

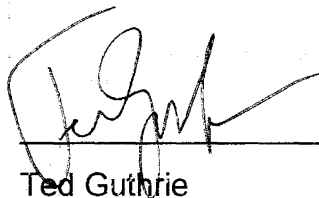
**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

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, dated)
October 6 and 13, 2003 ,respectively, to adjust)
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)

BZA No. 17109

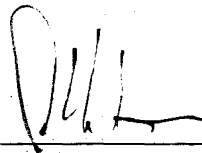
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**EXCEPTIONS TO PROPOSED ORDER AFTER REMAND No. 17109-D
SUBMITTED BY ADVISORY NEIGHBORHOOD COMMISSION 1 C AND
KALORAMA CITIZENS ASSOCIATION**



Ted Guthrie

Chair, Advisory Neighborhood Commission 1C
Commissioner, Single Member District 1C03



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

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* * * * *

Advisory Neighborhood Commission 1C (the ANC) and Kalorama Citizens Association (KCA), Appellants in BZA Case No.17109, respectfully submit the

following Exceptions to proposed Order After Remand 17109-D (“the draft Order”). This case is before the Board for the second time on remand from the Court on the issue of whether the sixth level of the subject property is an “attic” under the 1958 Zoning Regulations of the District of Columbia.

THE COURT’S REMAND OF THE CASE

At pp. 1-2 the draft Order sets out procedural history of this case before the Board and the Court of Appeals. It does so, however, with one important misrepresentation, namely, the basis on which the Court remanded the case for the second time. It states, at p. 2:

“After the parties briefed the case, the Board requested that the Court remand the case back to it for additional deliberations on the issues and so it could better articulate its reasoning.”

This statement is inaccurate in two material respects:

First, the only information before the Court at the time of its remand were the case record and the brief filed by KCA. The Assistant Attorney General filed no brief on behalf of the Board, but submitted merely the Motion to Remand, and there was no oral argument on the Motion or the merits of the case, or decision on the merits by the Court.

Second, the Motion did not seek an opportunity for the Board to conduct “additional deliberations on the issues . . . so [the Board] could better articulate its reasoning”, as the draft Order asserts, but rather stated that “the BZA wishes to *reconsider its decision* and to conduct further proceedings as may be appropriate.” [emphasis added]

The sole substantive issue before the Court was whether the findings of fact on the basis of which the Board decided that the sixth level of the building is an “attic” – findings that the Board would necessarily have to reaffirm in order to

reach the same decision now -- were supported by substantial evidence in the record. The Assistant Attorney General apparently concluded that the record would not support the Board's Order, and acted accordingly (citing in the motion just one of the deficiencies that KCA had noted in its brief, namely, that the order was based on plans that had later been revised).

STANDARD OF REVIEW OF FINDINGS AND CONCLUSIONS

The Board's conclusions of law will be upheld if, but only if, it has made findings of fact on each material contested issue of fact, flowing rationally from substantial evidence in the record as a whole, from which its conclusions are rationally drawn. See D.C. Code §2-510(a) (2001); *Mendelson v. District of Columbia Board of Zoning Adjustment*, 645 A.2d 1090, 1094 (D.C. App. 1994); *Myrick v. District of Columbia Board of Zoning Adjustment*, 577 A.2d 757 (D.C.1990); *Levy v. District of Columbia Board of Zoning Adjustment*, 570 A.2d 739 (D.C. 1990); *Communication Workers of America v. District of Columbia Commission on Human Rights*, 367 A.2d. 149, 152 (D.C. App. 1976); *Dietrich v. Board of Zoning Adjustment*, 293 A.2d 470 (D.C.1972); *Palmer v. Board of Zoning Adjustment*, D.C. App., 287 A.2d 535 (1972); *A.L.W., Inc. v. Board of Zoning Adjustment*, 338 A.2d 428, 430 (D.C. App.1975).

SUMMARY OF ARGUMENT

1. At the sixth level of the building there are horizontal beams labeled "collar ties", positioned 6 feet 5 ¼ inches above the floor. In Findings of Fact 7 and 8, the draft Order would find that there are openings between the collar ties "where there is nothing between the floor of the sixth level and the underside of the roof" – i.e., that the sixth level has no ceiling -- and that therefore the sixth level is immediately below the roof. These findings are unsupported by any substantial evidence in the record, but are instead contradicted by substantial evidence:

- The section drawings in the project plans specifically label the sixth level as having a ceiling;

- The project architect repeatedly testified, in response to detailed questioning from the Board, that the sixth level has a ceiling, of gypsum wallboard, mounted on the collar ties;

- Moreover, the plans show that a portion of the building roof is installed on the roof structure, the floor of which further intervenes between the sixth level and the roof.

Consequently the sixth level is not “immediately bellow the roof”: all of it is separated from the roof by a wallboard ceiling and part of it additionally separated by the floor of the roof structure.

Since the definition of “attic” requires that an attic be immediately below the roof, for this reason alone the Proposed Order errs in concluding that the sixth level is an “attic”.

2. The Order’s Finding of Fact 9 that the collar ties are a part of the roof framing, and its conclusion that the sixth level is therefore “within the roof framing” (draft Order, p. 5) are likewise unsupported by any evidence in the record, and are contrary to the testimony of the project architect which ascribed a wholly different structural function to them: stiffening the building against racking in a front-to-back direction.

