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June 18, 2001

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The Honorable Chairperson and Members
Board of Zoning Adjustment
One Judiciary Square, Suite 210
441 Fourth Street, NW
Washington, D.C. 20001

Re: BZA Application No. 16730 (Bundy Development Corporation, Relating to Square 243, Lot 26 (former lots 818 through 821) located at 1320 Thirteenth Street, NW)

Dear Madam Chairperson and Members:

This firm represents the interests of its client, K.J.G.C. Associates, L.L.C., who, along with Robert and Lucille Harris, are co-owners of certain properties located along the 1300 block of Thirteenth Street, NW. The Board's Notices alerted our client to the application of Ms. Pamela D. Bundy, who owns property(ies) located on the west side of the same block for variances from various zoning limits to allow her to pursue her objective of building a medium density residential project on her lot(s). Our client asked me to examine the plans and provide you comments on their behalf.

Within the firm, I am engaged as a professional land use planner. As you know, I have recognized expertise in that field generally and specific expertise in zoning in the District of Columbia. I have appeared, from time to time, as an expert witness before both the Board of Zoning Adjustment and the Zoning Commission.

As part of my earlier professional work, independent of this law firm, from late 1997 though 1999, I assisted all the co-owners of the our client's property when it was under review by the Zoning Commission as part of an area-wide rezoning and review of properties in most of the District's Special Purpose zones, and areas near them.

BZA
Case No. 16730
Exhibit No. 54

Board of Zoning Adjustment
District of Columbia
CASE NO.16730
EXHIBIT NO.54

I examined Ms. Bundy's plans and situation. In my mind what she seeks satisfies each of the three-prong tests for granting a variance, which I consider as follows:

- "Practical difficulty arising our of extraordinary or exceptional condition of a specific piece of property."
- "Peculiar and exceptional practical difficulties, or exceptional and undue hardship..."
- Granting the relief requested would not result in "substantial detriment to the public good" and would not "substantially impair the intent, purpose, and integrity of the Zone plan."

In addition to the variance relief, I feel this letter should also touch on the issue of "reliance." I will address both, below.

K.J.G.C. Associates, L.L.C.'s, Interests:

Specifically, K.J.G.C. Associates, L.L.C., ("K.J.G.C.") co-owns, with Robert and Lucille Harris, seven distinct, but contiguous, lots almost directly across Thirteenth Street, NW, from the lot(s) Ms. Bundy owns and seeks to develop. K.J.G.C's seven properties include lots on which a mechanical car wash is located (1309-11 Thirteenth Street, NW) and lots on which a retail establishment is operated (1313 Thirteenth Street, NW). More particularly, K.J.G.C.'s lots are located on Square 280 and are known as Lots 2, 3, 4, 830, 847, 859 and 860. See enclosed map, which is a combination of Sheets 20 and 27 of Volume One of the ***Baist Atlas*** for the District of Columbia, published circa 1968.[1]

Pamela D. Bundy Overview:

From what I can determine, Ms. Bundy developed and advanced a plan to develop her property *within* R-5-D limits, limits she was repeatedly advised to be in effect – only to be advised very late in the building permit process that these *former* limits no longer apply.

Reliance

I cannot understate the importance of being able to rely on information properly sought even if it is improperly provided by government sources. This principle should apply to all persons and residents: they should have faith in *and be able to rely upon* their government's declarations or, if they disagree, have a means to dispute them. In her case, she was given what now is acknowledged to be incorrect information. In fact,

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[1] Lots 859 and 860 did not exist when the most recent ***Baist Atlas*** was printed. They are situated within a former, now closed, north-south segment of the alley system within Square 280, with Lot 859 being adjacent to Lots 3 and 4, extending to the mid-point of the former alley and Lot 860 comprising the balance, bounded on the east by Lot 830 and to the west by lots 847 and 859.

the Office of Zoning's web-based zoning map made available, albeit unofficially, Ms. Bundy's area is wrongly depicted as recently as June 12, 2001, as R-5-D.

Unfortunately, having been dealt that hand by our government, Ms. Bundy (not the government that provided her incomplete, if not faulty, information) now finds herself having to seek relief to do what she was earlier advised in writing she could do as a matter of right, upon which she invested capital and personal energy to advance a project to bring housing to the District of Columbia.

