BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal of Kalorama Citizens Association from The Decision of DCRA Issuing Building Permits B455571 & B455876 Notwithstanding Non-Compliance of Plans with FAR, Height, ,and Setback Requirements with respect to 5-story Apartment in R-5-D Zone at 1819 Belmont Road, N.W. (Square 251, Lot 45).	) BZA No. 17109

Declaration of Ann Hughes Hargrove and John Lawrence Hargrove Submitted by Appellant Kalorama Citizens Association

Ann Hughes Hargrove and John Lawrence Hargrove jointly, except where otherwise indicated, declare as follows:

1. We are over the age of majority, and have resided at 1827 Belmont Road, N.W. in the District of Columbia during the entire period of the events referred to in this declaration. Ann Hughes Hargrove is Zoning Chair, Kalorama Citizens Association ("KCA").

2. Montrose LLC ("Montrose") claims in its Motion to Dismiss ("*Motion*") to have "conducted due diligence, which included investigation into the zoning classification, D.C. Comprehensive Plan, and Historic Status." (*Motion*, p. 11).

A. As to the Comprehensive Plan, the Plan places 1819 Belmont in an area designated "Moderate Density Residential", which means "Row houses and garden apartments are the predominant uses; may include low density housing". The Plan contains no language compatible with a building of a height equivalent to 8 stories for this area. This has been the case since the1989 cycle of amendments to the Comprehensive Plan and Generalized Land Use Map, enacted in D.C. Law 8-129.

B. As to historic status, on **January 23, 2003**, Alan Roth and Bryan Weaver, the two Commissioners from ANC 1C representing the Washington Heights area (which includes 1819 Belmont Road), held a public meeting, attended by approximately 80 persons including several residing in the 1800 block of Belmont Road, to discuss KCA's proposal for a survey preparatory to a possible application to establish a historic district for the area. This meeting was widely announced by flyers posted throughout the Washington Heights area. Officials of the Historic Preservation Office of the DC government, which had been consulted as early as November 2001 about the historic survey proposal being developed by KCA, attended and participated in the meeting. KCA has since been approved for a grant for the survey by the Historic Preservation Office.

BZA
Case No. 17109
Exhibit No. 38

3. On **December 26, 2002**, according to files supplied by to KCA by the Department of Consumer and Regulatory Affairs ("DCRA"), Montrose LLC ("Montrose") obtained a demolition permit for "Alteration and Repair – Interior Demolition/Excavation only".

4. By April, 2003 Montrose had removed the front stoop exceeding 5 feet in height that extended into public space to the sidewalk, removed a front berm of approximately 1 foot in height, removed a low concrete retaining wall abutting the sidewalk, and demolished portions of the façade so as to enlarge a ground-level window opening, apparently to accommodate a planned driveway and garage.

5. On **March 11, 2003**, Montrose obtained a permit for "Alteration and repair of exist. Bldg. Addition in rear, add 2 floors plus attic; retaining wall & stair at rear.", with the additional notation indicating 5 stories plus basement. We observed the front and rear of 1819 Belmont Road on an almost daily basis from March 11 through mid-September, 2003, when a stop work order was issued for the project. At no time during that period was this permit visible on the outside of the building, or inside the building from a vantage point just outside openings at the front and rear, or on the garage which stood at the rear of the lot until its demolition in September.

6. On **March 19, 2003**, we attended a meeting of the Planning, Zoning and Transportation Committee of Advisory Neighborhood Commission 1C. Representatives of Montrose LLC appeared at that meeting and requested support for a curb-cut adjacent to 1819 Belmont Road, N.W., to permit removal of a curbside tree in public space and access to a proposed inside parking space through the front bay of the row house. They stated that they proposed to add one apartment unit to the existing 4-unit row house. Montrose asserts that at that meeting elevation drawings showing the garage and the full height of the row house, including the addition of the fourth, fifth and attic levels, and the penthouse, were "shared with the community". We saw no such elevations at the meeting and none were "shared with" KCA. In fact Montrose displayed at the meeting drawings in connection with its curb-cut and driveway request, which showed the proposed curb cut, driveway through public space and garage space, but they did not address the scale of the building relative to surrounding structures. Because they had stated they planned to add a unit to the existing 4-unit row house, Mr. Hargrove asked how high the building would be, and Montrose indicated that they proposed to add one story. Montrose conveyed the general impression of a project consisting of substantial renovation of, and an addition to, an existing row house. As indicated below, the project in fact entailed total demolition of the existing row house except for a portion of the façade, and erection of a new building in its place.

