District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C. 20001

GARLAND F. PINKSTON
CLERK OF COURT

Telephone: 879-2700
Area Code 202

October 19, 2001

NO. 01-AA-1343 Capitol Restoration Society vs. DC Board of Zoning Adjustment

District of Columbia Board of Zoning Adjustment
Jerrily Kress, Director
Suite 210 S
441 - 4th Street, N.W.
Washington, D.C. 20001

Dear Sir/Madam:

Pursuant to the rules of this Court I am transmitting, herewith, a copy of the petition for review filed on October 19, 2001 in the above-entitled case.

Yours very truly,

Garland F. Pinkston
Clerk of Court

By: _____
Information Center Supervisor

cc: Charles L. Reischel, Esq.

BZA
Case No. 16404
Exhibit No. 30

Board of Zoning Adjustment
District of Columbia
CASE NO.16404
EXHIBIT NO.30

DISTRICT OF COLUMBIA COURT OF APPEALS

CAPITOL HILL RESTORATION SOCIETY)
P. O. Box 15264)
Washington, D.C. 20003-0264)
)
Petitioner,)
)
v.) Appeal No. 01-AA-1343
)
DISTRICT OF COLUMBIA)
BOARD OF ZONING ADJUSTMENT)
441 4th Street, N.W.)
Suite 210-S)
Washington, D.C. 20001)
)
Respondent.)

RECEIVED
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DISTRICT OF COLUMBIA
COURT OF APPEALS

PETITION FOR REVIEW

The Capitol Hill Restoration Society ("CHRS"), through undersigned counsel, and pursuant to Rule 15 of the District of Columbia Rules of the D.C. Court of Appeals, files this Petition for Review of the September 21, 2001 Order by the Board of Zoning Adjustment ("BZA") denying CHRS's Motion for Reconsideration in BZA Appeal Number 16404, and the underlying Order of the BZA dated March 8, 2000 which was the subject of the timely Motion for Reconsideration filed by CHRS and denied by the BZA. Copies of the September 21, 2001 and March 8, 2000 Orders are attached hereto as Exhibits A and B, respectively. As grounds for this Petition and Appeal, CHRS states the following:

1. The underlying dispute giving rise to this Petition commenced when Jack Milton Fields ("Fields") applied to the D.C. Zoning Administrator for a Home Occupation Permit pursuant to 11 D.C.M.R. § 203 et seq. (1995). Based upon the representations then made to the Zoning Administrator by counsel for Fields, the Zoning Administrator granted a Home Occupation Permit (No. 98-0271) to Fields for premises located at 434 New Jersey Avenue,

S.E. (the "Property"). Subsequently, at hearings before the BZA on Fields' request for a special exception to increase the number of employees operating Fields' business at the Property (BZA Application No. 16370), CHRS (and, presumably, the BZA), learned from Fields' own testimony that, inter alia, Fields was not then and had never been a resident of the Property, as expressly required by the Municipal Regulations as the central condition for obtaining a Home Occupation Permit. Instead, Fields testified that he was a legal resident of the State of Texas, and his testimony made it clear that his operation of a consulting business out of the Property was not an accessory use to residential purposes. CHRS sought to challenge Fields request for special exception based upon this evidence, but, despite hearing this testimony, the BZA chose to disregard it as irrelevant.[1] By Order dated September 2, 1998, the BZA granted Fields' request for a special exception.

2. Promptly after the BZA ruled that it would disregard the evidence demonstrating that Fields was not and had never been a resident of the Property, CHRS filed Appeal No. 16404 (the "Appeal Proceedings") to challenge the Permit in the procedural posture declared suitable by the BZA. At the outset of the Appeal Proceedings, however, the BZA granted Fields' motion in limine, ruled that this evidence was irrelevant, and ruled that the only relevant issue before the BZA was whether the Zoning Administrator was authorized to issue a Home Occupation Permit to a contract purchaser.[2] Following these rulings, the Board denied CHRS's

[1] The BZA's decision was based on its opinion that this evidence was only relevant in an appeal of the Zoning Administrator's action to grant the Permit (which, of course, would be before and heard by the BZA), and not in the proceedings (before and heard by the BZA) involving Fields' request for a special exception to expand his use of a permit that as the evidence demonstrated, should never have been granted in the first instance.

[2] At the time Fields sought the Home Occupation Permit, he represented that he had a contract to purchase the Property. Of course, the evidence later demonstrated that he never took up residence in the property since he was then, and remained, a legal resident of the State of Texas.

Appeal by Order dated March 8, 2000. By Order dated September 21, 2001, the BZA denied CHRS's Motion to Reconsider.

3. CHRS challenges the actions and rulings of the BZA on the grounds that the BZA's September 21, 2001 Order denying CHRS's Motion for Reconsideration, which reiterated and was founded upon the same factual and legal conclusions forming the basis of its rulings and Order of March 8, 2000, was clearly erroneous, arbitrary and capricious, and an abuse of its authority and discretion, because, inter alia the BZA: wrongly excluded relevant evidence, abused its authority, discretion and CHRS's right to an orderly, lawful administrative process, and misstated the legal issues properly raised by CHRS; wrongly exceeded its authority and abused its discretion and authority by issuing a clearly erroneous order which had the effect of amending the Municipal Regulations concerning Home Occupation Permits and/or rendering them meaningless; and, wrongly exceeded its authority and abused its discretion and authority by departing without justification from long-standing administrative practices which correctly denied Home Occupation Permits unless or until it was certain that the applicant was a resident of the premises for which said permit was sought, as required by the express terms of the Municipal Regulations. In effect, the BZA did whatever necessary, in terms of procedural, evidentiary and substantive rulings, to disregard the facts and law so as to allow Fields to retain a permit which, had truth been known, disclosed or considered admissible, never should have been issued in the first instance.

WHEREFORE, the Capitol Hill Restoration Society respectfully requests that the Board of Zoning Appeals be reversed, and that this case be remanded with instruction to the BZA to grant CHRS's appeal Number 16404 and revoke the Home Occupation Permit issued to Jack Milton Fields.

Respectfully Submitted,

SHERMAN, MEEHAN, CURTIN & AIN, P.C.

Douglas E. Fierberg, Esq., #418632
Jason A. Dzubow, Esq.
1900 M Street, N.W.
Suite 600
Washington, DC 20036
(202) 530-3300
(202) 530-4411 (fax)
Counsel for Capitol Hill Restoration Society

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for Review was mailed postage prepaid, this 19th day of October, 2001 to: Richard B. Nettler, Robins, Kaplan, Miller & Ciresi L.L.P., 1801 K Street, N.W., Suite 1200, Washington, D.C. 20006; Michael D. Johnson, Zoning Administrator, Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs, 941 N. Capitol Street, N.E., Suite 2000, Washington, D.C. 20002; Advisory Neighborhood Commission 6B, 921 Pennsylvania Avenue, S.E., Washington, D.C. 20003; and Corporation Counsel for the District of Columbia, 441 Fourth Street, N.W., Suite 1060N, Washington, DC 20001.

Douglas E. Fierberg

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