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September 26, 2002

BY LOCAL COURIER

Geoffrey H. Griffis
Chair
D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Suite 220-S
Washington, D.C. 20001

Re: BZA Application No. 16896: Randle Highlands Manor

Dear Mr. Griffis and Members of the Board:

Through counsel, the Applicant, Randle Highlands Limited Partnership (hereinafter "RHLP"), respectfully responds to the application of Geraldine C. Marshall to participate as party representing the Randle Highlands Citizens Civic Association ("RHCCA") in the above-referenced case. For the reasons stated below, the party status application must be denied.

Section 3106.2 of the D.C. Zoning Regulations provides the standards that an applicant must meet to qualify for admission to appear and participate in a case as a party. The first criterion is that one shall file his/her application not later than 14 days prior to the date set for the hearing. This hearing was "set" for July 16, 2002 thus requiring all persons seeking party status to file an application for such by July 2, 2002. Ms. Marshall first made application to be a party at the hearing, two weeks later than the regulations allow. She then sought, and still seeks party status as a representative of the RHCCA. As justification for her request that the Board waive its rules and accept her application out of time, she stated that she did not know about the application until the time for filing an application for party status had lapsed. However, the record clearly shows that the group she is seeking to represent at the hearing knew about the application as early as March 28, 2002 when it sent a letter to the Mayor opposing the application. A copy of that same letter was

BZA
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Exhibit No. 43

Board of Zoning Adjustment
District of Columbia
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EXHIBIT NO.43

filed in this record on June 14, 2002, nearly a month prior to the date by which an application for party status on its behalf should have been filed.[1]

This application is untimely filed without a credible reason for doing so. Even if it applied to RHCCA, not knowing of the regulatory deadline is an insufficient and inapplicable excuse, especially in the circumstances presented where the record clearly demonstrates that the RHLP and the Board's staff followed the regulations regarding public notice of the hearing.

Section 3106.2(e)(1) requires those who request party status to state the property interests that will be affected by the application for zoning relief. It is on this point that Ms. Marshall's application becomes muddled. While she clearly seeks party status as a representative of the RHCCA, she states interests that are particular to her rather than to the Association. There is no statement of the RHCCA's property interest, if any, nor of whom the members of the RHCCA are, nor is there an identification of the properties that those members may own. 11 D.C.M.R. § 3106.2(e)(1). Thus, the Board is at a loss to determine what interests and whose interests will be affected by the zoning action the RHLP requests of the Board.

Ms. Marshall's application is also silent on the legal interests that the membership of the RHCCA is seeking to protect and the location of those properties in which a legal interest is claimed.[2] 11 D.C.M.R. § 3106.2(e)(2), (3). Similarly, how will the Board know what "... environmental, economic, social or other impacts that are likely to affect the . . ." RHCCA's property if the Board doesn't know where that property is? 11 D.C.M.R. § 3106.2(e)(4), (5).

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[1] At the hearing, Ms. Marshall admitted that she was not an active member of RHCCA and that she had no official authorization to represent that association. No other person, authorized or not, appeared at the hearing on behalf of RHCCA. So, in actuality, RHCCA's request for party status was first made on September 17th, sixty-three days after the hearing and 77 days out of time.

[2] The August 19, 2002 RHCCA letter that Ms. Marshall proffers as her authorization to represent that association offers no guidance of the interests to be represented or to the upper or lower limits of Ms. Marshall's representational authority. Whether the RHCCA acted officially to extend any authority to Ms. Marshall is another open question.

The party status application goes on to state that ". . . there are other CBRFs within 500 feet of the subject property and that the proposed facility should be denied on that basis" but the document accords the Board no hint as to what or where those facilities are. The reason for this omission is attributable to the fact that there are not any CBRFs that would, under the Zoning Regulations, preclude the approval of the zoning relief that RHLP has requested. The RHLP has established this fact in the record.

The regulations limit the Board's authority to grant party status to those who clearly demonstrate that ". . . the person's interest would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning relief than those of other persons in the general public." 11 D.C.M.R. § 3106.3. There is no showing whatever that either Ms. Marshall's interest or those of the RHCCA meet this clear and concise standard. It has been established in the record, that the RHLP has discussed this application at length with the affected Advisory Neighborhood Commission 7B ("ANC 7B") and with the RHCCA. The result has been that the proposed project has earned the support of the ANC.[3] A letter stating that support is in the record. Neither Ms. Marshall nor the RHCCA has shown that either of their interests are "significantly, distinctively or uniquely" different from those of the general public or of the ANC. According to the regulations, Ms. Marshall and the RHCCA are free to participate in the hearing as persons but clearly do not meet the strict standards the Zoning Regulations impose to be awarded party status in this case.

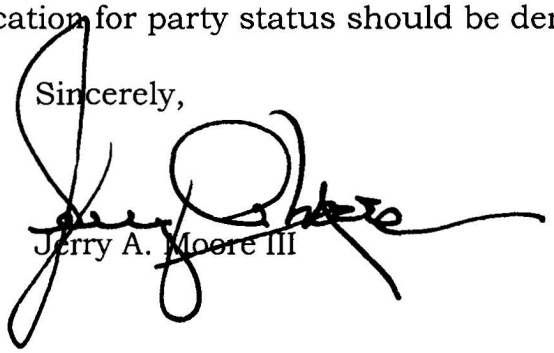
The RHCCA's application for party status was filed significantly out of time, states no property interest nor any specific impacts that the Board can identify or associate with the underlying zoning case and accords the Board no clue as to how the RHCCA's interests are significantly and uniquely different in this case than those of the general public which is represented by the ANC, an existing party to the case.

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[3] The Chairperson of ANC 7B, Roscoe Grant Jr., appeared at the hearing to reaffirm that group's support for this application.

For these reasons, the application for party status should be denied.

Sincerely,



Jerry A. Moore III

cc: Ms. Geraldine C. Marshall
Ms. Lisa A. Bolden
Mr. Butch Hopkins