Since the definition of “attic” requires that an attic be wholly or partly within the roof framing, for this reason alone the draft Order errs in concluding that the sixth level is an “attic”.

DISCUSSION

1. The findings that that there are openings between the collar ties “where there is nothing between the floor of the sixth level and the underside of the roof” – i.e., that the sixth level has no ceiling -- and that therefore the sixth level is immediately below the roof.

The draft Order is correct in its determination at p.5 that, of the three alternative definitions of “attic” provided by Webster’s, the applicable dictionary definition is the third:

“c. the part of a building immediately below the roof and wholly or partly within the roof framing: a garret or storage space under the roof.”

Moreover, the Order correctly recognizes that if a ceiling is installed on the “collar ties” that are positioned 6’ 5 ¼” above the sixth level’s floor, the sixth level would not be “immediately below the roof” because it would be separated from the roof by the ceiling. (The 1958 Zoning Regulations do not define “ceiling”, so, under 11 DCMR §199.2(g), the governing definition is that provided by Webster’s Unabridged Dictionary: “The overhead inside lining of a room”.)

Where the draft Order is in error is in its finding of fact that there is no such ceiling and that all the vertical space between the sixth level floor and the roof rafters is therefore open. The draft Order’s finding of fact on this issue is:

7. The revised section drawing labels the underside of the collar ties as a “ceiling”. However, between the collar ties are openings where there is nothing between the floor of the sixth level and the underside of the roof. (Tr. of April 6, 20004 at 138-39, 146)

This finding is self-contradictory on its face: The second sentence – that there is nothing between the collar ties -- can be true only if the evidence cited in first sentence – that there is a ceiling in place there -- is simply ignored. And it is not only the project plans that the Board must ignore in order to reach this desired conclusion, but the repeated statements of the project architect, Norman Smith, that there is a gypsum wallboard ceiling mounted on the collar ties, in response to intensive questioning by the Board, and recorded in the very transcript excerpt that the draft Order’s finding No. 7 cites.

Specifically, in a colloquy about the project plans with Commissioner Parsons, Mr. Smith was asked specifically whether the “attic” had a finished ceiling. He explicitly and repeatedly stated that the “attic” was to have a finished ceiling, and went on to discuss how the gypsum wallboard ceiling would be installed:

COMMISSIONER PARSONS: New question. Is there actually a ceiling panel at the line shown on this drawing as ceiling?

... MR. SMITH: Yes

COMMISSIONER PARSONS: So there is a ceiling measurement here and then a line that goes all the way to the back of the building.

MR. SMITH: Yes.

COMMISSIONER PARSONS: There is a ceiling along the entire length even though there is no use for it, I mean, as in ceiling in this room?

MR. SMITH: Well it's –

COMMISSIONER PARSONS: Finished ceiling?

MR. SMITH: There is a finished ceiling in a two story space and there is a finished ceiling plane in the attic space, yes.

COMMISSIONER PARSONS: Plane?

MR. SMITH: Well, I use the word plane, because the collar ties are spaced at 48 inches on center, and so the drywall, the wall board, goes across and down and back up. But to answer your question, there is a finished – yes, there is a finished ceiling surface.

COMMISSIONER PARSONS: So you have got a 4 inch space between that and the beams that carry the roof, is that right, I don't know, a 6 inch space?

MR. SMITH: The collar ties are 2x10, so they are 9 and 1/4 inches deep, so the difference – I'm sorry, I'm not sure that I completely understand your question.

COMMISSIONER PARSONS: Well, Mr. Hawkins [architect witness for the appellant] spent a lot of time talking about this and I'm trying to get some rebuttal to what he is talking about.

MR. SMITH: Right

COMMISSIONER PARSONS: As to whether there is a ceiling here or it's just a measuring line for a ceiling.

MR. SMITH: I guess what I can say is that there is a ceiling at the top of the two story space. There is a ceiling in the attic as well.¹

The draft Order seeks to dismiss this testimony as follows:

"The Board is aware that the project architect first testified that the collar ties were covered by a "finished ceiling." He later clarified that he was talking about a "plane, because the collar ties are spaced at 48 inches on center, and so the drywall, the wall board, goes across and down, and back up."

¹ Transcript 04 06 04, pp 138-40:

Here the draft Order appears to be advancing the curious and obviously insupportable argument that because the drywall installed on these beams forms a plane – a flat surface – it is somehow not to be regarded as a ceiling, ignoring the fact that almost literally in the same breath the architect again affirmed that he was talking about a finished ceiling.²

-Moreover, a portion of the building roof at the sixth level is installed on the roof structure, which provides access to the roof and roof deck and of course has a floor. So, in addition to the ceiling, about a third of the sixth level is also separated from the building roof by the floor of the roof structure, and would be so separated even if there were no ceiling at the sixth level.

Since the definition of “attic” requires that an attic be immediately below the roof, and since the Board’s findings to this effect are unsupported by, and in fact contrary to, substantial evidence in the record, for this reason alone the Order is in error in concluding that the sixth level is an attic

2. The finding that the collar ties are a part of the roof framing, and the conclusion that therefore the sixth level is within the roof framing.

² Shortly after this testimony by Mr. Smith, Chairman Griffis sought further information about the “collar ties”:

CHAIRPERSON GRIFFIS: Let's start with the basics. What is a collar tie? If you're standing on the floor of that attic space, that level, I'm looking up and I look up to 6 feet, five and ¼ inches, what do I see?

