

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

2011 FEB 23 PM 1:04

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-C
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. )

REPLY OF APPELLANT KALORAMA CITIZENS ASSOCIATION
TO DCRA'S RESPONSE TO KCA'S EXCEPTIONS
TO PROPOSED ORDER ON REMAND

No action having been taken by the Board to close the record, Appellant KCA submits
the following reply to DCRA's Response to Appellant's Exceptions ("DCRA's Response"):

1. DCRA asserts at p. 1 that KCA seeks to re-litigate issues of fact determined
previously determined by the Board. DCRA identifies no such issues, and there are none. The
only factual issues addressed by KCA are whether certain of the Board's findings of fact, on
which the Board's conclusion on the single issue remanded to it depends, are supported by
substantial evidence in the record as a whole. (We believe we have shown that they are not.)

2. The Board's conclusion that the sixth level qualified as an attic depends on its findings
Nos. 6 and 9 that there is no finished ceiling to the sixth level and that therefore "all of that
level is immediately below the roof of the building . . . ." At page 2 of its DCRA's Response,
DCRA denies that the record indicates that a finished ceiling was installed. This assertion
ignores, and is refuted by, the repeated testimony of the developer's architect, Norman Smith,
that the sixth level had a finished ceiling, stating that

"[t]here is a finished ceiling in a two-story space and there is a finished ceiling plane in
the attic space. . . . [T]o answer your question, there is a finished - yes, there is a
finished ceiling surface . . .",

going on to explain how the drywall was attached.<sup>1</sup>

**3. DCRA asserts that the sixth level qualifies as an attic whether or not it has a finished ceiling.** *DCRA's Response*, p. 2. Strangely, this assertion places DCRA in direct contradiction to the position of the Board in its draft Order, which finds that “because there is no finished ceiling to the sixth level, all of that level is immediately below the roof of the building” as the dictionary definition of “attic” requires. *Proposed Order*, Finding 9. Contrary to DCRA’s position, the Board correctly proceeds from the premise, which seems beyond dispute, that a ceiling installed on the collar ties and ceiling beams that are positioned 6’ 5 ¼” above the sixth level’s floor would divide the space between that floor and the roof into two separate spaces, only the uppermost of which would be “immediately below the roof of the building” -- just as drywall walls divide the floor space into separate rooms. Where the Order is incorrect is not in this premise, but in its finding of fact that there is no such ceiling, because the record clearly establishes that there is.

**4.** The Board’s conclusion that the sixth level qualified as an attic also depends on its findings that

“[t]he collar ties in the subject building are a part of the roof framing. They secure the roof rafters and work to brace the building against racking in a north-south direction,”

and therefore that “[t]he sixth level of the building is at least partially within the roof framing.”

KCA has pointed out that there is no evidence in the record that the collar ties secured the roof rafters or were part of the roof framing, and that the developer’s architect repeatedly ascribed a quite different structural function to them. *KCA's Exceptions*, p. 4. **DCRA asserts that KCA’s own architect, Donald Hawkins, “described the collar ties as being part of the roof framing, by preventing in the roof rafters from spreading,”** citing the following statement:

“It’s easier to imagine, to picture how a collar tie works if you’ll imagine an equilateral triangle, the bottom being the collar ties and the top two being the roof rafters. The collar ties are keeping that pair of rafters from spreading.” *Transcript 04 06 04*, p. 186-7.

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<sup>1</sup> *Transcript 04 06 04*, p. 139, set out in full at Attachment 1 to *KCA's Exceptions*. In any event what governs on this issue is the project plans as approved and permitted -- which were the object of the Appeal -- and it is clear both from this testimony of the project architect and other evidence cited at *Appellant's Exceptions*, pp. 3-4, that the plans called for a finished ceiling at the sixth level.

However, even a cursory reading of Hawkins' testimony at this point shows that he was not asserting that the collar ties in the subject building served to prevent the roof rafters from spreading. Rather, he was explaining the concept of a "collar tie" -- which engendered requests for elucidation in the course of the hearing -- by reference to the typical use of collar ties in a peaked or gabled roof, in which each collar tie is connected to two rafters to form an *equilateral* triangle that keeps the roof rafters from spreading apart.

The developer's architect, Norman Smith, took the same approach in explaining the typical function of a collar tie, by referring to collar ties "banged onto the sides of the rafters" in a *gabled* attic in a single-family house.<sup>2</sup> Both of these expert witnesses then went on to distinguish this typical function from the function performed by the members labeled "collar ties" in the subject building-- in which the roof is flat and in which the collar ties, so far from forming an equilateral triangle with the rafters in that flat roof, are almost parallel to them.<sup>3</sup> There was no claim in testimony on either side that the collar ties served to support the roof (as

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<sup>2</sup> *Transcript 04 06 04*, p. 147-48.

