GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15805 of St. Gertrude's School and Development Center, pursuant to 11 DCMR 3108.1, for special exceptions under Sections 303 and 303.7 to establish a youth residential care home for 15 persons within the same square and within 500 feet of an other community-based residential facility, special exceptions under Sections 305, 305.7 and 305.8 to establish an emergency shelter for 20 persons within the same square, within 500 feet of another community-based residential facility and to allow a facility of more than 15 persons in the basement through the fourth floor in an R-2 District at premises 4801 Sargent Road, N.E. (Square 3977, Lot 809).

HEARING DATE: May 19, 1993
DECISION DATE: June 2, 1993

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The subject property is located at 4801 Sargent Road, N.E. (Square 3977, Lot 809). It is situated between Delafield Place and South Dakota Avenue N.E.

2. The site contains 526,310 square feet of land area, or approximately 12 acres. The large site is irregularly-shaped (an octagon) primarily consisting of wooded unimproved land. The site is improved with two main buildings and two ancillary structures (a carport and an enclosed pool). One of the main buildings is a four-story structure built in 1927. The other building is a two-story structure built in 1967 and connected to a one-story building. These two buildings (the two-story and one-story buildings) are considered to be one structure. A driveway (approximately 525 feet long) provides access to the site from Sargent Road.

3. The site is located adjacent to St. Anselm's Abby and School to the south. St. Anselm School is an independent college preparatory school that is located on a 36-acre site and is owned by the Benedictine Foundation of Washington, D.C. Located adjacent to the site to the north are 28 semi-detached dwellings and rowhouses, a 16-foot wide public alley, the Randall Memorial Baptist Church and the North Michigan Park Recreation Center. Rowhouses and semi-detached dwellings are located to the east and west of the site. In general, the area surrounding the site consists primarily of wooded open space and single-family dwellings. Providence Hospital is located to the south of the site at 14th and Varnum Streets N.E. The site is zoned R-2. The R-2

BZA
Case No. 16531
Exhibit No. 21

Board of Zoning Adjustment
District of Columbia
CASE NO.16531
EXHIBIT NO.21

District permits matter of right development of single-family detached and semi-detached dwelling units. In addition, youth residential care homes or community-based residential facilities for nine to 15 persons are permitted in the R-2 District if approved by the Board of Zoning Adjustment. Emergency shelters for five to 15 persons are also permitted in the R-2 District if approved by the Board.

4. The property is currently owned by the applicant, St. Gertrude's School and Development Center, a 24-hour care and educational facility for up to 50 mentally and emotionally handicapped children. St. Gertrude's has been in existence on the subject property for almost 65 years. St. Gertrude's will discontinue its operations at the end of the 1992-1993 school year. Boys Town USA ("Boys Town") has contracted to purchase the property contingent on zoning approval of its proposed uses. For purposes of this order, Boys Town will hereinafter be referred to as "the applicant".

5. Boys Town proposes to establish two community-based residential facilities on the subject property -- a long-term youth residential care home for up to 15 children and a short-term emergency shelter facility for up to 20 children. Both are to be located in the same square, within 500 feet of each other.

6. The proposed residential facilities will be part of Boys Town USA -- a network of nonprofit, nonsectarian, residential programs operating in nine states nationwide. Boys Town USA is the family and community-based extension of Father Flanagan's Boys Town, founded in 1917 in Omaha, Nebraska to help troubled boys. The program was expanded in 1979 to admit girls. The Nebraska campus is the "home campus". Boys Town USA is the satellite program.

<u>The Long-Term Youth Residential Care Home (YRCH)</u>

7. The applicant proposes to locate the long-term YRCH in Building B -- the combined one-story and two-story structure on the site which contains approximately 9,502 square feet of floor area. The long-term residential component of Boys Town USA will be for up to 15 abused and neglected children.

Boys and girls who want help and who are functioning in the normal range of intelligence will be eligible. Referrals will be taken from government agencies -- including the Department of Human Services, therapists, parents, concerned relatives and school personnel. The average age of admission is expected to be 14 years. The expected length of stay is at least 18 months.

8. Upon admission into the long-term program, Boys Town's rules will be explained and an individualized treatment program

will be designed. The ultimate treatment goal is the development of skills that will allow the child to be reunited with his or her family, if possible, or to live independently or pursue a college education at the age of 18.

