BEFORE THE BOARD OF ZONING ADJUSTMENT
DISTRICT OF COLUMBIA

Appeal of	)	
	)	
KALORAMA CITIZENS ASSOCIATION	)	
	)	BZA Appeal No. 17335
From the issuance of permit no. B469999	)	ANC 1C
for the erection of a structure comprising a	)	
roof deck and railing on a 5-unit apartment	)	
building at 1819 Belmont Road, N.W.	)	
in the R-5 D district (Square 2551, Lot 45)	)	

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JOINT RESPONSE OF APPELLANT KALORAMA CITIZENS ASSOCIATION AND ADVISORY NEIGHBORHOOD COMMISSION 1C TO SUBMISSIONS BY APPELLEE AND INTERVENOR

At the hearing on the above-captioned Appeal on October 18, 2005, the Board requested the Department of Consumer and Regulatory Affairs (DCRA), Appellee, and Montrose LLC, Intervenor, to submit certain documents to the Board. Kalorama Citizens Association (KCA) and Advisory Neighborhood Commission 1C (ANC 1C) present the following comments on the respective responses by DCRA and Montrose LLC to these requests.

1. In response to a request for "the original building permit," DCRA by letter dated October 28, 2005 submitted a copy of Permit No. B449218, together with the permit application and certain other materials apparently taken from the file on that permit, including a number of photographs dating from September 2003 that had been submitted to DCRA by Kalorama Citizens Association at that time. (This earlier permit was dated March 11, 2003, not March 2, 2005 as stated by DCRA.) This permit, and two later permits making certain modifications in it (No.B455571, dated October 6, 2003, and No. B455873, dated October 16, 2003), were at issue in Appeal No. 17109 ("*KCA I*"). None of these permits is at issue in the present case or has any

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bearing upon the question of the lawfulness of the permit now under appeal (Permit No. 469999, dated March 2, 2005).

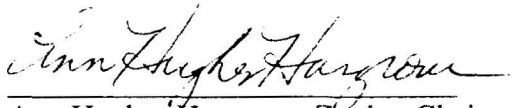
2. In response to the Board's request for "some documented evidence of the past practice of excluding railings from the Height Act measurements," DCRA states in the same letter that it "does not have any additional documentation at this time." This admission confirms the contention of KCA and ANC 1C that not only has DCRA allowed railings to be constructed in violation of the Height Act in this and apparently other cases, but that it has done so without paying any attention to the Height Act at all, much less engaging in anything that could be characterized as interpretation or analysis of the Act. DCRA's admission is fully consistent with the October 18, 2005 testimony on behalf of DCRA by Ms. Faye Ogunneye, who under repeated questioning was unable to identify any provision of the Height Act that DCRA had considered to provide a basis for exempting railings from the height limitations, and who evinced a general unfamiliarity with that Act.

3. By letter of October 28, 2005, Montrose LLC submitted a copy of a Memorandum dated October 16, 1986, from then Deputy Zoning Administrator Joseph Bottner, which Montrose characterizes as "indicating that the Mayor delegated his authority to approve roof structures above the limits of the 1910 Height Act (D.C. Code § 601.05(h)) to the Building and Land Regulation Administration." This delegation of authority to approve certain excessively high roof structures has no bearing on the issue of the lawfulness of the permit under challenge in the present Appeal. The structure at issue in the present case – a roof deck with attached railing – is not among the types of roof structures for which the Act gives the Mayor that authority, for reasons detailed in the Joint Prehearing Statement of KCA and ANC 1C previously

submitted. As to this structure, the Mayor had no authority to delegate. In any event, the present issue is not whether officials in DCRA who approved this permit had authority to interpret the Height Act, but whether they in fact did so, and if they did so whether they interpreted it correctly, or whether in either case they authorized a structure that violates the Act.

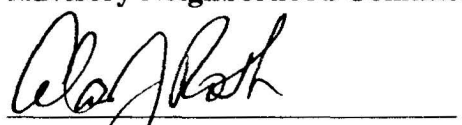
That this structure does violate the Act is clear not only from its omission (and the omission of anything like it) from the Act's list of allowable exceptions, but also from the Act's evident underlying policy: restricting building heights in the capital city save for a limited list of decorative architectural features and rooftop paraphernalia necessary for building functioning, while excluding rooftop structures intended for human occupancy, since otherwise the basic purpose of the Act could be readily circumvented. Rooftop facilities for recreational or other forms of human activity not related to building functioning are fine, and indeed some are officially encouraged in certain districts -- so long as they are wholly within the height limit. But to invent an arbitrary exception for one class of recreational structures where no basis exists in the Act would be to open the door to an open-ended parade of all manner of rooftop structures for general use, limited only by the imagination of architects and builders and their lawyers. This is the very eventuality the Height Act's drafters sought to forestall.

Respectfully submitted,
Kalorama Citizens Association

By: 

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

Advisory Neighborhood Commission 1C

By: 

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

Dated: November 8, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Prehearing Statement was sent by United States mail or hand-delivered to Lisa A. Bell, Esquire, Office of General Counsel, Department of Consumer and Regulatory Affairs, at 941 North Capitol St., NE, Room 9400, Washington, DC 20002, and to Mary Carolyn Brown, Esquire, counsel for Montrose, LLC, at Holland & Knight, 2099 Pennsylvania Ave., NW, Washington, DC 20006 on this 8th day of November, 2005.

Ann Hughes Hargrove