BEFORE THE BOARD OF ZONING ADJUSTMENT
DISTRICT OF COLUMBIA

Application of	)	
	)	
MONTROSE, LLC	)	
	)	BZA Case No. 17221
For a Special Exception in the	)	ANC 1C
R-5-D District at 1819 Belmont	)	
Road, NW (Square 2551, Lot 45)	)	

MOTION OF ADVISORY NEIGHBORHOOD COMMISSION 1C
AND KALORAMA CITIZENS ASSOCIATION
TO REMOVE CASE FROM THE HEARING SCHEDULE

Pursuant to 11 DCMR §§ 3100.1 and 3105.11, Advisory Neighborhood Commission 1C (ANC 1C) and Kalorama Citizens Association (KCA) hereby move to remove the above-captioned case from the hearing schedule for September 20, 2005, in view of the fact that the Board of Zoning Adjustment (Board) postponed any hearing on the case until at least 40 days following the issuance of the written order in the Appeal *of Kalorama Citizens Association,* BZA Case. No. 17109 ("*KCA Appeal*"), and no such order has yet been issued.

The property involved in Montrose, LLC's application here for a special exception is the same property addressed in the *Appeal of Kalorama Citizens Association* case (BZA Appeal No. 17109). In its oral discussion and vote on that *Appeal* at a special public meeting on June 22, 2004 the Board by a unanimous 5-0 vote granted the appeal in part and denied it in part. The Board concluded, among other things, that the roof structure of the building at issue was subject to the setback requirements found in the Zoning Regulations and the Height of Buildings Act, a conclusion that the Board orally reversed at the public meeting on February 1, 2005. No formal order has been issued in that Appeal.

The present Application for Special Exception seeks relief from the roof structure setback requirements. At the December 7, 2004 hearing on the Application, the Board had before it two

BZA
Case No. 17221
Exhibit No. 50

Board of Zoning Adjustment
District of Columbia
CASE NO. 17221
EXHIBIT NO. 50

motions submitted by ANC 1C and KCA: a motion to dismiss the Application, and a motion to postpone until at least thirty days after the date on which the written order in the *KCA Appeal* becomes effective.

The Motion to Postpone (copy attached) was based on the on the grounds, among others, that critical issues is the Special Exception case were directly dependent on the Board's order in the *KCA Appeal* and could not be coherently argued in the absence of an order in that *Appeal*, and set out the reasons why this was so. In fact several members of the Board, in the Board's extended discussion of this Motion on December 7, cogently articulated those reasons (see *Transcript of BZA Hearing of December 7, 2004 (PM)["Transcript"]*, pp. 63-87), discussing at length why it would be imprudent to proceed with the present case in the absence of a final order in the *KCA Appeal*. Accordingly the Board unanimously voted to postpone the Special Exception case (*Transcript*, p. 87), and after further extended discussion decided that the postponement would continue until 30 days after the issuance of the Order, plus ten days (*Transcript*, p. 107-08).

There is still no written order in the *KCA Appeal*. The Board has not revoked or otherwise modified its previous postponement. Nor should it have done so, since in the absence of a written order, the reasons for the postponement – set forth in the attached Motion and well stated by the Board itself – remain as compelling as ever.

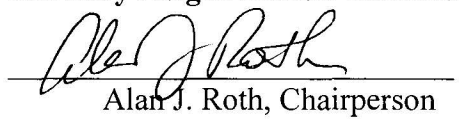
Even if the Board were now to revisit its ruling on the earlier Motion to Postpone, serious issues of jurisdiction and basic fairness to the parties would be raised if the Board were at this juncture to proceed with the Applicant's special exception case. Having already ruled orally on KCA's Appeal in BZA Case No. 17109 that the roof structure at issue in this special exception application was not subject to the setback requirements of the Zoning Regulations and the Height of Buildings Act, the only thing that remains for the Board to do is to issue its long-awaited

written order. Once that order is issued, there would be no reason and no basis for the Board to issue a special exception; indeed, this application would be altogether moot, since the relief sought here would presumably be unnecessary under the Board's previous ruling. Going ahead at this point with the special exception case would be not only a waste of the Board's time and resources, it would also be contrary to intent of the jurisdictional provision in section 3100.7 of the Zoning Regulations: "The Board shall not consider informal requests for advice or moot questions." The parties here, and particularly Appellant KCA, are entitled to a written order from the Board on a vote taken nearly eight months ago, reversing a vote taken nearly 15 months ago, in a case filed nearly two years ago. Montrose, by contrast, should not be permitted to consume the Board's time and party-opponents' time with the presentation of a case that would be mooted by the issuance of a long-awaited written order.

It is therefore clear that the present case should not have been scheduled for hearing on September 20, 2005, and ANC 1C and KCA therefore respectfully move that that case be removed from the September 20, 2005 hearing schedule.

Respectfully submitted,

Advisory Neighborhood Commission 1C

By: 

Alan J. Roth, Chairperson
P.O. Box 21652
Washington, DC 20009

Kalorama Citizens Association

By: 

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

Dated: September 16, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Remove Case from the Hearing Schedule was sent to Mary Carolyn Brown, Esquire, counsel for the Applicant, by United States mail, postage prepaid, at the offices of Holland & Knight, 2099 Pennsylvania Avenue, NW, Suite 100, Washington, DC 20006 on this 16th day of September, 2005.

Ann Hughes Hargrove

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Road, NW (Square 2551, Lot 45)	)	

MOTION OF ADVISORY NEIGHBORHOOD COMMISSION 1C AND KALORAMA CITIZENS ASSOCIATION FOR POSTPONEMENT OF HEARING

Pursuant to 11 DCMR §§ 3100.1 and 3105.11, Advisory Neighborhood Commission 1C (ANC 1C) and Kalorama Citizens Association (KCA) hereby move for a postponement of the hearing in the above-captioned case to a date not less than 30 days following the date on which the written decision or order of the Board of Zoning Adjustment (Board) in *Appeal of Kalorama Citizens Association,* BZA Case. No. 17109, becomes effective pursuant to 11 DCMR § 3125.9.

