

BEFORE THE 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 ) BZA No. 17109  
Requirements with respect to 5-story Apartment in R-5-D )  
Zone at 1819 Belmont Road, N.W. (Square 2551, Lot 45) )  
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MOTION OF KALORAMA CITIZENS ASSOCIATION FOR  
PARTIAL REHEARING AND RECONSIDERATION  
OF ORDER OF NOVEMBER 8, 2005

Pursuant to 11 DCMR § 3126 Kalorama Citizens Association ("KCA") moves that the Board of Zoning Adjustment (Board) grant a rehearing and reconsideration of its Order dated November 8, 2005 in this Appeal, in the following respects:

**1. New information about the configuration of the sixth level of the newly constructed building at 1819 Belmont Road, N.W., labeled by the developer, Montrose LLC, as an "attic" in the project plans and permit application, indicates that it is actually an interior balcony, which must be included in the calculation of gross floor area and floor area ratio (FAR).**

The sixth level of the building extends over only a part of the fifth level. The ceiling above the southernmost portion of the fifth level – an area equivalent to approximately 1/6 of the fifth level – extends more than 6 feet above the ceiling on the rest of the fifth level, to the same height as the ceiling above the sixth level, creating an atrium-like section in the front of the fifth.

In its Order, at pp. 13-14, the Board concluded that the sixth level is legally an "attic" with structural headroom of less than 6 feet 6 inches and that it therefore was properly excluded by the Zoning Administrator from the calculation of gross floor area. The plans made available to KCA by the Department of Consumer and Regulatory Affairs and submitted to the record disclose no information about the configuration of the front wall of the sixth level, or "attic," or indicating that it is other than a solid wall. To our knowledge no such information was disclosed by Montrose, LLC in the course of the case.

Subsequent to the close of the evidentiary record in this case, observation from outside this building disclosed that the sixth level is in fact substantially open at the front, or south, side, overlooking the floor below and providing outside views to the south through the large windows on the front of the building at the fifth and sixth levels.

BOARD OF ZONING ADJUSTMENT  
District of Columbia

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EXHIBIT NO. 93

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EXHIBIT NO. 93

outside views to the south through the large windows on the front of the building at the fifth and sixth levels.

Under §199 of the Zoning Regulations, an interior floor extending over only a portion of the floor below and providing a view of that floor is either a “mezzanine” or an “interior balcony,” both of which are required to be included in the calculation of gross floor area. While the area in question does not appear to be a mezzanine under the definition found in § 199,<sup>1</sup> it does qualify as an “interior balcony.” “Balcony” is not defined in § 199; therefore, under that section, the definition in Webster’s Unabridged Dictionary controls, the most relevant portion of which is:

“b : an interior projecting gallery in a public building (as a theater); specif: such a gallery immediately above the main floor.”

While this is of course not a public building (nor does it need to be – the Zoning Regulations cover public and private structures alike), the sixth level projects over the main floor of the apartment, and like a theater balcony affords a view of the floor below as well as what lies beyond it (in this case, not a stage or screen, but the dramatic views offered by the large front windows of the building – advertised, we suppose, in the name that Montrose has given the building for marketing purposes: “Belmont Overlook”).

A floor so configured is a common feature of contemporary loft apartments, and the regulations require it to be counted toward gross floor area and hence, toward FAR. Consequently, ANC 1C and KCA respectfully request that the Board reverse its decision regarding the FAR status of the sixth level of the building.

**2. Prompted by a document submitted by counsel for DCRA on October 28, 2005 in BZA Appeal No. 17335, KCA undertook an investigation into Zoning Commission records and, even with the assistance of Office of Zoning staff, has been unable to identify an order ever changing the zoning for 1819 Belmont Road , N.W. and adjacent parcels from R-5-B. KCA has submitted a formal search request to the Office of Zoning specifically for such an order; that search is now underway. If no such order can be produced, the zone district remains R-5-B, the adjacent property owners do not have the right to build to a height of 70 feet, and the theory upon which the Board based its decision to regard the side walls of 1819 Belmont Road as not “exterior” is not applicable, requiring that decision and the consequent approval of the roof structure setback to be reversed.**

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<sup>1</sup> Section 199 of the Zoning Regulations define a mezzanine as “a floor space within a story between its floor and the floor or roof next above it and having an area of not more than one-third (1/3) of the area of the floor immediately below.” Because the sixth level of 1819 Belmont has a floor area that appears to be more than 1/3 that of the floor below, it does not qualify as a mezzanine.