9. The physical environment of the long-term residential facility or "family home" in the District of Columbia will mirror a middle-class home in design, decor and atmosphere. Food, clothing and other essentials will be purchased in the community in the same manner that such goods and services are purchased by other families. Meals will be prepared and consumed family-style. Housekeeping will be a family responsibility.

10. The primary staff in the "family home" will be a married couple, called "family teachers", who will reside in the home and function as parents. The family teachers will be assisted by full-time and part-time assistant family teachers and the site director, who will oversee the operation of the program. The staff to youth ratio for the long-term residential facility will be 1 to 2.

11. The applicant proposes to renovate the structure to meet the needs of the home. The upper floor will house the children and the bottom floor will consist of a two-bedroom apartment unit for the resident mother and father (and their family) who will be supervising the entire facility. The structure will also be renovated to provide living/dining facilities, as well as classroom and kitchen facilities.

The Short-Term Emergency Facility:

12. The short-term emergency facility will be located in the old tudor-style structure that was built in 1927. This structure has a basement, first, second and third floors and contains approximately 13,328 square feet of floor area.

13. The applicant proposes to establish the short-term facility for up to 20 children. The program is intended to provide a stable environment for children who cannot stay in their own homes because of emergency circumstances. The typical resident of the short-term facility is expected to be a child who needs a place to stay because of short-term domestic violence in the home, a complaint of abuse is being investigated, or until a permanent placement can be arranged. The children's ages will range from ten to 17, with an average age of 14.

14. The staff for the short-term facility will consist of the site director, a residential coordinator, a staff supervisor, youth care workers, a teacher and a teacher's aid. The staff-to-child ratio for the short-term residential program will be 1 to 4.

15. Section 303 of the Zoning Regulations governs youth care homes and Section 305 governs emergency shelters. While the provisions governing these facilities allow only one community-based residential facility (CBRF) within the same square or within 500 feet of another (303.1 and 305.1), the applicant is seeking special exceptions under Subsections 303.7 and 305.7 to locate the two facilities on the same property.

Responding to the criteria established in Subsection 303.7 and 305.7, the applicant maintains that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise or operations.

16. The site and physical facilities. The applicant's architect and planner testified that the two existing structures on the site will accommodate the two programs proposed by the applicant. The interior of both structures will be renovated to accommodate the programs, however no exterior renovations are planned except to make the facilities accessible to the handicapped. The architect further testified that the site and the facilities are appropriate for the intended uses and that the facilities can be established without any adverse impact on the neighborhood due to traffic, noise or operations.

17. Traffic and Parking. The applicant stated that there is a metrobus line that runs along South Dakota Avenue as well as Sargent Road. Vehicular access to the subject site is from an existing driveway on Sargent Road. The applicant stated that none of the 35 youth residents will have an automobile. Also, not more than 15 staff persons will be on site at any given time, including a site director, 2 family teachers, 2 assistant family teachers, a short-term coordinator, a staff supervisor, a teacher, a teacher's aid, a secretary and up to four youth care workers. The delivery of office supplies by delivery vehicles will be limited to approximately six times per year. Service vehicles will be limited to those of maintenance workers who will visit the site on an as needed basis. Food, clothing and other essentials for residents of the facilities will be purchased in the community in the same way that families purchase such goods and servies.

18. Visitors to the site are expected to be counselors and family members. Children in the long-term and short-term programs are expected to receive an average of two such visits per month.

19. The applicant stated that the Zoning Regulations require two parking spaces for the long-term facility (15 residents). The number of parking spaces for the short-term facility is to be determined by the Board of Zoning Adjustment, since authorization is requested for more than 15 persons. However, using the Zoning Regulations formula of two parking spaces for each 15 residents,

the eighteen parking spaces provided are more than sufficient to meet the needs of residents, staff and visitors to the site.

20. Noise. The site consists of 12 acres to be used exclusively for Boys Town programs. No other uses will occupy the site that is the equivalent of three city blocks. The open space and wooded areas surrounding the structures provide a natural buffer from adjacent residences. The size of the structure to be used for the emergency facility is approximately 13,328 square feet. The size of the structure to be used for the long-term residential program is 9,500 square feet. Each is more than sufficient to provide for the needs of the children to be served. Therefore, there will be no negative impact associated with intensity of use and closeness to surrounding residences.

21. Operations and Security Measures. The applicant stated that the children at Boys Town will be closely supervised to ensure progress in their individualized treatment programs. This close supervision, made possible by the high staff-to-child ratio, mitigates against any adverse impact on the surrounding neighborhood due to Boys Town's operations.

