

Preliminary Issues as raised by Opponent

EXISTING RESIDENTIAL BUILDING
AND QUALIFIED NONPROFIT ORGANIZATION

Existing Residential Building



Existing Residential Building – The Requirement

Section 203.1 of Subtitle U

“The following uses shall be permitted as a special exception in R-Use Groups A, B, and C, if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9 subject to applicable conditions of each section:

(n) Use of existing residential buildings and the land on which they are located by a nonprofit organization for the purposes of the nonprofit organization”

Opponent’s Claim: The subject building located at 2118 LeRoy Place is not an existing residential building.

The Issue: What is meant by the phrase existing residential building, for purposes of Section 203.1(n)?

Existing Residential Building

The Law:

As affirmed by the DC Court of Appeals in language that could not be clearer, the established Law is:

“the phrase “existing residential buildings” requires only that a structure be residentially zoned, not that it be in actual use as a residence, in order to qualify for use by a non-profit organization.” French vs. DC Board of Zoning Adjustment, affirming BZA Order No. 15555 for 2110 LeRoy Place, NW.

- In affirming, the Court noted that no less than four (4) previous BZA cases before Cullen held the exact same position, that the requirement was that the building be in a residential zone, not that it currently house an existing residential use.

Existing Residential Building

- The underlying BZA case (Cullen #15555) was practically identical to the present case, including:
 - Same street (three doors down)
 - Same opposition group
 - Similar size – 2110 LeRoy was smaller and required variance relief from the 10,000 sf GFA requirement.
 - Strikingly similar facts – 2110 LeRoy had most previously been used as office space for the Italian Embassy's Military Attaché.
 - There is nothing about the present case that could justify reuping the Court of Appeals on this point.

Existing Residential Building

- Review of the Language Supports the Court of Appeals and the Five (5) previous BZA decisions and shows that the interpretation is entirely reasonable and appropriate:
- The phrase used is “Existing Residential Building” – It does not read “Existing Residential Use”. Nor does it use the term “conversion”.
- It makes no difference to the Zoning Commission’s objective of preserving large residential buildings what the current or most previous use is. In fact, we think that the Opponents would agree that a property containing an actual existing residential use would be a less desired candidate for this relief.

Existing Residential Building

Opponent's Argument:

To the extent we understand it, seems to be that this Board should simply discard the five (5) previous BZA decisions, and “overturn” the Court of Appeals decision definitively affirming those previous decisions, and do a 180-degree turn-around based on _____ ?

Existing Residential Building

- Opponent relies on the well-known principle that each BZA decision is decided on its own merits.
- It is true that every BZA case is to be decided on its own merits.
- This does not mean that every BZA case is also decided on its own “law”. And the principle does not mean that the BZA is empowered to overrule Court of Appeals decisions.
- Opponents argument, at heart, is that this Board should refute well-established and long-practiced BZA and Court of Appeals rulings, with no change in the underlying law behind those decisions.
- The problem with that is that even if the Board believed that it was appropriate to overturn such well-established law (and it is not), the Opponents haven’t even offered any reasonable argument as to WHY it should be overturned in this particular case.

Non-Profit Organization



FSMB is a Non-Profit Organization Under the Zoning Regulations

- Definition of Non-Profit Organization:
- Organization, Non-Profit: An organization organized, registered with the appropriate authority of government, and operated exclusively for religious, charitable, literary, scientific, community, or educational purposes, or for the prevention of cruelty to children or animals; provided that no part of its net income inures to the benefit of any private shareholder or individual.

Non-Profit Organization

- Nothing in that definition, or anywhere else in the Zoning Regulations, is there a requirement that the organization in question be registered as a 501(c)(3) organization under the Internal Revenue Code
- If the Zoning Commission had intended such a requirement, it could have easily included such language

Non-Profit Organization

- FSMB is Organized as a Non-Profit

- FSMB is Operated as a Non-Profit

Other Cases

- The Board has approved other non-501(c)(3) organizations under this relief:
- Case No. 19131- Delta Sigma Sorority
 - 501(c)(7) organization
- Case No. 17985- National Indian Gaming Association
 - 501(c)(6) organization
- This is not to say that this sets a precedent that all non (c)(3)'s automatically qualify, but rather that a non-(c)(3) organization is not automatically disqualified
- Rather, the Board can decide whether the subject organization's operations qualify as non-profit use under the Zoning Regulations

Articles of Incorporation and Definition of Non-Profit in the Zoning Regulations

ARTICLE III

The corporation is organized exclusively for scientific and educational purposes, and its activities shall include the furtherance of the following objects and purposes:

SEC. A. To keep itself and its members informed concerning the medical and other healing arts practice acts of the District of Columbia, the several states of the United States and its territories and insular possessions, and of foreign countries, and of rules and regulations promulgated thereunder and concerning other pertinent desirable practices, methods or factors relating to the medical and other healing art licensure.

SEC. B. To study, determine, advocate and /or advance the adoption and maintenance by the District of Columbia, the several states of the United States and its territories and insular possessions of adequate and uniform standards for licensure in medicine and/or in the healing arts, and of proper administrative and enforcement provisions in such practice acts, and to study, determine, advocate and/or advance the interstate and interjurisdictional endorsement of medical licensure on such terms and under such conditions as the organization may determine desirable to protect and promote uniformity in the administration of medical practice acts.

SEC. C. To develop and improve the quality of licensing examinations given to members of the medical profession, and to assist by means of research and study the member medical boards to improve the quality of their examinations.

