the Board should find that the space labeled as “attic” on the drawings meets the Webster’s definition of “attic” and the Board’s decision in Case No. 17109 upheld.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Mary Carolyn Brown

CERTIFICATE OF SERVICE

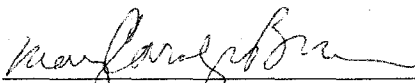
I HEREBY CERTIFY that a copy of the foregoing was sent on July 12, 2010, by first class mail or electronic mail to:

Kalorama Citizens Association
c/o Anne Hughes Hargrove
1827 Belmont Road, N.W.
Washington, D.C. 20009

Andrea Ferster
1100 17th Street, N.W., 10th Floor
Washington, D.C. 20036

Chairperson
Advisory Neighborhood Commission 1C
P.O. Box 21009
Washington, D.C. 20009

Jay Surabian
Assistant Attorney General
DCRA
Office of the General Counsel
1100 4th Street, S.W., 5th Floor
Washington, D.C. 20024
Jay.surabian@dc.gov

By: 
Mary Carolyn Brown