The property involved in Montrose, LLC's application here for a special exception is the same property addressed in the *Appeal of Kalorama Citizens Association* case (BZA Appeal No. 17109).. In its oral discussion and vote on the *Appeal of Kalorama Citizens Association* at a special public meeting on June 22, 2004 – nearly four months ago – the Board by a unanimous 5-0 vote granted the appeal in part and denied it in part. No written order or decision has yet been issued by the Board in that *Appeal.* In the present case, ANC 1C has submitted a report to the Board pursuant to 11 DCMR §3115, and KCA has requested party status pursuant to 11 DCMR §3106.

In support of their motion, ANC 1C and KCA state as follows:

I. Critical issues in the special exception case are directly dependent on the Board's order in the earlier appeal, and cannot be coherently argued by the parties until they have the final order in hand.

In that earlier case, the Appellants prevailed at the June 22nd vote on the roof structure setback issue. Specifically, the Board agreed that the Board had jurisdiction to determine issues arising under the 1910 Height of Buildings Act (the Height Act), that Montrose was required to comply with the roof structure setback requirement in the Height Act, and that the roof structure did not comply with that requirement. The threshold procedural issue here in Montrose's special exception case is therefore whether the Board has jurisdiction to grant a special exception from a requirement found in the Height Act, which is a congressional enactment, not a mere District regulation – an issue that arises from and is directly related to the Board's own interpretation of the Height Act's setback requirement in the previous *Appeal* case. Moreover, a central part of the test for the grant of a special exception under section 3104.1 of the Zoning Regulations – whether the requested special exception "will be in harmony with the general purpose and intent of the Zoning Regulations" – is similarly intertwined with the Board's interpretation of the Height Act provision at issue, since compliance with the Height Act overrides virtually all other Zoning Regulations. *11 DCMR § 2510.*

That being the case, it would be virtually impossible for the parties here to coherently argue either the jurisdictional question or the "harmony" issue without a full and complete understanding of the Board's earlier decision in the *Appeal* case, including the Board's findings of fact, conclusions of law, and specific order.

II. ***The Application is in effect a Motion for Reconsideration and Rehearing, in which the Applicant is again seeking to circumvent the Zoning Regulations by relitigating issues determined in the prior appeal before the issuance of a final written order.***

The Board supported the Appellant's interpretation of the Height Act at the June 22nd special public meeting with respect to the illegal roof structure constructed by Montrose here, as well as the illegal roof deck to which the roof structure provides access. It is evident, however – both from Montrose's unsuccessful attempt to obtain reconsideration from the Board without a written decision, and from its pre-hearing statement filed for this special exception case – that Montrose thinks it can keep on relitigating that very issue until it gets the answer it wants from the Board. Specifically, Montrose has devoted an entire section of its statement to reopening and rearguing the issue of whether the Height Act's requirement of setback from exterior walls applies only to walls fronting on a street—an issue already decided at the June 22voting session—and has promised extensive testimony on the issue. *Statement of the Applicant, pp. 7-9, and Exhibit J.* In effect, Montrose's Application is nothing more than another premature Motion for Reconsideration and Rehearing packaged in a different form. It is incumbent on the Board to treat it as such by applying the various requirements governing such motions, set out in 11 DCMR §3126.

Montrose acknowledges, as is the rule under 11 DCMR § 3125.9, that the Board's decision cannot become effective until a final written order has been issued. *Statement of the Applicant at p. 2.* Montrose also has acknowledged, as 11 DCMR §3126.2 plainly requires, that a party may seek reconsideration or rehearing only after the final written order has been issued. *See: Intervenor's Motion for Partial Reconsideration submitted in Appeal No. 17109 on July 14, 2004 (which we understand the Board declined to consider in the absence of a final order) at p. 1.* Without the benefit of the Board's written decision, both KCA-and ANC 1C, which was also a

party to the *Appeal*, would be highly prejudiced by being required on October 12th to argue and present evidence, in a de facto re-hearing on the earlier Appeal, with respect to an issue on which they prevailed in the Board's voting session almost four months ago. Fundamental fairness as well as 11 DCMR §3126.2 dictate that a written decision be issued and become effective before Montrose may seek to reargue issues it has already lost.

ANC 1C and KCA do not seek by this motion to unreasonably delay the progress of this case. Indeed, the timing of a written decision in the *Appeal* is entirely within the Board's own control. ANC 1C and KCA respectfully ask only that they and any other parties in opposition be given a reasonable period of at least 30 days following the effective date of that written decision in which to receive notice of it, read and understand it, and – with the Board's own reasoning in hand – prepare both our jurisdictional and substantive arguments in opposition to the special exception application. (In presenting this motion ANC 1C and KCA concede no jurisdictional or substantive grounds for such opposition.)

For all of the reasons stated above, ANC 1C and KCA request that their Motion for Postponement of Hearing be granted.

Respectfully submitted,

Advisory Neighborhood Commission 1C

By: _____

Alan J. Roth, Chairperson
P.O. Box 21652
Washington, DC 20009

Kalorama Citizens Association

By: _____

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

Dated: October 8, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Postponement of Hearing was hand-delivered to Mary Carolyn Brown, Esquire at the offices of Holland & Knight, counsel for the Applicant, 2099 Pennsylvania Avenue, NW, Suite 100, Washington, DC 20006 on this 8th day of October, 2004.

Ann Hughes Hargrove

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Ann Hughes Hargrove