MR. SMITH: You would see the bottom face of a member that is, in its rough state, an inch and a half wide and 9 and ¼ inches tall that would run from north to south, would be spaced 48 inches on center.” Transcript 04 04 06, p. 146.

By itself, this statement by Mr. Smith about the specifications of the collar ties might be taken to imply the absence of a ceiling on the collar ties. But in view of Mr. Smith’s simultaneous statements that there was to be a ceiling on the collar ties no such claim would be credible, and the draft Order, properly, makes none. It is perhaps worth noting that had one stood on the sixth level floor and looked up at the moment this testimony was being given, one might well have seen only the collar ties, because at the time of the March and April hearings construction was underway and DCRA’s representative had testified only three weeks earlier that the ceiling had not been installed yet.

The building's roof framing -- the structural members to which the roof is attached, which secure it in place -- consists of rafters sloping gently front to back on the main roof of the sixth level and sloping at different grades on the compound roof of the penthouse. *See section drawings.* (These framing members are described as "9 and ½ inch TJI 350s" for the main part of the sixth level roof and 2x12s for the portion of the roof on the penthouse. *See Transcript 04 06 04, p.148*). The sloping roof rafters are located above the "collar ties", which like the floor below are horizontal. *Ibid, p. 139, 148.*

There is no evidence that the beams labeled "collar ties" perform any part of the function performed by the roof rafters -- holding up the roof. They are physically separate from the roof rafters and roof, and the architect repeatedly ascribes a wholly different structural function to them: stiffening the building to prevent racking in a north-south (front to back) direction in this tall narrow structure, noting that they are affixed to the bearing walls (not the roof rafters). *See Transcript 04 06 04, pp. 134, 141.*

Nevertheless, the draft Order insists that these collar ties are a part of the roof framing. To arrive at this conclusion it first asserts (in finding 6) that the project architect testified, and the Board finds, that the collar ties are part of a structural system comprised of the roof rafters, bearing walls, and collar ties, and that the function of the collar ties in that system was to prevent north-south racking of the building.

In fact the architect did not describe the collar ties as part of a "system", but said merely that the roof rafters and collar ties together with the bearing walls to which they are connected "work together to *help resist north/south racking*" -- not to support the roof. *Ibid, pp. 141-42.[emphasis added]* As just noted, stabilizing the building in this way is a completely different function from holding up the roof, but the Order continues, in finding 9:

"The collar ties depicted in the Revised Section Drawing are part of the roof framing. They are located at the top of the building and brace the building against racking in a north-south direction",

and again, at p. 5:

“Since the collar ties are located at the very top of the building and perform this structural function, the Board considers them part of the roof framing.”

Thus the draft Order’s argument boils down to the proposition that since the collar ties are “at the very top of the building” (although they aren’t – that would be the roof rafters and roof) and since they help stabilize the building against racking or twisting, somehow it must be appropriate for the Board to call them “roof framing” – a patent *non sequitur*. There is no evidence to support the proposition that these collar ties that support the ceiling at the sixth level are part of the building’s roof framing, rendering the sixth level “wholly or partly within the roof framing.” Indeed there is nothing in the record to indicate that support of the roof would be in any way affected if there were no collar ties.

Finally, regardless of the function of the collar ties, the sixth level is not “within the roof framing”, because it is separated from both the collar ties and the roof framing by a wallboard ceiling. Even accepting *arguendo* that the Board could properly label the collar ties “roof framing”, the sixth level would be separated from them by the wallboard ceiling and thus could not be “wholly or partly within the roof framing”.

Since the definition of “attic” requires that an attic be wholly or partly within the roof framing, and since the Order’s finding that the collar ties are part of the roof framing is not supported by, and is in fact contrary to, substantial evidence in the record, for this reason alone the Order is in error in concluding that the sixth level is an attic.

Note on the term “collar tie”. Among its findings the draft Order recites a dictionary definition of “collar tie”: “A board used to prevent the roof framing from spreading or sagging.” However, no claim was made or evidence introduced that the beams labeled as “collar ties” in this building performed or could perform such a function or were connected to any roof rafters. On the contrary, the project architect specifically distinguished the function of these beams from the characteristic function of collar ties, which are, as he said, “sort of banged into the side” of a pair of rafters on opposite sides of a gabled roof to form a triangle and thus prevent the rafters from spreading apart. *Transcript 040604, pp. 147-48.* (In fact they could not perform this

function in the present building, which has no gabled roof.) .As already noted, the architect was at pains to describe the function of the “collar ties” in this building as bracing the building against north-south racking, noting that they were affixed to the bearing walls (not the roof rafters). *Ibid.*, p. 134. This being the case, it is not clear why the architect chose to use the term “collar ties” in reference to these beams.

CONCLUSION

The findings of fact upon which the draft Order’s conclusion that the sixth level of the building qualifies as an “attic” is based are unsupported by any substantial evidence, but rather are contrary to substantial evidence in the record as a whole. Therefore KCA and ANC 1C respectfully request the Board to revise the draft Order accordingly, eliminating any findings and conclusions inconsistent with that state of affairs³ and including among the Order’s findings of fact and conclusions of law those set out below.

