

BZA APPEAL NO. 17109-C
PAGE NO. 5

approximately eight feet, five and one-quarter inches¹ to 16 feet, five and one-quarter inches² below the roof of the building. But it is not less “immediately below the roof” than in the flat-roofed area because there is nothing intervening between the floor of the sixth level and the peaked roof except the open-work sixth level ceiling rafters/collar ties.³ The whole open area between the sixth level floor and the peaked roof is “immediately below the roof,” thus satisfying the first part of sub-definition (c).

The second part of sub-definition (c) states that an attic is “wholly or partly within the roof framing.” The sixth level of the subject building includes the collar ties which help stabilize the building. They are not put in place for ornamental purposes, but are structural members of the building’s skeleton.⁴ The collar ties are interspersed with the ceiling rafters of the sixth level, but this “ceiling” is, essentially, unfinished, with open spaces among the rafters and collar ties. The collar ties are, therefore, structural members which are part of the roof framing, making the sixth level “within the roof framing,” thus satisfying the second part of sub-definition (c).

The third part of sub-definition (c) comes at the end, after a colon, and essentially provides two examples of what the first two parts of the definition try to define. It is not necessary that the sixth level actually fit either category, but in this case it does. The examples given are of “a garret or storage space under the roof.” The sixth level of the subject building is exactly that – a garret or storage space under the roof. A “garret” is defined by *Webster’s Dictionary* as “(1) an unfinished part of a house immediately under or within the roof: loft – compare ATTIC, (2) a room on the top floor of a house.” The sixth level is an unfinished part of the building just under the roof and within the roof framing, and thus falls within “garret” definition number one.

ANC 1C filed a submission with the Board on December 2, 2003 (Exhibit 20) supporting the appeal and stating that the sixth level is not an attic under the dictionary definition or any commonly accepted sense of the term. The ANC claimed that the labeling of the sixth level as an attic was a “subterfuge” to avoid counting in FAR calculations space that it claims is intended to be used for human habitation. (Exhibit 20, at 3.) For all of the reasons set forth above, the Board disagrees with the ANC’s position that the sixth level is not an attic. The Board instead

¹This number is derived by adding the height of the sixth level -- six foot, five and one-quarter inches -- plus the two feet between the ceiling rafters/collar ties and the low point of the peaked roof.

² This number is derived by adding the height of the sixth level -- six feet, five and one-quarter inches -- plus the 10 feet or so to the top of the peak.

³The situation was clearly verbally depicted by Chairperson Moldenhauer: “[I]f I were 6’8”, I could look up and put my head between one of the four or five wooden joists and see the remainder of the space and look up to the roof; thus, I would be immediately below the roof. There is nothing for me to believe that there is any sort of drywall or ceiling structure that would impede my ability to put my head up and through those rafters, or however you want to term them, but those roof structural aspects to see the remainder of the area that I consider to be directly or immediately below the roof structure.” (Decision Meeting Transcript of July 20, 2010, p. 43, lines 1-13.)

⁴Board Order No. 17109, at 14, states that “structural” is defined by *Webster’s Dictionary* as “of or relating to the load bearing members or scheme of a building, as opposed to the screening or ornamental elements.”

BZA APPEAL NO. 17109-C
PAGE NO. 6

finds that the sixth level falls within the third sub-definition of “attic” enunciated in *Webster’s Dictionary*. And, as noted by the Court, the issue of habitability is not relevant to whether a space is or is not an attic.⁵

On remand, the Board concludes that the sixth level of the subject building is an attic. Having already concluded that the space has less than six feet, six inches of structural headroom, the area was properly excluded by the Zoning Administrator from the calculation of the gross floor area of the building. Therefore, the building does not exceed the maximum floor area ratio permitted in this R-5-D Zone District. Accordingly, the Board affirms its denial of Appeal No. 17109 with respect to the FAR calculations.

VOTE: **3-0-2** (Meridith H. Moldenhauer, Konrad W. Schlater, and Shane L. Dettman to Affirm. No other Board members (vacant) participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this Order.

ATTESTED BY: _____
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

⁵*Kalorama Citizens Association v. D.C. Bd. of Zoning Adjustment*, 934 A.2d 393, 407 (D.C. 2007).

9/15.

Transcript of March 16, 2004
pp. 245-247

1 less.

2 CHAIRPERSON GRIFFIS: Right. And we do
3 have in the record, I don't know who submitted it, but
4 we do have a definition also from Webster's on attic.

5 MR. ROTH: Yes, it was submitted and I --
6 I guess -- I guess in light of counsel's objection, I
7 just want to clarify or -- or -- or make clear or ask
8 Ms. Ogunneye to make clear is that your definition or
9 do you apply the Webster's definition?

10 MS. GILBERT: May we look at the Webster's
11 definition again? Does anybody have the Webster's
12 definition before she's asked to response to that
13 question?

14 CHAIRPERSON GRIFFIS: Is there a doctor in
15 the house? Who's got a dictionary?

16 MR. ROTH: Mr. Chairman, maybe we can
17 shorten this by -- by my simply asking Ms. Ogunneye, I
18 -- I believe that you testified near the end of your
19 direct examination that the attic is measured from the
20 floor to the underside of the structural members. Is
21 that what you said?

