Advisory Neighborhood Commission 1C

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September 23, 2004

Hon. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 4th Street, NW – Suite 210 South
Washington, DC 20001

Re: Application of Montrose, LLC for Special Exception – 1819 Belmont Road, NW (Square 251, Lot 45) – BZA Application No. 17221

Dear Chairman Griffis:

Pursuant to 11 DCMR 3115, Advisory Neighborhood Commission 1C respectfully submits the following report on the above-referenced application for a special exception from the roof structure setback provisions under subsections 400.7(b) and 411.11 of the Zoning Regulations, for a five-story condominium project (not yet completed) at 1819 Belmont Road, NW – also known in the Adams Morgan community as the so-called "Belmont Tower" – located in an R-5-D District. This case is scheduled for hearing before the Board of Zoning Adjustment (BZA) on October 12, 2004.

3115.1(a) – The application under review is identified and described above.

3115.1(b) – The application was considered at a public meeting of ANC 1C on Wednesday, September 8, 2004.

3115.1(c) – Proper notice of the meeting was given by ANC 1C in the form of publication in a community newspaper, transmittal of e-mail and Internet notice to approximately 1,000 neighborhood residents and stakeholders, and posting of notices in individual single member districts (SMDs).

3115.1(d) – ANC 1C has eight SMDs. However, due to the resignation of one Commissioner, only seven are currently represented. A quorum of four Commissioners is therefore required for action. Six of the seven sitting Commissioners were present at the September 8, 2004 meeting.

3115.1(e) – ANC 1C strongly opposes the application. As indicated in the attached resolution, our ANC believes as follows:

1) The Board of Zoning Adjustment (BZA) lacks jurisdiction to grant a special exception from a statutory requirement under the Height of Buildings Act (Height Act), which is in effect what the applicant seeks here. The application should be dismissed at the October 12, 2004 hearing without further consideration of the merits.

2) The applicant's claim that complying with the roof structure setback requirements of the Height Act would be "unduly restrictive, prohibitively costly, or unreasonable" is the result

BZA
Case No. 17221
Exhibit No. 25

Board of Zoning Adjustment
District of Columbia
CASE NO. 17221
EXHIBIT NO. 25

of the applicant's own self-inflicted harm. Its constant efforts throughout the duration of this project to mislead the community and the Department of Consumer and Regulatory Affairs as to its plans and intentions are well-documented in the record of *Appeal of Kalorama Citizens' Association,* BZA Case No 17109. Those efforts were obviously aimed at evading the limitations of the Height Act and are the source of the applicant's own troubles here. Even after the community's concerns and opposition to the height of the barely-framed-out roof structure became known to the applicant in early September 2003, the applicant kept building and building – completing the roof structure and a roof deck even while evidentiary hearings on the KCA appeal in the spring of 2004 were ongoing. Such offensive conduct should not be rewarded by the BZA with a special exception from the Zoning Regulations.

3) The applicant's roof structure, as currently configured, would adversely affect the light and air of adjacent buildings, in violation of the very section of the Zoning Regulations on which the application relies (section 411.11). Moreover, similarly contrary to section 411.11, the structure, if allowed to remain, would materially impair the intent and purpose of the Zoning Regulations, which are expressly intended to prevent violations of the Height Act.

4) Putting aside the specific tests for a special exception under section 411.11, the applicant cannot even meet the general test under section 3104.1. The roof structure in question will "tend to affect adversely the use of neighboring property," and it is *not* "in harmony with the general purpose and intent of the Zoning Regulations," which as noted above are expressly intended to prevent violations of the Height Act.

3115.1(f) – For the reasons stated above and in the attached resolution, ANC 1C recommends that the application be denied.

3115.1(g) – The attached resolution, as amended, was approved by unanimous roll call vote of 6-0.

3115.1(h) – Any or all of the following Commissioners are authorized to present this report:

- ANC 1C Chairperson Alan Roth;
- ANC 1C Vice Chairperson Josh Gibson, who also chairs the ANC's Planning, Zoning, and Transportation Committee; and/or
- Commissioner Bryan Weaver, SMD 1C03, in whose Single Member District the premises are located and whose constituents are most directly impacted.

3115.1(i) – The signature of ANC 1C's Chairperson is provided below.

Please feel free to contact me at 347-3030 (W) or 667-7812 (H) if you have any additional questions.

Thank you for your consideration of our views.

Sincerely,

Alan J. Roth
Chairperson

Enclosure
cc: Mary Carolyn Brown, Esquire

ANC 1C RESOLUTION IN OPPOSITION TO SPECIAL EXCEPTION SOUGHT FOR ROOF STRUCTURE AT 1819 BELMONT ROAD, NW

WHEREAS, Montrose LLC, the owner/developer of 1819 Belmont Road, NW, has applied to the Board of Zoning Adjustment (BZA) for a special exception from the roof structure requirements of section 411 of the Zoning Regulations, and

WHEREAS, Montrose LLC seeks through this special exception application to avoid the effect of the BZA's recent unanimous decision in an appeal brought by the Kalorama Citizens Association and supported by Advisory Neighborhood Commission 1C, in which the BZA ruled that Montrose must comply with the Height of Buildings Act requirement that the roof structure in question "be set back from the exterior walls [by] distances equal to their respective heights above the adjacent roof",

NOW, THEREFORE, BE IT RESOLVED, that ANC 1C opposes the special exception sought by Montrose for this roof structure on the following grounds:

1) The BZA lacks jurisdiction to grant a special exception from a statutory limitation under the Height of Buildings Act.

2) Montrose's claim under section 411.11 of the Zoning Regulations that full compliance would be "unduly restrictive, prohibitively costly, or unreasonable" is the result of Montrose's own self-inflicted harm as a result of its constant efforts throughout the duration of this project to evade compliance with the Height of Buildings Act.

3) Montrose cannot comply with the requirement in section 411.11 "that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely" in order to receive a special exception.

4) The special exception sought by Montrose fails to meet the general test for special exceptions in section 3104.1 of the Zoning Regulations, in that the roof structure in question will "tend to affect adversely the use of neighboring property" and it is not "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps".

BE IT FURTHER RESOLVED, that ANC 1C may be represented before the BZA in this special exception case by the Commissioner for Single Member District 1C03, the Chairperson of the ANC's Planning, Zoning, and Transportation Committee, and/or the Chairperson of ANC 1C.

Offered by: **Commissioner Weaver**
Seconded by: **Commissioner Miscuk**
Vote: **Approved by roll call vote, 6-0**
AYE Roth, Apostolides, Weaver, Moretti, Miscuk, Gibson
Date: **September 8, 2004**