PROPOSED FINDINGS OF FACT

1. Section drawings for the project depict conversion of a three-story row house into a six level plus basement apartment building. They depict a top apartment consisting of the fifth and sixth levels, with beams labeled “collar ties” positioned 6 feet 5 1/4 inches above the floor of the sixth level; a roof structure housing a staircase connecting level 6 to the roof structure and providing access to the roof and roof deck; and a roof deck. The collar ties are labeled as supporting a ceiling.

2. The sixth level of the building, which the plans label as “attic”, does not extend all the way to the front, but is set back by approximately 1/5 of the length of the building at that level. As a result the fifth level has a very high ceiling at the front of the building, which toward the rear of the building becomes the ceiling of the sixth level.

3. The 1958 Zoning Regulations do not define “ceiling”, so, under 11 DCMR §199.2(g), the governing definition is that provided by *Webster’s Unabridged Dictionary*: “The overhead inside lining of a room.”

³ These include Findings 6, 7 (second sentence), 8 and 9.

4. The 1958 Zoning Regulations do not define “attic”. The applicable definition provided by *Webster’s Unabridged Dictionary* pursuant to 11 DCMR §199.2(g) is “The part of a building immediately below the roof and wholly or partly within the roof framing: a garret or storage space under the roof.”

4. Section drawings in the project plans depict horizontal beams, labeled “collar ties”, positioned 6 feet 5 ¼ inches above the floor of the sixth level of the building, parallel to the floor.

5. The project architect testified, and the Board finds, that the collar ties perform the structural function of bracing the building against racking in a north-south direction, working together with the bearing walls and roof rafters for this purpose.

6. Section drawings in the project plans depict a ceiling on the underside of the collar ties.

7. The project architect repeatedly testified, and the Board finds, that there is a gypsum wallboard ceiling mounted on the underside of the collar ties.

8. Because of the ceiling separating the sixth level from the roof framing and roof, the sixth level is not immediately below the roof.

9. A portion of the sixth level is additionally separated from the building roof by the floor of the roof structure.

10. The building’s roof framing at the sixth level, depicted in the section drawings and the project architect’s testimony, consists of rafters located above the collar ties, sloping gently front to back on the main roof of that level and sloping at different grades on the compound roof of the roof structure. These framing members are “9 and ½ inch TJI 350s” for the main part of the sixth level roof and 2x12s for the portion of the roof on

the roof structure. Neither the section drawings nor the architect's testimony depict any connection between the collar ties and the roof rafters or roof.

11. Because of the ceiling separating the sixth level from the roof framing and roof as well as from the collar ties, the sixth level is not wholly or partly within the roof framing.

PROPOSED CONCLUSIONS OF LAW

1. Since the sixth level is not immediately below the roof, for this reason alone it is not an attic.

2. Since the sixth level is not wholly or partly within the roof framing, for this reason alone it is not an attic.

3. Since the sixth level does not qualify as an attic, it is one of the "several floors" the floor area of which must be included in the calculation of the building's gross floor area. *11 DCMR §199.1, definition of "gross floor area"*. Consequently the building exceeds the maximum floor area ratio permitted in the R-5-D district.

TEXTS OF REGULATIONS CITED

11 DCMR §199.1

...

Gross floor area – the sum of the gross horizontal areas of the several floors of all buildings on the lot, measured from the exterior faces of exterior walls and from the center line of wall separating two (2) buildings. The term “gross floor area” shall not include . . . attic space (whether or not a floor has actually been laid, providing structural headroom of six feet, six inches (6 ft., 6 in.), or more

...

11 DCMR §199.2(g)

...

(g) Words not defined in this section shall have the meanings given in Webster’s Unabridged Dictionary.

EXHIBITS

1. Section drawing from original project plans (from Exhibits 29, 31 and 107 of the record filed with the Court)
2. Revised section drawing from project plans (from Exhibits 29, 31 and 107 of the record filed with the Court)
3. April 6, 2004 BZA hearing transcript from the record filed with the Court:
Pages 134-148

CERTIFICATE OF SERVICE

On or before this 14th day of September, 2017 a copy of the foregoing instrument was sent by United States mail, first class postage prepaid, or by electronic mail, to:

Andrea Ferster, Esquire
1100 17th Street, N.W., 10th floor
Washington, D.C. 20036
andreafersterlaw.com
aferster@railstotrails.org