Boys Town's staff receives extensive and continuing training on appropriate and effective responses to "significant events", which include emotional crises and disruptive behavior. In the long-term residential facility, the family teachers are primarily responsible for responding to significant events. Youth care workers have this primary responsibility in the short-term facility. The site director, short-term residential coordinator and staff supervisor are also on 24-hour call to respond to emergencies, and national staffpersons are on sky pagers to assist the staff of Boys Town USA if necessary. A set of thoroughly-tested policies and procedures guide their behavior.

The applicant stated that the family setting is integral to Boys Town's treatment program, therefore security measures that suggest confinement are not used. The applicant stated that Boys Town's internal security plan has proven to be successful in other cities. Therefore, there is no need for an additional security plan at the District of Columbia facility.

22. The number of residents. For the long-term youth residential care home, the applicant is seeking approval for 15 youth, the maximum allowed as a special exception pursuant to 11 DCMR 303.1. However, for the emergency shelter, the applicant requests approval for 20 youth, five more than the maximum of 15 allowed under Subsection 305.1. Therefore, for purposes of the emergency shelter, the applicant is seeking relief under Subsection 305.8 which allows the Board to approve a facility for more than 15 persons if the Board finds that the program goals and objectives of the District cannot be achieved by a facility of a smaller size at

the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District of Columbia.

The applicant stated that over a one-year period of time, it conducted an analysis of the the need for the two relatively small programs proposed. Based on this study, there appeared to be a strong need for the programs.

The applicant testified that the District of Columbia government's statistics demonstrate that approximately 65 percent of children who enter foster care in the District do so for reasons associated with abuse and neglect and that there is a substantial need for quality, private-sector programs to respond to the needs of abused and neglected children. The applicant stated that currently there are only about two short-term facilities in the city.

23. By report dated May 11, 1993 and through testimony at the hearing, the Office of Planning (OP) recommended conditional approval of the application. OP noted the location of the site and the proposed use. With regard to parking OP stated that the number of on-site spaces substantially exceeds the number of spaces required by the Zoning Regulations.

OP stated that, based on a discussion with the Department of Consumer and Regulatory Affairs, Boys Town will not be required to obtain a license to occupy the site. However, it will be required to obtain a certificate of occupancy prior to occupancy.

The Office of Planning stated that is is not aware of any other community-based residential facilities that are located in the subject square, or within a radius of 500 feet from the property. OP noted that if the subject buildings were to be physically connected, no zoning relief would be needed regarding the 500-foot radius provision.

OP stated that the site has been used since 1927 to provide care and assistance for children. It is therefore fitting that Boys Town is proposing to continue to use the site in such a capacity. During the last eight decades, the site has coexisted harmoniously with the surrounding neighborhood and the Office of Planning anticipates a positive relationship between Boys Town and the Michigan Park community. OP stated that, in its opinion, the facilities will not have adverse impacts on the neighborhood because of traffic, noise, operations, or the number of other facilities that are located close-by. The 12-acre site is large enough to accommodate the youth residential care home and emergency shelter without negatively impacting on the Michigan Park neighborhood. Most of the site consists of well-maintained, scenic open space. Accordingly, the use of the facilities by Boys Town

would not be in disharmony with the general purpose and intent of the Zoning Regulations and Map and would not tend to affect adversely the use of neighboring properties. Therefore, the Office of Planning recommended approval of this application subject to the following conditions:

1. The number of children shall not exceed 15 in the youth residential care home and 20 in the emergency shelter, at any given time.

2. Father Flanagan's Boys' Home shall develop a security plan to be included as part of the record in this case.

3. Father Flanagan's Boys' Home shall establish and maintain liaison with the Michigan Park community.

24. By memorandum dated May 18, 1993, the Department of Public Works (DPW) stated that the property fronts on Sargent Road, a minor arterial roadway 44 feet in width. Parking is allowed on both sides at all times. To operate the facility, approximately 20 staff persons will be employed in three shifts over 20 hour period. DPW noted that parking is available on site in an existing parking lot containing approximately 21 spaces. This level of parking is adequate to accommodate employees and visitors to the site with little or no measurable effect on the transportation system in the area. Accordingly, DPW has no objection to the proposal.

25. By memorandum dated May 7, 1993, the office of Community-Based Residential Facilities/Office of Consent Decree Coordination stated that it has no objection to the application.