<sup>3</sup> See depiction of collar ties and roof rafters in section drawing at Attachment 2 of *Memorandum of Appellant KCA Regarding Definition of "attic" in Response to Procedural Order on Remand ("KCA's Memorandum")*. As this drawing and Hawkins' testimony make clear, the only triangle of which the collar ties could be said to form a part would have been one in which the two sides were 50 or 60 feet long and the base consisting of a one or two foot section of the slightly tilted portion of the front facade of the building. *Transcript 04 06 04*, p. 187. Hawkins went on to conclude that while "theoretically . . . , you might find a force that these collar ties are accommodating, in fact I don't believe any force would come to bear on them." *Ibid*, p. 188. Smith stated that the collar ties attached to the rafters in a gabled attic are "acting in tension to keep the roof from spreading," but that the collar ties in the subject building "are not acting in tension. They are acting, essentially, as compression braces . . . ." He then identified the roof rafters above the collar ties as the "roof framing":

"CHAIRPERSON GRIFFIS: Fascinating. And then your roof framing is 2 x 12s above that [i.e., the collar ties]. Is that correct?

MR. SMITH: They are 9 and ½ inch TJI 350s, I believe. The roof framing of the penthouse structure is 2 x 12s." *Transcript 04 06 04*, p. 148."

An additional inaccurate finding in the draft Order (Finding No. 9) may have generated some confusion on this point. It states that "[p]art of the roof of the building is peaked, and there is an open area between the sixth-level ceiling rafters/collar ties and the peaked roof." That finding may have been based on the elevation drawing at Attachment 2 of *KCA's Memorandum*, showing a structure atop the building roof substantially set back from the front and rear of the building and shown as having a two-sided peaked roof. That is a "penthouse roof structure" as envisaged in 11 DCMR §411 for enclosing a stairway to the roof and roof deck. It has a floor, and thus -- except for the staircase -- is not open to the space below, and its own roof has no connection with the roof of the building, which is flat. Moreover, the elevation drawing just mentioned was eventually replaced in the course of the Appeal by a drawing eliminating the rear portion of the roof altogether, and replacing it with a vertical wall.

the draft Order asserts) or were connected to the roof rafters spanning the length of the building or were in any other way a part of the roof framing. The only issue was whether they served any structural purpose at all, with Mr. Hawkins arguing that they did not, and Mr. Smith asserting repeatedly that they served the purpose of preventing the racking or twisting of the building in a north-south direction. The Board agreed with Mr. Smith's assertion, and so found in Order 17109, Finding 32. The Board did not find, nor did any testimony assert, that the collar ties served any other structural function.

The Board is required by law to base its conclusions of law on findings that flow rationally from substantial evidence in the record as a whole. That requirement not being met in the proposed Order as to essential elements in the definition of "attic", the Board should revise the Order accordingly, to conclude that the sixth level of the subject building did not qualify as an attic.

Respectfully submitted,



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John Lawrence Hargrove  
Counsel for Kalorama Citizens Association  
D.C. Bar No. 35413

## CERTIFICATE OF SERVICE

A copy of this instrument was sent on this 28<sup>h</sup> day of February, 2011 by United States mail, first class postage prepaid, to:

Montrose, LLC  
c/o Mary Carolyn Brown, Esquire  
Holland & Knight, LLP  
2009 Pennsylvania Avenue, N.W., Suite 100  
Washington, D.C. 20006-6801

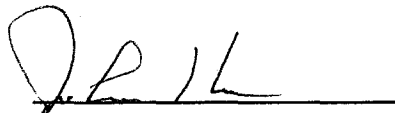
Wilson Reynolds, Chairman  
Advisory Neighborhood Commission 1C  
P.O. Box 21009  
Washington, D.C. 20009

Olivier Kamanda  
Single Member District Commissioner 1C-03  
P.O. Box 21009  
Washington, D.C. 20009

Councilmember Jim Graham  
Ward 1  
1350 Pennsylvania Avenue, N.W., Suite 105  
Washington, D.C. 20004

Melinda Bolling, Esquire  
General Counsel  
Department of Consumer and Regulatory Affairs  
1100 4<sup>th</sup> Street, S.W.  
Washington, D.C. 20024

Jay Surabian, Esquire  
Assistant Attorney General  
Department of Consumer and Regulatory Affairs  
1100 4<sup>th</sup> Street, S.W.  
Washington, D.C. 20024

  
John Lawrence Hargrove