Condominium Association
1819 Belmont Road N.W.
Washington, D.C.20009

Dwayne B. King
1819 Belmont Road N.W.
Washington, D.C.20009

Maria DelCarm Requena
1819 Belmont Road N.W.
Washington, D.C.20009

Acacia L. Clark
1819 Belmont Road N.W.
Washington, D.C.20009

Miquel H. Dijkman
1819 Belmont Road N.W.
Washington, D.C.20009

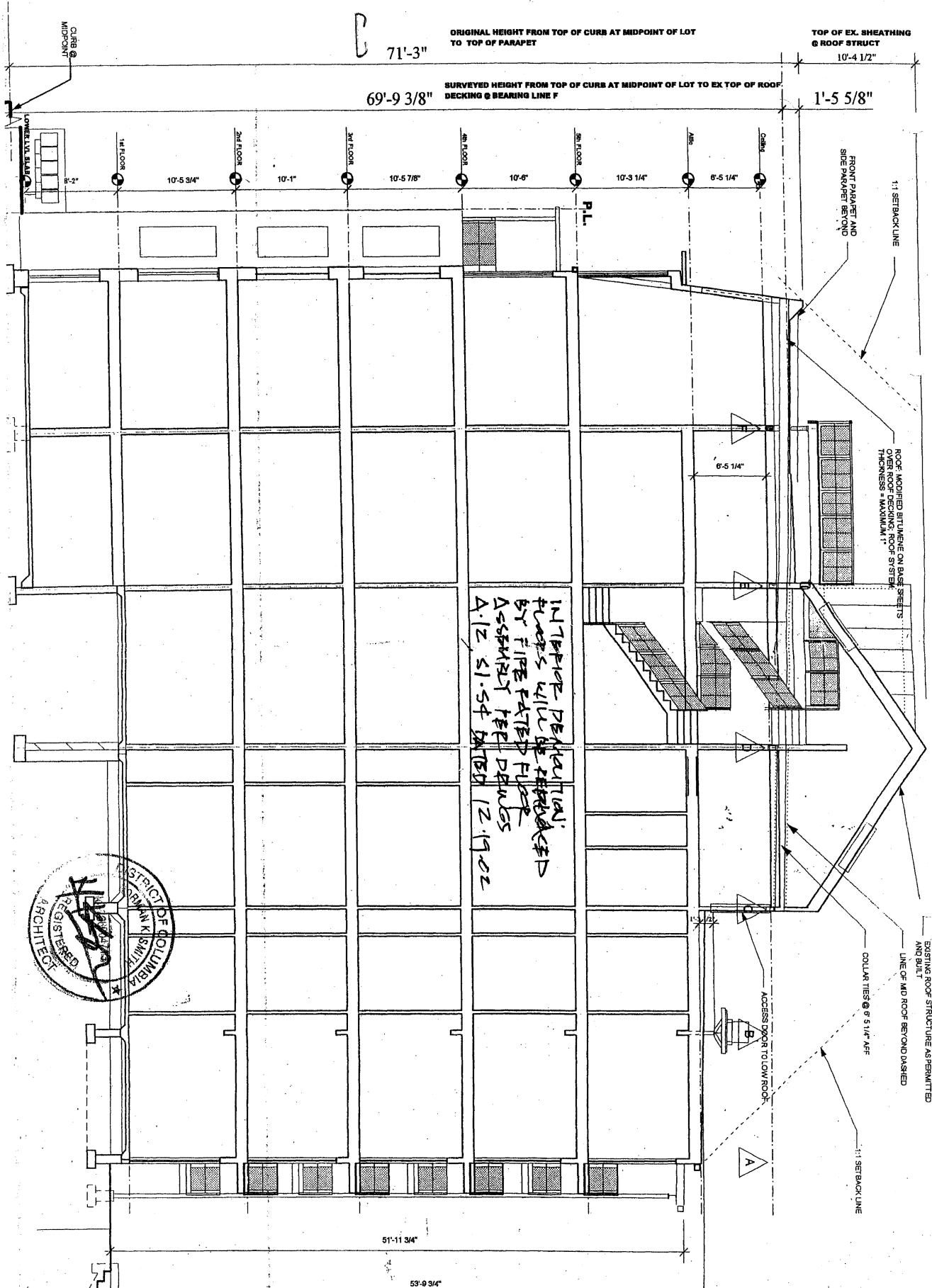
Craig M. Engle
1819 Belmont Road N.W.
Washington, D.C.20009

Matthew LeGrant, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
1100 4th Street S.W., Room 3100
Washington, D.C. 20024
Matthew.LeGrant@dc.gov

John Lawrence Hargrove

Exhibit 1.

Section drawing from original project plans (from Exhibits 29, 31 and 107 of the record filed with the Court)



1819 BELMONT RD., NW 09-29-03
 NORMAN SMITH ARCHITECTURE 202.462.5886

CHEMATIC BUILDING SECTION

SECTION SHOWING AS BUILT AND
 ORIGINALLY PERMITTED ROOF
 STRUCTURE AND BUILDING NEW

Exhibit 2

Revised section drawing from project plans (from Exhibits 29, 31 and 107 of the record filed with the Court)

Exhibit 3.

**April 6, 2004 BZA hearing transcript from the record
filed with the Court: Pages 134-148**

1 since the stair has been counted in the FAR
2 calculations of the floors below, it is not counted
3 here. So therefore, we have 1270.5 FAR square
4 footage, square feet on this floor.

5 In regard to the attic, the attic is an
6 attic under the Zoning Regulations since it has
7 structural headroom of 6 foot, 5 and 1/4 inches, which
8 is less than the structural headroom of 6 foot, 6
9 inches or 6.5 feet, which is the threshold under the
10 Zoning Regulations for the level to count toward FAR.

11 This headroom is created by the use of
12 permanently attached collar ties, which are spaced at
13 a maximum of 48 inches on center in all the structural
14 bays of the attic, that is from front to back, from
15 north to south. These collar ties are attached to the
16 steel stud load bearing walls with screw applied
17 framing anchors and like the cross or rack bracing in
18 the walls contribute to the north/south stiffness of
19 the building structure. Based on that, it is my
20 opinion that there is no FAR square footage assignable
21 to the attic space.