SEC. D. To obtain and disseminate information regarding proposed legislation and administrative actions affecting the healing arts and licensure.

[FSMB Articles of Incorporation]

Definition of “Non-Profit” is not restricted to 501(c)(3) Organizations:

Zoning definition: “An organization organized, registered with the appropriate authority of government, and operated exclusively for religious, charitable, literary, **scientific**, community, or **educational purposes**, or for the prevention of cruelty to children or animals; provided that no part of its net income inures to the benefit of any private shareholder or individual.”

FSMB is Organized as a Non-Profit

**ARTICLES OF INCORPORATION OF
THE FEDERATION OF STATE MEDICAL BOARDS OF THE UNITED STATES, INC.**

The undersigned hereby associate themselves together for the purpose of forming a nonprofit corporation pursuant to Article 19, Chapter 21, Reissue Revised Statutes of 1943, more commonly known as the Nebraska Nonprofit Corporation Act, and for that purpose adopt these Articles of Incorporation, to wit:

FSMB Operates as a Non-Profit

- The Internal Revenue Code section 501(c) provides that an organization organized and operated for "charitable" purposes may qualify for exemption from federal income tax. The concept of what is charitable has varied, however, with the time, the place and the needs of a particular community
- FSMB designated itself as a 501(c)(6) – a common designation for entities that serve members that have a common business interest
 - 501(c)(3) is an important designation for those organizations that raise funds from general public because it makes those donations tax deductible
 - FSMB does not raise funds from the general public
- FSMB has 70 member medical and osteopathic medical boards who exist under the color of state law to perform the essential state duty of regulation of the medical profession
- The “common business” interest of the FSMB members is the effective functioning of state government
- FSMB fulfills its charitable interest because it assists members in the function of state government
- Assisting the functions of state government constitutes a charitable function under 501(c)(3) as well

FSMB Operates as Non-Profit

"Charitable" Purposes

English

Organizaciones caritativas (en inglés)

Churches and Religions Organizations

Political Organizations

The exempt purposes set forth in Internal Revenue Code section 501(c)(3) are *charitable*, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals. The term *charitable* is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

Educational Purposes of the FSMB

- There is no statutory definition of the term “educational” in the IRC.
- FSMB meets both tests
- Rather, the term is defined by a Treasury regulation.
 - “Educational” encompasses both (1) individual instruction “for the purpose of improving or developing his capabilities,” and (2) “[t]he instruction of the public on subjects useful to the individual and beneficial to the community
 - *Treas. Reg. §1.501(c)(3)-1(d)(3)(i)*

Educational Purposes of FSMB

Individual Instruction

- FSMB is accredited by the Accreditation Council on Continuing Medical Education as a Continuing Medical Education provider
- FSMB is currently partnering with the DEA to host multiple live conferences in 2018 throughout the United States on Opioid Abuse
- FSMB hosts online and in-person educational activities

Educational Purposes of FSMB

Instruction of the Public

- Annual Meeting is a gathering of state boards and parties interested in medical regulation
- Annual Board Attorney workshops which are accredited for CLE and open to the public
- Webinars and Roundtables hosted via teleconference
- Journal of Medical Regulation (JMR)
 - Peer-reviewed, editorially independent journal published by the Federation of State Medical Boards. JMR's scholarly content examines trends and topics of interest to the community of medical regulators in the United States and abroad, who protect the public's health and safety through the licensing and disciplining of physicians and other health care professionals. JMR helps foster an environment in which the link between regulatory policies and health and social outcomes is better understood, and new knowledge is created upon which to base regulatory decisions. Published continuously since 1913, JMR is committed to disseminating original research designed to enhance public protection
- Staff members have published articles in the New England Journal of Medicine, Journal of the American Medical Association, numerous other scholarly journals

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FSMB Operates as a Non Profit

- Operating exclusively for educational purposes is not strictly construed to exclude non-exempt purposes – some level of advocacy efforts, including ‘lobbying’ are allowed
- **“Organized and operated exclusively”** requirement means “the presence of a single [non-exempt] purpose, **if substantial in nature**, will destroy the exemption regardless of the number or importance of truly [exempt] purpose
 - FSMB meets test of IRC 501(h): advocacy is not substantial in nature
 - Annual expenditures are approximately \$400,000 out of a budget of around \$30MM = 1% of budget
 - Under IRS rules, this does not meet a ‘substantial part’ test, which says lobbying is a substantial part of a non-profit if under 1MM for an annual budget of over 17
- Numerous organizations who have selected to be 501(c)(3) engage in legislative advocacy as well
 - Association of American Medical Colleges - \$220,000 per quarter
 - National Council of State Boards of Nursing - \$100,000 per quarter

FSMB Operates as Non-Profit

- FSMB does not provide for private inurement
 - Prohibited for 501(c)(6) **and** 501(c)(3)
 - No member board receives private inurement
- FSMB can provide reasonable compensation to board members and senior staff
 - Nebraska Nonprofit Corporation Act allows for compensation of directors of a non-profit.
 - Neb.Rev.St. § 21-1979 states, "Unless the articles or bylaws provide otherwise, a board of directors may fix the compensation of directors of nonprofit corporation"
 - Board compensation allowable, but cannot be excessive and must be reasonable to similarly situated organizations

Treas. Reg. 53.4958(b)(1)(ii); 53.4958-3(c)(2),(3)