26. By report dated May 6, 1993 and through testimony at the hearing, Advisory Neighborhood Commission (ANC) 5A expressed its support for the application.

The ANC stated that to allow the special exception would enhance the facility's care and treatment of children. The ANC has no problems with locating the two facilities within 500 feet of each other because they are basically the same, with the only major difference being length of stay. The ANC believes that the parking provided will be adequate. The ANC does not believe that the facility will have an adverse impact on the area due to traffic or noise because the subject property is separated from the surrounding area by distance and landscaping.

ANC 5A expressed a concern about Boys Town's responsibility for illegal acts committed by its residents. The ANC communicated its concern to the Office of the Corporation Counsel which assured the ANC that there are laws governing such situations. The ANC stated that it also has assurances from Boys Town that it will assume responsibility for the misconduct of any of its residents.

ANC 5A stated that it has negotiated with Boys Town to assist any family in the community that may be having trouble with a youth. The family or the youth can meet with the professional staff of Boys Town for consultation and treatment.

The ANC pointed out that the applicant agreed to form an Advisory Board that would include members of the community. This board would create a link between Boys Town and the community.

Finally, ANC 5A stated that this proposal is similar to other applications approved for the site in the past. Therefore, the ANC recommended approval of the subject proposal.

27. Three neighbors testified in support of the application.

28. The first neighbor testified that there is a need for more homes of this type throughout the city.

29. The second neighbor expressed his support for the work of Boys Town. He stated that to help the children, he believes that the parents need to be helped as well. He also stated that he was in favor of establishing a liaison committee.

30. The last neighbor to testify in support of the application stated that she embraces Boys Town's concepts and mission. She expressed support for the application only as it is currently proposed. She expressed a concern about preserving the character of the neighborhood. She stated that she has invested a lot of time and resources in her property and she wishes to protect her investment. For this reason she opposes further development on the site.

This neighbor also testified that she wants a neighborhood-friendly facility -- not one with locked gates, guard dogs or security officers on the property. Finally, she expressed a willingness to work on the liaison committee.

31. One neighbor testified in opposition to the application. He expressed skepticism about whether the applicant will limit its facilities to what is proposed in the application. He is concerned about Boys Town expanding its facilities. He stated that his concern is based on a situation that occured in his neighborhood where a school was converted into a church of 1,600 members who disrupted the community due to traffic and parking problems. He stated that it is difficult to believe that the applicant will spend two million dollars on 35 children.

This neighbor believes that there will be problems with the residents of the facilities based on what happened in the movie about Boys Town. He also stated that there will be traffic problems because of parents and others who will visit the site.

32. Other neighbors who characterized their views as opposing the application, testified about a problem they have had with St. Gertrude's handling of the subject property. One neighbor who resides at 4723 13th Place, N.E. stated that she is the Chairperson of the 13th Place and Sargent Road Block Association and that she represents the views of the homeowners that belong to the association. She testified that the subject site abuts the properties of these homeowners. She further testified that in 1984 all of the trees on St. Gertrude's lot were bulldozed and loads of dirt were dumped onto the land. When the neighbors spoke with the Director of St. Gertrude's School about the landfill, they were promised that St. Gertrude's would landscape the area beautifully with trees and shrubbery. The neighbors relied on this promise but the landfill continued to grow. Because of the mounds of dirt on the property, there is a problem with water run-off and erosion of the dirt. The witness testified that with the help of Councilmember John Ray's office, St. Gertrude's was directed to create a swale to catch the rain and water to prevent the formation of a pond along the property line. Instead, she stated, they dug a hole and left a ditch in the homeowners' back yards. The ditch fills up with water and creates a haven for bugs and mosquitoes. The neighbors made efforts to have St. Gertrudes fix the problem, but they have been unable to get a response. The neighbors are concerned about how Boys Town will handle the matter if the application is approved.

Finally, this witness testified that the neighbors fear that their investments will be jeopardized if Boys Town is allowed to operate on the site.

33. The applicant responded as follows to the concerns expressed by neighbors:

A. Soil erosion. Boys Town officials were unaware of the problems that neighbors were having with soil erosion. The applicant stated that their engineers will examine the problem.

B. Expansion. The applicant does not plan to expand. The current facilities are adequate. However, if it ever needs to expand it will have to appear before the Board again for approval.