22 The roof structure. In the roof
23 structure, the area of the short stair, that is the
24 short stair leading up to the actual deck, the landing
25 and then the stair down to the attic is included for a

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1 total of 124.3 FAR square feet. The stair from the
2 fifth floor to the attic is included in the FAR
3 calculations for the fifth floor.

4 In terms of the variations of the other
5 calculations, which alluded to a moment ago, they are
6 done using CAD and I think there will be some variance
7 between our figures and somebody's figures who does it
8 with a planometer or any other kind of mechanical
9 devise owing to the instability of print paper and
10 other factors.

11 Also, I think there is some discrepancy,
12 because, as I mentioned earlier, the original lower
13 level area way was in-filled and cannot count towards
14 FAR since it doesn't exist, and I believe that this
15 accounts for the, approximately, 50 square foot
16 difference in our lower level calculations from the
17 other calculations that were given.

18 So in conclusion, based on all the above,
19 it's my professional opinion that the project complies
20 with the height requirements of the 1910 Height Act
21 and the Zoning Regulations, as well as the setback
22 requirements of the Zoning Regulations and the FAR
23 requirements of the Zoning Regulations for an R-5-D
24 District.

25 MS. BROWN: I would just have one quick

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1 follow-up question for the witness.

2 Mr. Smith, you heard Mr. Hawkins'
3 methodology for calculating the FAR. In your expert,
4 professional opinion, is this calculation method the
5 customary and accepted method for a partial basement
6 cellar space?

7 MR. SMITH: In my experience, it is not
8 customary, no.

9 MS. BROWN: Thank you. That concludes our
10 direct testimony and we would reserve any
11 conclusionary statement until the end.

12 CHAIRPERSON GRIFFIS: Questions from the
13 Board? Yes, Mr. Parsons?

14 COMMISSIONER PARSONS: Well, it's
15 certainly quite clear how you did something. I want
16 to go into a little bit as to why you did something.
17 Why has this building -- as I understand it, the attic
18 is really not required for any purpose other than the
19 structural purpose that you identified earlier, Mr.
20 Smith. Is that correct, or just recently, just now
21 identified?

22 Why has this building got an attic and got
23 access to the roof? I don't understand that. I mean,
24 if economics was driving you to make this building
25 work and the attic doesn't work for you, it's not

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1 rentable space, what motivated you to this height? Is
2 it simply a view from the roof? I need some help as
3 to why you did this, either of you. Is it a marketing
4 issue?

5 MS. MONTPLAISIR: From a development --

6 COMMISSIONER PARSONS: There is certainly
7 no reason to go to additional height if you don't need
8 to.

9 MS. MONTPLAISIR: From a development
10 standpoint, the attic does two things for us. One, as
11 probably most people know, anybody who lives in an
12 apartment in the city, is that storage space is always
13 at a premium. That is number one. Number two, the
14 competition out there these days is fierce and to have
15 a two story space in the front of the unit is
16 definitely called for in the market. It's definitely
17 called for.

18 If you go to loft projects, if you go to
19 selling condominium projects, you will frequently find
20 two story spaces and it is definitely a competitive
21 advantage to have that space. And then yes, of
22 course, to have a roof deck as anybody -- you know, we
23 try to give as much outdoor space as we can and we
24 would normally want that to be a roof deck if you're
25 talking about the penthouse unit, which is why we did

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1 do this.

2 COMMISSIONER PARSONS: So it's the windows
3 in the living room, if you will, and access to the
4 roof is worth all of this structural addition, if you
5 will, to the building. Is it that simple?

6 MS. MONTPLAISIR: Absolutely.

7 COMMISSIONER PARSONS: And the only one
8 that has access to the roof deck is the fifth floor
9 apartment penthouse owner?

10 MS. MONTPLAISIR: Correct.

11 COMMISSIONER PARSONS: New question. Is
12 there actually a ceiling panel at the line shown on
13 this drawing as ceiling? Certainly, you have seen
14 this drawing. I don't have an exhibit number, but
15 it's --

16 CHAIRPERSON GRIFFIS: It's attached to --

17 MR. SMITH: Yes.

18 COMMISSIONER PARSONS: So there is a
19 ceiling measurement here and then a line that goes all
20 the way to the back of the building.

21 MR. SMITH: Yes.

22 COMMISSIONER PARSONS: There is a ceiling
23 along that entire length even though there is no use
24 for it, I mean, as in ceiling in this room?

25 MR. SMITH: Well, it's --

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1 COMMISSIONER PARSONS: A finished ceiling?

2 MR. SMITH: There is a finished ceiling in
3 a two story space and there is a finished ceiling
4 plane in the attic space, yes.

5 COMMISSIONER PARSONS: Plane?

6 MR. SMITH: Well, I use the word plane,
7 because the collar ties are spaced at 48 inches on
8 center, and so the drywall, the wall board, goes
9 across and down and back up. But to answer your
10 question, there is a finished -- yes, there is a
11 finished ceiling surface.

12 COMMISSIONER PARSONS: So you have got a 4
13 inch space between that and the beams that carry the
14 roof, is that right, I don't know, a 6 inch space?

15 MR. SMITH: The collar ties are 2 x 10, so
16 they are 9 and 1/4 inches deep, so the difference --
17 I'm sorry, I'm not sure that I completely understand
18 your question.

19 COMMISSIONER PARSONS: Well, Mr. Hawkins
20 spent a lot of time talking about this and I'm trying
21 to get some rebuttal to what he is talking about.