On October 28, 2005, in BZA Appeal No. 17335, involving the roofdeck of this structure, counsel for DCRA submitted to the Board certain documents pertaining to 1819 Belmont Road, N.W, including a 1968 Certificate of Occupancy (Exhibit 1). ANC 1C and KCA were surprised to note that this C of O indicated the zoning to be R-5-B, raising a question as to when it was changed to R-5-C or R-5-D.<sup>2</sup> With the help of the zoning staff, KCA has conducted a search of paper records at the Office of Zoning and digital records on the OZ database, and has found no Commission order establishing R-5-C zoning for the portion of the 1800 block of Belmont Road that the zoning map now depicts as R-5-D, nor any order changing the zoning directly from the original R-5-B to the R-5-D designation found on the zoning map.

Zone districts are established by decisions of the Zoning Commission, under its authority in D.C.Code §6-641.01, and not by the maps, the function of which is to depict graphically the Commission's decision. While not frequent, discrepancies between the map and the relevant Commission order are not uncommon. For example, in the course of considering the now-withdrawn application of Jemal's Citadel/Faison Associates for a Planned Unit Development to house a proposed Harris Teeter supermarket, ZC Case No. 04-30, ANC 1C recently discovered that the area on the south side of the 1600 block of Kalorama Road, NW shown as C-M-2 on the current zoning map is actually zoned R-5-B by order of the Zoning Commission. It is the latter that controls.

In its Order, at p. 12, the Board concluded that the side walls of 1819 Belmont were not "exterior" because it said the adjacent structures could potentially build to the same height as the actual construction at 1819 Belmont. Montrose LLC and the permitting authorities in DCRA presumably relied upon the map in treating the zoning for 1819 Belmont Road as R-5-D, and the project is built to the maximum permitted height of 70 feet. If the Zoning Office's search does not disclose an order effecting the change to R-5-C, however, the actual zoning remains R-5-B, and will govern any future construction not only on 1819 Belmont but on the adjacent parcels. Owners of those parcels could not build to a height greater than 50 feet, requiring reversal of the Board's determination that the side walls of 1819 Belmont are not "exterior" and, therefore, that the structure did not have to comply with normal roof structure setback requirements.

Consequently ANC 1C and KCA respectfully request that the Board allow a reasonable period for the completion of the search currently underway by the Office of Zoning, and if that search fails to disclose a Zoning Commission Order establishing R-5-C zoning for 1819 Belmont and the adjacent parcels, that the determination as to roof structure setback be reversed and the permit be revoked as to the non-complying roof structure.

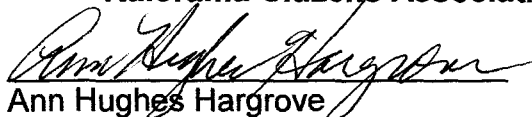
Respectfully submitted,

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<sup>2</sup> A 1996 Zoning Commission order changed all R-5-C districts to R-5-D.

**Kalorama Citizens Association**


By:

  
Ann Hughes Hargrove  
Zoning Chair  
1827 Belmont Road, NW  
Washington, DC 20009

Dated: November 18, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Partial Reconsideration and Rehearing was hand-delivered or sent by United States Mail to Mary Carolyn Brown, Esquire at the offices of Holland & Knight, counsel for Montrose LLC, 2099 Pennsylvania Avenue, NW, Suite 100, Washington, DC 20006, and to Laurie Gisolfi Gilbert, Counsel for DCRA, 941 North Capitol Street, NE, Suite 9400, Washington, DC 20002, and Alan J. Roth, ANC 1C, P.O. Box 21009, Washington, D.C. 20009 on this 18th day of November, 2005.

  
Ann Hughes Hargrove

# Exhibit 1

CERTIFICATE OF OCCUPANCY

No. B 62017

Washington, D.C., FEB. 27TH. 19 68

Permission is hereby granted to JOSEPH T. DIXON

to use the ALL & BASEMENT floor(s) of the building located on Lot 45 Square 2551

known as premises 1819 BELMONT ROAD, N.W. for the following

purpose(s): APARTMENT HOUSE

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

DEPT. OF LICENSES & INSPECTIONS, GOV'T. OF DIST. OF COL.

ZONE B-5-B FEE \$ 12.00

Chief, Permit Branch

By Mary D. Lang Permit Clerk

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