In fact, on the Office of Zoning's web-based zoning map made available, albeit unofficially, Ms. Bundy's area is incorrectly designated, as are most of the lots on Squares to the west, south, southeast, east, and northeast, copy enclosed.[2]. The map simply appears to leave untouched the sweeping curtailment of R-5-D zones in that area, and the wholesale (but not universal) replacement of SP-2 with R-5-E.

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[2] Enclosed you will also find a portion of the zoning map as depicted from the Office of Zoning website June 12. The portion printed extends from west of 14th Street to east of 10th Street, and from north of Q Street to the southern edge (or "cut line") of the Tile 6, then continuing to show adjacent areas of Tile 10. While the current map appears to have captured zoning changes directed in this area under Zoning Commission Order 862 as part of Case 97-7, specifically changing the former SP-2 portions of Square 243 to R-5-E, it does not reflect the change directed in Order 914 affecting many Squares in the Logan Circle area, including changing areas:

- formerly zoned R-5-D to R-5-B in Squares 242-N, 242, 243, 279, and 312,
- formerly zoned R-5-D to R-5-C in Squares 243, 279, 280, 312, and 313,
- formerly zoned R-5-D to R-5-E in Square 281,
- formerly zoned SP-2 to R-5-C in Square 280,
- formerly zoned SP-2 to R-5-E in Squares 245, 281, and certain lots within Square 314, and
- formerly zoned SP-2 to C-2-C for certain other lots in Square 314.

Moreover, careful scrutiny of the relevant Zoning Commission Order 914 reveals additional potential problems, namely its apparent failure to provide specifications for zoning for certain existing, but unspecific parcels (Square 242, lots 812, 821, 823, 824, and 825; Square 243, lot 19 (it may no longer exist); and likely transposing the condominium lots to be rezoned in Square 279 (wherein condominium lots 2001-2009, in the southeastern corner of Square 279, are apparently rezoned R-5-B while condominium lots 2010-2014, in the northeastern corner of the same Square are rezoned R-5-C.

Finally, Zoning Commission Order 914 appears to have directed a rezoning of a Federal property that is automatically unzoned, the Mary Bethune property at 1318 Vermont Avenue, NW (Square 242, Lot 55), a property we believe is under the jurisdiction of the National Park Service.

Variance Relief:

Ms. Bundy is seeking variances to proceed with plans she developed in total consistency with the development parameters that she was advised by official sources, both orally and in writing, applied to her property(ies). Ordinarily, variances should arise from a particular and practical difficulty arising from the land, and the Board should ordinarily grant the request on finding one or more practical difficulties if so doing would not violate the intent and purpose of the prevailing zone district regulations.

- **Practical difficulty arising our of extraordinary or exceptional condition of a specific piece of property**

Ms. Bundy's difficulty arises more from the fact that the land is adversely affected by, indeed it is afflicted with, incorrectly conveyed development constraints, which, *for all practical purposes*, became and were treated by her and her development team *as a condition of the land itself.*

While this is not the ordinary variance case, it is one that, nevertheless, deserves both your consideration and approval. Moreover, neither variance would, if granted, violate the intent and purpose of the zone district in which it now lies.

- **Peculiar and exceptional practical difficulties, or exceptional and undue hardship...**

The only apparent cures to the situations now at hand is to reduce the size of the development by the equivalent of three apartment units and, to comply with the height limit, to remove two stories from the design already approved by the Historic Preservation Review Board. If "typical" mid-level floors were removed, this would result in the loss of eight units, clearly an undue hardship.

- **Granting the relief requested would not result in "substantial detriment to the public good" and would not substantially impair the intent, purpose, and integrity of the Zone plan."**

The level of development sought would be only 0.5 greater overall Floor Area Ratio than the R-5-C standard allows, just one-sixth more than allowed. In terms of total added floor area on a lot of 5,486 square feet,[3] this amounts to 2,743 square feet or no more than three typical apartment units.