7. We attended the **May 15, 2003,** meeting of the Kalorama Citizens Association. At that meeting Ann Hughes Hargrove discussed the proposal to conduct a survey of the Washington Heights area, which includes 1819 Belmont Road, N.W., preparatory to a possible application for a historic district for that area. At that meeting a photograph of 1819 Belmont Road, previously circulated at block meetings concerning the proposed

historic survey, was presented (see *Opposition of Appellant KCA to Montrose LLC's Motion to Dismiss ("Opposition to Motion")*, Exhibit 3). The photograph depicts the removal of the stoop, removal of the berm, and partial demolition of the façade to enlarge the ground level opening. These actions by the developers, but not the scale or height of the planned construction project, were cited by Ann Hughes Hargrove as illustrative of the reasons why the proposed historic district for the area was a good idea. Mrs. Hargrove was at that time unaware of the height of the planned project.

8. Montrose LLC claims (*Motion*, p. 9) that the October, 2003 *Intowner* Article attached as Exhibit 5 to KCA's Prehearing Statement states that the height of the building was complained of at the **May 2003** KCA meeting. In fact that article makes no such statement, and no such complaint was raised at that meeting by Ann Hughes Hargrove or any other person in attendance at that meeting.

9. As the project proceeded, during the **late spring and summer, 2003,** the existing turreted row house was totally demolished except for the remaining portion of the façade, and a new building constructed in its place from the ground up. By **early September,** as framing for the upper levels was erected, the new building had become the towering narrow structure visible from distant points in Adams Morgan that is depicted in KCA's *Prehearing Statement*, Exhibit 4, and Attachment 1 to this Declaration.

10. At that time, KCA began efforts to see and obtain from DCRA a copy of the plans, starting with a request by Mr. Hargrove in person at DCRA, only to be repeatedly refused on various grounds (including alleged disarray in the filing system and inability to locate the file). It was joined in these efforts by Jonathan Orloff, a neighbor residing across the street from 1819Belmont Road, whose request for the plans was also refused by DCRA.

11. On **September 10 and 15, 2003**, KCA wrote DCRA (see *Opposition to Motion*, Exhibit 4). In these letters, and in follow-up conversations between Mrs. Hargrove and DCRA over the next several days, KCA complained about the lack of displayed permits, protested DCRA's denial of access to the plans, again asked for the plans, noted possible Height of Buildings Act height and setback violations, raised questions about the possible exclusion of the basement from FAR calculations, and urged that a stop work order be issued.

12. A stop work order was posted on the property on **September 12, 2003.**

13. Shortly thereafter, an array of copies of permits, including the March 11, 2003 permit, was posted on the building along with the stop work order.

14. A document in the DCRA case file dated **September 15, 2003**, entitled "Fact Sheet 1819 Belmont Street, NW" states: "Based on inspections and review of the building plans, it was determined that the demolition exceeded the scope of the permit, and that the proposed building height exceeds the 70 feet maximum allowable." It also

states: "The developer will transmit a letter to BLRA asking for permission to brace the existing walls against the anticipated hurricane later the week of 9/15/03." (See *Opposition to Motion*, Exhibit 7)

15. On **September 16, 2003**, still lacking the plans, KCA filed a Notice of Intent to Appeal, on the basis of Height Act and zoning violations, with the Office of Zoning on the form provided by that Office for that purpose.

16. Shortly thereafter, KCA was orally informed by DCRA that it expected that new, revised permits relating to the project would be issued.

17. On **September 22, 2003**, KCA submitted a Freedom of Information Act request for the plans to DCRA (See *Opposition to Motion*, Exhibit 5).

18. Continuing neighborhood concerns about the project were discussed in a meeting of the KCA on **September 29** and the ANC on **October 1** (in both of which Montrose participated). After the ANC meeting Ann Hughes Hargrove asked a Montrose representative for a copy of the plans; the request was refused.

19. On **September 29, 2003,** DCRA wrote KCA asking for assurance that KCA would pay the cost of producing the documents requested (KCA provided that assurance), and stating that the statutory 10-day deadline for response to FOIA requests "is suspended until all processing issues are resolved".