22 MR. SMITH: Right.

23 COMMISSIONER PARSONS: As to whether there
24 is a ceiling here or it's just a measuring line for a
25 ceiling.

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1 MR. SMITH: I guess what I can say is that
2 there is a ceiling at the top of the two story space.

3 There is a ceiling in the attic as well. And in
4 terms of Mr. Hawkins' testimony, I have to confess, I
5 don't remember exactly what he said about that.

6 CHAIRPERSON GRIFFIS: Maybe this will
7 help. This section, which is frankly more schematic
8 than anything else, although it has labels on it, we
9 have what is showing and what Mr. Parsons is going to,
10 only in the elevation is there a note to it that says
11 ceiling and then it's dimensioned.

12 MR. SMITH: Yes.

13 CHAIRPERSON GRIFFIS: 6 feet, 5 and 1/4
14 inches. But it looks like it's a structural member.
15 It has depth to it. So his first question is is there
16 a finished ceiling in there and the answer is yes. I
17 think where he is going to next is what does that do
18 as there appears to be a whole line of your collar
19 ties, which really read more as the roof joist. So
20 you have created two members. You have one that's
21 parallel with the floor below it and the other, it's
22 following the pitch of the roof.

23 MR. SMITH: Yes.

24 CHAIRPERSON GRIFFIS: So in some sense, I
25 guess Mr. Parsons is trying to get to the fact of what

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1 is this one doing, if anything, and that relates to
2 why do we have the attic space so large below it and
3 then in addition to the penthouse, but that goes to
4 his first question.

5 So the first one is what are those two
6 doing in conjunction with each other?

7 MR. SMITH: Well, the collar -- let me
8 start by explaining that this building is framed from
9 front to back rather than the traditional side to side
10 method you would normally use in a structure of this
11 width and that was done specifically to not have to
12 deal with loads super-implied on the existing walls
13 and so on and so forth and all the geotechnical
14 analysis that is involved in doing that.

15 So therefore, we decided for that reason
16 amongst some other ones to frame the building front to
17 back. Because of that, that means that the building
18 has a tendency to want to rack, that is to twist a
19 little bit, excuse me, twist this way, north/south.
20 So the roof rafters, obviously, are creating a roof
21 slope.

22 The collar ties are locking into those
23 bearing walls that the roof rafters, in turn, bear
24 all, which are spaced, approximately, 13 to 14 feet
25 apart and varies slightly from north to south to form

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1 what is, essentially, a panel truss in each one of the
2 framing bays, so that those elements work together to
3 help resist north/south racking.

4 CHAIRPERSON GRIFFIS: Okay.

5 COMMISSIONER PARSONS: Thank you for the
6 help, because I was out on a limb. Let me try another
7 limb.

8 CHAIRPERSON GRIFFIS: Okay.

9 COMMISSIONER PARSONS: Why is the roof
10 deck this high off the roof, and again I'm looking at
11 this section and it's not dimensioned, but it appears
12 to be about 3 feet off the roof, as opposed to 2 feet
13 off the roof or 8 inches? What drove that decision?

14 MR. SMITH: I can address that. There are
15 two things. One was the way we had decided to frame
16 it, which is that the typical way of framing a deck
17 like this, I mean, given the fire rated requirements
18 and so on and so forth, is to bring the floor joists
19 to a beam, that is this way. We also need to deal
20 with the fact that we have to allow for leaves,
21 buildup, trash blown, blown trash and debris that gets
22 on the roofs that can conceivably get clogged
23 underneath a deck. So the deck was raised enough to
24 allow passage of water underneath, to prevent ice
25 damming and that kind of thing.

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1 That said, in reality we did drop the deck
2 some. We chose to reframe it, so that the beam that
3 the floor joists frame to was dropped, I believe,
4 about 12 inches or so and it makes a little hump at
5 the end of the deck. The final --

6 COMMISSIONER PARSONS: A hump?

7 MR. SMITH: I'm sorry, a little hump like
8 that. It's only because the beam is a deeper
9 structural dimension that the floor joists are. The
10 net result being that the top of the walking surface
11 of the deck is, approximately, 1 foot 3 to 1 foot 4
12 off of the top of the parapet.

13 COMMISSIONER PARSONS: Off of the top of
14 the what?

15 MR. SMITH: Off of the top of the parapet.

16 COMMISSIONER PARSONS: Oh, so this drawing
17 isn't really accurate, I mean?

18 MR. SMITH: It is not accurate, no.

19 COMMISSIONER PARSONS: At one time,
20 somebody could have crawled under there to get leaves
21 out and so forth?

22 MR. SMITH: That was the original
23 intention, yes.

24 COMMISSIONER PARSONS: And now you have
25 lowered it?

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1 MR. SMITH: Yes.

2 COMMISSIONER PARSONS: Okay. Thank you.

3 CHAIRPERSON GRIFFIS: Go ahead, Mr.
4 Etherly.

5 BOARD MEMBER ETHERLY: Just a quick
6 follow-up to make sure I understood that last point.
7 So the space -- perhaps both for the witness, but then
8 also for Mr. Parsons. So the space that is denoted as
9 ceiling, and I am looking at what is the same drawing,
10 but it's Exhibit 1, it's attachment 1 to Exhibit 48,
11 which was the supplemental report of Mr. Hawkins.