22 MS. OGUNNEYE: Yes, I did.

23 MR. ROTH: And is it your opinion that
24 sheetrock applied to the top of a room is a structural
25 member?

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1 MS. OGUNNEYE: Sheet rock applied to the
2 top of --

3 MR. ROTH: Applied to -- applied to the
4 ceiling.

5 CHAIRPERSON GRIFFIS: You measure from the
6 floor to the finished ceiling to establish the 6 feet
7 6?

8 MS. OGUNNEYE: No, the finished ceiling
9 isn't in place yet.

10 CHAIRPERSON GRIFFIS: Pardon me.

11 MR. ROTH: I thought you said that the --
12 that the space was built out.

13 MS. OGUNNEYE: The space was built out.
14 The measurement was taken from the floor and I'm not
15 sure that it's a finished floor yet to the underside
16 of collar tie. That was what I said. Which is a
17 structural member.

18 CHAIRPERSON GRIFFIS: Make sense?

19 MR. ROTH: It makes sense now, but it
20 sounds to me like it contradicts her earlier testimony
21 and -- and --

22 MS. OGUNNEYE: That's what I said earlier.

23 CHAIRPERSON GRIFFIS: No, in fact, I do
24 remember because that would be part of the definition
25 of the -- the height. Because she said from the floor

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1 to the structural member, the collar ties.

2 MR. ROTH: She did -- she did say that?

3 CHAIRPERSON GRIFFIS: That's correct.

4 MS. OGUNNEYE: Um-hum.

5 MR. ROTH: And -- and going back again to
6 the definition there in Webster's which hopefully
7 you've had a chance now to review which I now don't
8 have in front of me. That's okay. Would you -- would
9 you read the underlined language please?

10 MS. OGUNNEYE: Sure. "The part of a
11 building immediately below the roof and wholly or
12 partly within the roof framing."

13 MR. ROTH: And I'm not an expert in this
14 obviously, sir. You're going to have to help me here,
15 but was -- based upon what you know of what these
16 inspectors measured when you sent them out last week,
17 the measured from where to where?

18 MS. OGUNNEYE: From the floor to the
19 underside of collar ties and they had 6 foot 5 inches.

20 MR. ROTH: Okay. Thank you. Appreciate
21 your indulgence, Mr. Chairman.

22 CHAIRPERSON GRIFFIS: No problem. Ms.
23 Miller, did you want a follow-up question?

24 VICE CHAIRPERSON MILLER: I have one
25 follow-up question and I think this is where Mr. Roth

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Transcript of April 6, 2004
pp. 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 than 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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Transcript of July 20, 2010
pp. 40-43

1 July 2nd.

2 The Board is to act on these
3 submissions attended to the remand.

4 And that concludes the staff's
5 briefing, Madam Chair.

6 MADAM CHAIR MOLDENHAUER: Thank
7 you very much, Mr. Moy.

8 The Board will accept all
9 documentation in this case in order for us to
10 have a full file and review all the matters.
11 I believe the matters have been fully briefed
12 and there's no prejudice to any of the parties
13 by accepting all the documentation.

14 That being said, we now get into
15 the issue that is before us. The Court found
16 that the Board did not explicitly consider or
17 apply any of the Unabridged Webster's
18 Dictionary before concluding that the sixth
19 level is an attic.

20 And so then our obligation right
21 now is to analyze the three different
22 Webster's Unabridged Dictionary definition of

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1 the word "attic" and determine how those apply
2 to the facts of this case and how that either
3 confirms that the sixth floor is an attic or
4 confirms that it is now.

5 Then now looking at the Webster's
6 definition, we have three different
7 definitions. We have them labeled as:

8 Definition A: Which is a low story
9 or vault above the main order or orders of a
10 facade in the classical style.

11 Definition B: A room or rooms
12 behind an attic, and;

13 Definition C: Part of the
14 building immediately below the roof and wholly
15 or partly within the roof framing a garret or
16 storage space under the roof.

17 Looking at these three definition,
18 I think that Definition A while providing some
19 clarification as to what exactly an attic is,
20 is not absolutely clear.

21 Definition B, considering that
22 they're using the term that they're trying to

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1 define in the definition, provides no
2 assistance in my opinion.

3 So, then I moved to Definition C,
4 which states as I read earlier, "part of the
5 building immediately below the roof."

6 Looking then at our case file and
7 the different briefings, I turn to KCA's
8 Exhibit 100 and they have attached as an
9 exhibit, Attachment 4 portions of the
10 transcript. And I think that this was
11 provided mostly on my point as to, in my
12 opinion, how to determine whether the area was
13 immediately below the roof.

14 And this section Chairperson
15 Griffis at the time was inquiring with the
16 architect, I believe, Mr. Smith or their
17 expert Mr. Smith. And they provided in the
18 record that when you looked up, you looked up
19 directly to the wooden joist or beams.

20 And so by reading that I
21 understand the facts as they are in evidence
22 to me. And if -- I'm not, I'm 5 foot. But if

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1 I were 6'8", I could look up and put my head
2 between one of the four or five wooden joists
3 and see the remainder of the space and look up
4 to the roof, thus I would be immediately below
5 the roof.

6 There is nothing for me to believe
7 that there is any sort of drywall or ceiling
8 structure that would impede my ability to put
9 my head up and through those rafters, or
10 however you want to term them, but those roof
11 structural aspects to see the remainder of the
12 area that I consider to be directly or
13 immediately below the roof structure.

14 That being said, I would state
15 that the areas in question do fall within
16 Webster's definition 1C, which is immediately
17 below the roof.

18 That being said, I'll open up the
19 floor to additional Board deliberation as to
20 whether they have any additional perspectives
21 on that or any expansions.

22 MEMBER DETTMAN: Madam Chair, I

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