GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17316-A of Randle Highlands Manor Limited Partnership, pursuant to 11 DCMR § 3104.1, for a special exception under § 353 and § 410 (new residential development), and pursuant to 11 DCMR § 3103.2, for a variance from the side yard requirements of § 405, to allow the development of ten single-family dwellings on a single subdivided lot in the R-5-A District at premises 2700 R Street, S.E. (Square 5585, Lot 812).

HEARING DATE: May 10, 2005
DECISION DATE: June 7, 2005

DATE OF DECISION ON RECONSIDERATION: February 7, 2006

ORDER ON RECONSIDERATION

On December 22, 2005, ANC 7B, which opposed the application of Randle Highlands Manor ("Applicant") at the hearing on the application, timely filed a motion for reconsideration ("motion") of the December 12, 2005 Board Order granting the application ("Order"). *See,* 11 DCMR § 3126. The Applicant filed a response to the motion for reconsideration, which was received by the Office of Zoning ("OZ") on January 3, 2006.

Procedural Issues

The Applicant's response points out several potential procedural deficiencies in the ANC's motion. The motion does not set forth the context in which ANC 7B decided to request reconsideration. There is no statement in the motion that the ANC took a vote at a properly noticed public meeting, with a quorum present. There was also some question whether the signer of the motion, ANC Commissioner Davis, was authorized to represent the ANC as to reconsideration.

As to these preliminary matters, the Board finds that the motion can be accepted even without setting forth the procedural context in which the ANC decided to request reconsideration because such information is specifically required in "the written report of the ANC," but not in a motion for reconsideration. *Compare,* 11 DCMR § 3115.1 and § 3126.4. Section 3126 does not specify that an ANC requesting reconsideration must file

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the procedural background of its request. Instead, it states that a motion for reconsideration must set forth three things: (1) a specific statement of all respects in which the final decision is claimed to be erroneous, (2) the grounds for reconsideration, and (3) the relief sought.

As to whether Commissioner Davis was authorized to represent the ANC with respect to a motion for reconsideration, the Board finds that the ANC letter of May 31, 2005, clearly states that "[t]he ANC 7B representative for this case is Commissioner Kenneth A Davis" and operates to authorize Commissioner Davis throughout the entirety of the proceedings in this case, including any request for reconsideration.

The Merits of the Motion

The motion for reconsideration alleged five errors in the Board's decision. It alleged generally that the estimated sales prices given by the Applicant and accepted by the Board were unrealistic and that a higher per-unit sales price might allow for a smaller development and might eliminate the need for zoning relief. The motion also opined that any agreement between the Applicant and the District of Columbia government (to provide two low-income units) was a temporary, self-imposed burden. Finally, the motion found fault with two specific Findings of Fact in the Order, alleging that there was insufficient evidence to support them.

The first two allegations mentioned above regarding the sales price of the units are conclusory statements unsupported by any facts, whether from the record or newly-introduced. The issues raised by these statements were thoroughly vetted at the hearing and in the Board's Order. Related to this argument are the two findings of fact with which the ANC takes issue - Findings of Fact Nos. 28 and 29. With regard to both of these findings of fact, the motion complains that the Applicant did not provide current or projected sales prices or a breakdown of construction costs to support them. With regard to No. 28, the ANC further notes that no "break even" costs were provided, and with regard to No. 29, the ANC states that there was no explanation provided for why the construction costs for eight units were higher than for ten units.

The Zoning Regulations do not require that current or projected sales prices, a breakdown of construction costs, or "break even" costs be provided. They leave an Applicant to present whatever evidence it sees fit. The Board then weighs all the evidence presented and makes a decision. Whether sufficient evidence of economic difficulties is presented is a determination to be made by the Board. In this case, the Board was persuaded that the Applicant's economic burdens were a significant and appropriate factor in the practical difficulty analysis of the variance test.

With regard to Finding of Fact No. 29, the motion contends that there was no explanation provided as to why construction costs for 8 units would be higher than for 10 units. The motion misstates the facts. Finding of Fact No. 28 states the cost to build 10 units as $2,521,340 and Finding of Fact No. 29 states the cost to build 8 units as $2,355,000. The cost to build 10 units is higher than the cost to build 8 units; however, with 2 units sold at below-market-rate, the construction of 8 units would result in a loss, whereas the construction of 10 units would not.

As explained in the Order on page 10, the Board found that the sale of 8 units, with two marketed at a lower-income sales price, would not permit the Applicant to recoup his construction costs, but would result in a loss to the Applicant. With the sale of 10 units, the Applicant would not sustain a loss. The motion does not offer any new evidence that undermines this analysis nor any legal argument that the Board erred in its analysis.

Finally, the ANC's contention that the Applicant's agreement with the District of Columbia to provide two low-income units is a self-imposed burden was also thoroughly discussed in the Order. While self-created hardship may sometimes prevent the granting of zoning relief, the Board fully addressed in the Order why that theory did not apply to the facts in this case. (See Order at 10-11.)

For all of the above reasons, it is hereby **ORDERED** that ANC 7B's motion for reconsideration is **DENIED.**

VOTE: **5-0-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, John A. Mann II and Kevin Hildebrand to deny)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

JUL 27 2006

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES.

UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.