C. Behavior of the residents and responsibility for their conduct. The applicant will not admit children who have committed felonies or major criminal offenses. It is Boys Town's policy not to financially burden anyone because of something their children have done. If a youth from Boys Town damaged someone's property, the officials would look into the situation and do what is responsible.

D. Impact on property values. Boys Town's presence will not be detrimental to the neighbors' property interests. Boys Town facilities are located in several states now. They are in various types of neighborhoods. While there may have been initial opposition to the facilities, after they have been in place for a while, the neighbors are assured that Boys Town is not detrimental, but rather beneficial to the particular neighborhood in many ways. Boys Town has never had an incident like what the witnesses at this hearing alluded to.

E. Neighborhood-friendly facility. Boys Town will not use locked gates, dogs or security guards. It is not a prison. There is no confinement, and there is no effort to keep people out. Members of the community can come to the facility and visit. Boys Town wants to be a good neighbor. It has a policy of outreach to the neighborhood.

Contested Issues:

The contested issues raised in this application are as follows: The adequacy of off-street parking; the adequacy of buffering; the impact caused by traffic, noise or operations; expansion of the facility; the willingness to work with the community; and the problem of erosion.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. The 18 spaces provided on site will be adequate to meet the needs of the proposed operation.

2. The subject site is large enough and the structures are situated far enough from the street and from surrounding properties to adequately buffer the neighborhood from the noise and operations.

3. Visits to the site will be few and will occur seldom. Also, some of the staff members will reside on site. Therefore, the facilities will not adversely impact traffic in the area.

4. Expansion of the facility at any time in the future will require the applicant to reappear before the Board and property owners in the area will have an oportunity to be heard on the matter. However, the applicant currently has no plans to expand the facilities.

5. The applicant intends to work with the members of the community to promote harmonious relations. The applicant is willing to form an advisory committee to serve as a liaison between the facilities and the community.

6. Because the erosion problem is not relevant to zoning, the Board makes no finding on this issue. However, the Board encourages Boys Town to resolve this matter with the officials at St. Gertrude's School.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing evidence of record, the Board concludes that the applicant is seeking special exceptions to establish a youth residential care home for 15 persons and an emergency shelter for 20 persons on property located in an R-2 District.

The granting of such special exception relief requires a showing through substantial evidence that the application can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the application will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. The applicant must also meet the applicable provisions of 11 DCMR 303 governing youth care residential facilities and 11 DCMR 305 governing emergency shelters.

The Board concludes that the applicant has met the burden of proof. The Board concludes that the applicant will provide adequate, appropriately located and screened off-street parking to provide for the needs of occupants, employees and visitors.

The Board concludes that the proposed facility will meet all applicable code and licensing requirements.

The Board is of the opinion that the facility will not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.

The Board is of the opinion that the cumulative effect of locating the two facilities in the same square and within 500 feet of one another will not have an adverse impact on the neighborhood because of traffic, noise, or operations.

The Board concludes that it is appropriate to approve an emergency shelter for more than 15 persons in the subject application because, in the opinion of the Board, the program goals and objective of the District cannot be achieved by a facility of a smaller size at the subject location and there is no other reasonable alternative to meet the program needs of that area of the District of Columbia.

The Board concludes that the application has been referred to the Office of Planning and other relevant District of Columbia departments and agencies.

Finally, the Board concludes that granting the application is in harmony with the general purpose and intent of the Zoning Regulations and Maps and that it will not tend to adversely affect the use of neighboring property.

The Board concludes that it has accorded the views of ANC 5A the "great weight" to which it is entitled.

Based on the foregoing, the Board **ORDERS** that the application is hereby **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. The maximum number of youth for the youth residential care home shall be 15 and the maximum number of youth for the emergency shelter shall be 20.

2. The maximum number of employees shall be 20 full-time equivalent employees.

3. The applicant shall provide 18 parking spaces on site.

4. The operator of the facility, Boys Town USA, shall establish an advisory committee which shall consist of representatives from Boys Town and members of the community (including area residents who at the public hearing on the application expressed an interest in participating). The advisory committee shall meet quarterly and shall report to ANC 5A annually.

VOTE: 3-0 (Sheri M. Pruitt and Paula L. Jewell to grant; Carrie L. Thornhill to grant by proxy; Angel F. Clarens not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Madeliene H. Robinson
MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: AUG 31 1993

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15805Order/TWR/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15805

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 31 1993 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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Madeliene H. Robinson

MADELIENE H. ROBINSON
Director

DATE: AUG 31 1993

15805Att/bhs