12 The space that's denoted as ceiling, it's
13 the witness' testimony that that space is no longer
14 there? Am I understanding that correctly?

15 COMMISSIONER PARSONS: Oh, no, I think
16 maybe we ought to go over this again with the
17 Chairman's help. But as I understand it, you have got
18 to have a finished ceiling in that two story section.

19 I mean, people pay good money for a window and
20 ceiling and loft. So there is a ceiling there and I'm
21 still confused as to what happens once you enter what
22 is attic space here where it's 6 foot high. I
23 wouldn't know a collar if I saw it.

24 BOARD MEMBER ETHERLY: Okay, okay.

25 COMMISSIONER PARSONS: So that's where I

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1 lost it.

2 BOARD MEMBER ETHERLY: Okay. Let me try
3 this attack then. There was a question that Ms. Brown
4 threw towards you at the conclusion of your statement
5 with regard to Mr. Hawkins' piece, and I think what
6 I'm trying to do is square your testimony with that of
7 Mr. Hawkins. So perhaps what might be helpful is help
8 me understand or help my colleagues and I understand
9 where Mr. Hawkins goes awry, in your opinion, with
10 regard to that interpretation of attic, because
11 perhaps what I am just struggling with is is it the
12 case then -- is there any real purpose to that ceiling
13 that is in place in what is referred to as the attic
14 or is that, essentially, just architectural subterfuge
15 for what realistically could be a taller space?

16 MR. SMITH: Are you asking whether the
17 collar ties could be removed?

18 BOARD MEMBER ETHERLY: Yes.

19 MR. SMITH: I think, and I do not mean to
20 be facetious in saying this, that you could remove a
21 piece of floor if you chose to. You could remove
22 collar ties. It would be very, very difficult. It
23 would be inadvisable and would require the consent of
24 the Condominium Owners Association who would contact,
25 hopefully, the architect of record and I would say

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1 that they cannot do that. In addition to that, it
2 would require a building permit, which would trigger
3 FAR calculations. So I think the short answer is no.

4 BOARD MEMBER ETHERLY: Okay. Okay. Let
5 me then back up real quickly and then I will pause,
6 Mr. Chair, and let other colleagues get in. But with
7 respect to, let's kind of go back downstairs, if you
8 will, and come to the basement.

9 CHAIRPERSON GRIFFIS: You know what? Let
10 me interrupt you for a second.

11 BOARD MEMBER ETHERLY: Yes, sir.

12 CHAIRPERSON GRIFFIS: Let's start with the
13 basics. What is a collar tie? If you're standing on
14 the floor of that attic space, that level, I'm looking
15 up and I look up to 6 feet, 5 and 1/4 inches, what do
16 I see?

17 MR. SMITH: You would see the bottom face
18 of a member that is, in its rough state, an inch and a
19 half wide and 9 and 1/4 inches tall that would run
20 from north to south, would be spaced 48 inches on
21 center.

22 CHAIRPERSON GRIFFIS: A member of what,
23 the Kalorama Citizens Association? Not being an
24 architectural design and review board or a structure
25 review board, what you are talking about is a piece of

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1 steel in that.

2 MR. SMITH: It's a wooden member.

3 CHAIRPERSON GRIFFIS: Oh, it's wood then?

4 You're using some wood in there, and so it's an
5 engineered piece though. Am I correct?

6 MR. SMITH: The actual floor joists of the
7 building are engineered lumber. These particular
8 members, I believe, are either engineered or are 2 x
9 10s. I think in the --

10 CHAIRPERSON GRIFFIS: All right. I'm just
11 trying to explain then. So they are 48 inches apart?

12 MR. SMITH: That is correct.

13 CHAIRPERSON GRIFFIS: Okay. So there is
14 only a few of them?

15 MR. SMITH: There are I think four or
16 five.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. SMITH: Because actually, they are
19 spaced less than 48 inches in certain places. I think
20 one of the analogies or a good example is if any of
21 you live in a single-family house and you go up into
22 the attic, in a gabled attic, frequently there are
23 collar ties that are 2 x 4s or 2 x 6s that run across.
24 They are sort of banged on to the sides of the
25 rafters. Those are members that are acting in tension

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1 to keep the roof from spreading.

2 These members here, these collar ties, are
3 the same thing. However, they are not acting in
4 tension. They are acting, essentially, as compression
5 braces and collar tie came from the collar bar on
6 men's shirts that helped hold the collar together.

7 CHAIRPERSON GRIFFIS: Fascinating. And
8 then your roof framing is 2 x 12s above that. Is that
9 correct?

10 MR. SMITH: They are 9 and 1/2 inch TJI
11 350s, I believe. The roof framing of the penthouse
12 roof structure is 2 x 12s.

13 CHAIRPERSON GRIFFIS: Oh, I got you. It's
14 kind of hard to read to 8.5 x 11. Okay. Is that
15 clear? I mean, I think this is important enough,
16 because it seems like we're going to spend a lot of
17 time on this to fully understand just the basics of
18 it, so we know what we're looking at. If there are
19 further questions, I would be happy to ask them if you
20 don't want to. But it really gets to the point of,
21 you know, what the Board is getting to, what I hear
22 them struggling with is here you have this space that
23 has got 6 feet 5 and change. Then you have got this
24 other space and then you have this penthouse.

25 Well, I think there is some sort of

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