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[3] Within the R-5-C and higher residential zone districts, the Zoning Commission can consider applications for Planned Unit Developments (PUDs) provided they meet the applicable minimum area requirement, namely 15,000 square feet. While the Commission can reduce that requirement in some instances, it can only do so if the parcel's area is at least one half that

Ms. Bundy's project would rise to 75 feet, which is only one-fourth more than is allowed as a matter of right and is less than both the nearly 90 foot height of the historic Iowa apartment building it would face and less than the 90 foot scale of new construction underway at the southwestern corner of Square 243, which itself faces another 90 foot high project under construction in the northeast corner of Square 245 immediately to the south. The existing Eddystone Apartment building on Lot 827 at the corner of Vermont and O (also R-5-E) is also nearly 90 feet in height.

Two comments about the impact of the height on the area. First, from 1300 block of Vermont Avenue, the proposed height would be screened from view by the massing of the existing, development, which, at the northern end of that block consists of mostly older residential properties with two or three stories, with high floor to ceiling heights.

Second, looking south from Logan Circle, the height is not at all excessive, a question to which our client communicated directly in the earlier Zoning Commission case (97-7). Ms. Bundy's project is located on a 110 foot wide "L'Enfant street," with 70 foot wide roadway and two 20 foot wide sidewalks, and whose entire development character *south* of the historic residences *facing* Logan Circle leading into the downtown area cries out for buildings of significant height, *starting with the historic Iowa Apartment building itself.* Constraining new residential development to sixty feet *south of* the long-standing R-5-B zone boundary in the middle of "O" street west of Thirteenth Street, NW, just north of Square 243 would inflict a lopsided legacy for generations to come. As to Ms. Bundy and her development plan, constraining it to sixty feet while retaining her typical floor plan would also result in the loss of two entire floors, each of which has four units. A loss of eight units could be the death knell for her project.

But, my view is supplemented by the fact that Ms. Bundy's design was also approved, in February of this year, by the District of Columbia Historic Preservation Review Board ("HPRB"), which reviews and approves all planned new construction in historic districts. Ms. Bundy's property lies within both the Logan Circle and Greater Fourteenth Street historic districts, adjacent to surviving three- and four-story "contributing" buildings.

Conclusion:

I feel neither variance would be such as to fundamentally or even marginally undermine the intent of the zone plan and its various districts (nor, based on HPRB's approval would it undermine the integrity of the two historic districts). Both the R-5-C and R-5-D zone districts seek to promote apartments of "medium" or slightly higher densities (though the semantic distinction is apparently greater than the difference of

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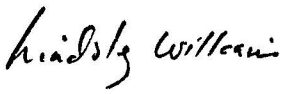
standard, or at least 7,500 square feet. Since Ms. Bundy's properties are barely over one-third the normal minimum area, a PUD "solution" to her problem appears to be precluded.

allowed FARs). This is what would result with the approval of Ms. Bundy's plans – which is not at all excessive and results in the exact use and general density that is at the core of the purposes of both these zone districts: apartment buildings and apartment units

Thus, I support Ms. Bundy's application in every respect and, on behalf of K.J.G.C. Associates, L.L.C., I urge the Board to grant both variances without reservation.

Very truly yours,

HOLLAND & KNIGHT LLP



Lindsley Williams
Senior Advisor for Land Use,
Planning, and Zoning

Enclosures:

A. Extracted Portion of Titles 6 and 10 from District of Columbia Website, June 12, 2001, for Logan Circle Area

B. Board of Zoning Adjustment Application No. 16730 (Pamela D. Bundy) Site and Areas Owned in Part by K.J.G.C. Associates, L.L.C., Showing Zone Boundary Changes Previously or Now in Effect Pursuant to Zoning Commission Case 97-7 and Zoning Commission Orders Numbers 862 and 914.

cc: George W. Calomiris, AIA
Robert and Lucille Harris
Pamela D. Bundy
Jacques dePuy, Esq.
John Parsons, National Park Service
Andrew Altman, Director, Office of Planning
David A. Clark, Director, DCRA
Jerrily R. Kress, FAIA, Director, Office of Zoning
Nyambi A. Nyambi, AICP, Chief Technology Officer, Office of Zoning
Alberto Bastida, AICP, Secretary to the Zoning Commission, Office of Zoning

Extracted Portion of Tiles 6 and 10 from District of Columbia
Office of Zoning website, June 12, 2001, for Logan Circle Area