20. On **September 29, 2003** Montrose submitted a permit application, and on **October 6 and 16, 2003**, received new permits on the basis of plans reflecting certain revisions in the project. These plans depicted the roof deck and railing, the roof parapet at its original height, the roof without the parapet and reduced in height, the attic, basement and all other levels of the building, the roof structure in its original configuration, the roof structure with reduced floor area and increased rear wall setback, the east and west wall setbacks of the roof structure, and revised FAR calculations. The revisions in the project included revised FAR calculations; removing the front roof parapet and making other adjustments so as to reduce the maximum height of the roof to 70 feet 0 inches; and reducing the footprint but not the height of the penthouse roof structure, so as to reduce its gross floor area and increase its setback from the rear wall.

21. *Ann Hughes Hargrove as sole declarant:* On **October 16, 2003**, Mrs. Hargrove met with ANC 1C Commissioners Alan Roth and Bryan Weaver, and Councilmember Jim Graham in Mr.Graham's office. In the course of that meeting , in a speakerphone conversation with DCRA officials, Mr. Graham insisted that the plans be made available to KCA. DCRA informed KCA that they were then in the process of preparing new permits to be issued to Montrose.

22. On **October 17, 2003** KCA received copies of the plans, lacking certain documents that KCA believed to exist and to be of possible relevance to its appeal. These included a certification of the actual height of the re-positioned roof, indicating the

method of measurement and the result of the measurement, and initial FAR worksheets for the original as well as the revised plans. Thereafter KCA received a reply from DCRA, dated **October 23, 2003**, to the September 22 FOIA request, indicating that the documents requested on September 22 had been located and copies could be picked up.

23. *Ann Hughes Hargrove as sole declarant:* On **October 20, 2003,** Mrs. Hargrove met with Commissioner Roth, Jeff Jennings of Councilmember Graham's staff, DCRA Deputy Director Theresa Lewis and Acting Zoning Administrator Denzil Noble. In response to comments and inquiries from Mrs. Hargrove, DCRA responded as follows:

(a) that if the "attic" is not properly called an "attic", the developers would find some other label for it;

(b) that if the "attic", being excluded from FAR, was not properly marketable as habitable space, citizens could rely on DCRA officials to enforce the housing regulations in that respect once the building was occupied;

(c) that the roof structure could properly be erected flush with the side wall since that was a party wall, and

(d) when asked, the DCRA officials appeared to acknowledge that the roof deck and its railing exceeded the maximum height allowable under the Height Act but provided no explanation as to how this could be lawfully justified.

24. KCA filed its appeal on **November 10, 2003.**

25. During the period **November 5 through November 13,** 2003, KCA communicated several times with DCRA, directly and through the office of Councilmember Jim Graham, in an effort to obtain the documents not yet received.

26. On **January 22, 2004**, KCA wrote DCRA by fax, again requesting the missing documents.

27. On **January 30**, by e-mail to the Hargroves, Councilmember Graham's office stated that DCRA had responded to the request for the missing documents that "he was not sure of the location of the file" (See *Attachment 2* to this Declaration).

28. On **February 8, 2004**, KCA filed a motion before the Board of Zoning Adjustment to have the Board cause DCRA to supply KCA with the missing documents.

29. On **February 12 and 16, 2004** DCRA supplied the missing documents except for the original FAR worksheets.

Ann Hughes Hargrove 3-1-04 John Lawrence Hargrove 3-1-04

Ann Hughes Hargrove Date John Lawrence Hargrove Date

Attachment 1

1819 Belmont Road viewed from Kalorama Road, 1 block south

Subject: RE: 1819 Belmont infor...ation request

Attachment 2

From: "Jennings, Jeffrey (COUNCIL)" <jjennings@dccouncil.us>
Date: Fri, 30 Jan 2004 10:50:45 -0500
To: 'Hargrove' <ahhjlhdc@worldnet.att.net>

Dear Ms. Hargrove:

Per the written request and previous verbal request, I am informing you of the brief conversation I had with Denzil Noble on Wedsnesday of this week at our office.

Upon asking Mr. Noble the status of providing the file to our office for you, he responded by informing me he was not sure of the location of the file.

Sincerely
Jeff Jennings
Councilmember Jim Graham's office
202.724.8181