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May 13, 2005

Geoffrey Griffis, Chairman
D.C. Board of Zoning Adjustment
Office of Zoning
441 4th Street, N.W.
Suite 220, South
Washington, DC 20004

Re: BZA Case No. 17316: Randle Highlands Limited Partnership, Applicant

Dear Mr. Griffis and Members of the Board:

Respectfully, we respond to the Commission's request for additional information regarding the value that the Monaco v. D.C. Board of Zoning Adjustment (407 A.2d 1091, DC 1979) case[1] conveys to the above-referenced proceeding and provide additional information to further substantiate the Applicant's sworn testimony that ten is the minimum number of units that can be developed on the subject property for the Applicant to be in compliance with the conditions under which it was awarded title to the property.

The Monaco case was decided by the District of Columbia Court of Appeals in 1979 but remains today as an often cited authority in defining the standards upon which a finding of "uniqueness" may be based. In pertinent part, the case involves a neighborhood resident's appeal of the Board of Zoning Adjustment's grant of a variance to permit a non-profit organization to extend its offices into an R-4 Zone district. The Court of Appeals affirmed the variance setting forth several principles of law which are applicable here. First, it ruled that a public need for the proposed use is an important factor in granting or denying a variance. Here, the Applicant has established, without rebuttal, that the development of affordable dwelling units at this location is a program goal and policy of the District of Columbia.

Second, citing previous decisions (Taylor v. Board of Zoning Adjustment, 308 A.2d 330 (DC 1973) and Palmer v. Board of Zoning Adjustment, 287 A.2d 535 (DC 1972), the court reiterated its interpretation of the uniqueness test to mean that the petitioner's property "... must be subject to some difficulty not shared by the entire neighborhood."

[1] The Applicant also points to the Draude II, Gilmartin, DeAzcarate, Clerics of Saint Viator, Palmer and Barbour decisions as support for the area variance relief that is requested. A copy of each of these cases is in the record.

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Board of Zoning Adjustment
District of Columbia
CASE NO. 17316
EXHIBIT NO. 31

Here, it is well established that, unlike other area properties, the subject property is burdened by a deed restriction requiring that it be developed into affordable dwelling units for first-time homebuyers. Further, there is evidence in the record substantiating the difficulty that the D.C. Government has had developing this property for that purpose. On this point, the Court went on to opine that the proffered difficulty does not have to be tied to a physical characteristic of the land.

Third, the Court determined that development restrictions that relate to the subject property, and not to other properties nearby, may also be considered as an extraordinary condition if these restrictions effectively restrict the design, height and use of the subject property. Here, as we point out below, the requirement that affordable housing for first-time homebuyers be produced on the subject site effectively limits the development options and requires the Applicant to maximize the development potential of the site to accommodate a portion of the site that must be deliverable within an "affordable" pricing range.

The need and requirement for the production of affordable housing on this site is firmly established in the record. To accomplish this end, the site must obviously be designed to produce sufficient revenue to cover the construction of the affordable units. Although all of the units will be similarly built and equipped it is necessary to sell some of the units at a "market rate" to offset the per unit revenue deficits that the affordable units will generate.
The mathematics of constructing both eight and ten units are as follows:

- Units "one", "nine" and "ten" require side yard variances. To eliminate the need for variance relief the project would have to eliminate two of the ten units that are proposed.

- The range of sales prices for new homes in this area is $175,000 to $279,000.

- With the sales prices of two units necessarily set at the lower range and the remaining eight units set at the "market price", ten units would produce gross sales receipts of $2,537,000, with costs to build of $2,521,340, leaving a reserve of $15,660.

- Eight homes would produce gross sales receipts of $2,019,000, with costs to build of $2,355.000, resulting in a loss of ($336,000).

It is necessary for the project to be developed with a minimum of 10 homes. A lesser number destroys the viability of a project that has been waiting over five years to commence.

Thus, for these reasons, and those previously submitted into the record by written, sworn and expert testimony, the requirements of Sections 353, 3104.1 and 405.2 of the Zoning Regulations have been met. Accordingly, the Applicant requests the Board to approve its application for the zoning relief necessary to make the long awaited project a reality.

Sincerely,

Jerry A. Moore III
Counsel to the Applicant

cc: Raymond Keith, Chair
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