GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

RECEIVED
D.C. OFFICE OF ZONING
2001 JAN 16 AM 8 31

CONCERNED NEIGHBORS OF NORTH MICHIGAN PARK Plaintiff	)	
v.	)	APPLICATION NO. 16531
FATHER FLANAGAN'S BOYS TOWN OF WASHINGTON Applicant	)	

PLAINTIFF'S MOTION TO OBTAIN PARTY STATUS NUNC PRO TUNC

COMES NOW the Plaintiff, Concerned Neighbors of North Michigan Park, by and through counsel, Ellen Opper-Weiner, Esq., and respectfully files this Motion To Obtain Party Status Nunc Pro Tunc in this case. Plaintiff respectfully states as follows:

1. That when the owners of property located within 200 feet of Father Flanagan's Boys Town of Washington, 4801 Sargent Road, N.E., were originally notified by the Board of Zoning Adjustment (hereinafter "BZA"), by a letter dated December 9, 1999, of the date and place for a public hearing in this matter, on the Applicant's request for a special exception, no notice was provided to any of these property owners as to how each might become a party in this case. (See Exhibit 1, which is a copy of a letter, that was sent and returned to the BZA, BZA Exhibit 27, which is attached hereto and incorporated herein). (See Exhibit 2, which is a copy of BZA Exhibits 17 and 20 in Application No. 16531).

2. That the notice sent to each property owner within 200 feet of 4801 Sargent Road, N.E., which is attached

BZA
Case No. 16531
Exhibit No. 82

Board of Zoning Adjustment
District of Columbia
CASE NO.16531
EXHIBIT NO.82

hereto and incorporated herein as Exhibits 1 and 2, could have and did mislead the Concerned Neighbors of North Michigan Park (hereinafter, "CNNMP") organization and its members, which is composed entirely of residents and property owners living within 200 feet of the Applicant's site, which described how as interested persons each would be able to participate in the BZA's process regarding Boys Town's application for a special exception. The letter merely details that each would be given an opportunity to express their views, which could have been and was interpreted by the CNNMP and its members that if an individual appeared at the hearing, each would have party status in this case. (See Exhibits 1 and 2).

3. That when members of the Concerned Neighbors of North Michigan Park appeared at and participated in the hearing on February 23, 2000, no announcement was made at the beginning of this hearing regarding who was a party in this matter, and no explanation was provided as to what party status meant in this case.

4. Further, that the Concerned Neighbors of North Michigan Park's Chairperson and its members believed that it and they had party status because Ms. Reid received a copy of the D.C. Office of Zoning's Memo To File, dated April 21, 2000, and signed by Sheri M. Pruitt, Secretary to the BZA, which noted the specific outstanding issues in this case, and in which Cynthia Reid, Concerned Neighbors of North Michigan Park, was listed as receiving a copy, along with Mr. Phil Feola,

attorney for the Applicant, and Ms. Norma M. Broadnax, Chairperson of ANC 5A, an automatic party in this case. (See Exhibit 3 attached hereto and incorporated herein).

5. That on or about November 2, 2000, Ms. Cynthia Reid, Chairperson of the Concerned Neighbors of North Michigan Park, contacted the BZA office in order to determine how to have the appearance of counsel entered on behalf of the Concerned Neighbors of North Michigan Park in this case. Based upon the advice Ms. Reid received from the BZA staff member she spoke to, Ms. Reid mailed a letter dated November 3, 2000, to the Chairwoman of the BZA, entering the appearance of the undersigned counsel. (See Exhibit 4, attached hereto and incorporated herein).

6. That subsequent to the BZA's receipt of Ms. Reid's letter dated November 3, 2000, no one ever contacted either Ms. Reid or undersigned counsel to inform either that the Concerned Neighbors of North Michigan Park were not a party to this case.

7. That because of the omissions and the misleading actions of the BZA, the Concerned Neighbors of North Michigan Park continued to believe that the organization had party status in this matter, until it was informed on or about January 4, 2001, that Plaintiff did not have party status.

8. That apparently the BZA changed its procedures at some time on or about June 2000, in order to provide notice to affected persons regarding how to become a party in a

proceeding before the BZA when it sends out its initial notification to all affected property owners located within 200 feet of an applicant regarding a requested BZA action. (See Exhibit 5 attached hereto and incorporated herein). If the affected persons with regard to this application had been so notified, the Concerned Neighbors of North Michigan Park would certainly have taken the appropriate steps to become a party in this matter because of their unique, significant and distinctive interests in this application for a special exception.

9. That it was the Concerned Neighbors of North Michigan Park which contacted Ms. Connie Washington of Boys Town USA on May 17, 1999, and attempted to initiate the long overdue development of a Neighborhood Advisory Council for Boys Town USA, which would be representative of the property owners and residents living within the 200 foot area and who were most directly affected by the Boys Town program and property. (See Exhibit 6 attached hereto and incorporated herein).

10. That the Concerned Neighbors of North Michigan Park's members who are the property owners most directly affected by Boys Town's application for a special exception, and whose interests they are best able to articulate, will not be able to have these significant, distinctive, and unique interests fully and properly represented unless the organization actually has party status and is able to proceed as a party in this case.

WHEREFORE, the above premises considered, Plaintiff, Concerned Neighbors of North Michigan Park, respectfully requests that its Motion To Obtain Party Status Nunc Pro Tunc be GRANTED, and that the Concerned Neighbors of North Michigan Park be given a copy of the BZA's recent Decision and Order on BZA Application 16531, and sufficient time to respond to the contents of this Decision and Order as per all applicable rules and regulations contained in DCMR Title 11.

Respectfully submitted,

Ellen Opper-Weiner, Esq.
3 Bethesda Metro Center
Suite 700
Bethesda, MD 20814
(301) 664-8434
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY certify that on the 16th day of January, 2001, a copy of the foregoing was mailed first class, postage prepaid to: Phil T. Feola
Paul A. Tummonds, Jr.
ShawPittman
2300 N Street, N.W.,
Washington, D.C. 20037-1128

and delivered by hand to:

Norma M. Broadnax, Chairperson
Advisory Neighborhood Commission 5A
Slowe School Demountable
1404 Jackson Street, N.E.
Washington, D.C. 20017

Honorable Vincent B. Orange
Councilmember Ward 5
Council of the District of Columbia
441 4th Street, N.W., Suite 702
Washington, D.C. 20001.

Ellen Opper-Weiner, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

CONCERNED NEIGHBORS OF NORTH MICHIGAN PARK Plaintiff	)	
v.	)	APPLICATION NO. 16531
FATHER FLANAGAN'S BOYS TOWN OF WASHINGTON Applicant	)	

ORDER

Upon consideration of Plaintiff's Motion To Obtain Party Status Nunc Pro Tunc and any Opposition filed thereto, it is on this _____ day of _____, 2001, hereby be and is

ORDERED that Plaintiff Concerned Neighbors of North Michigan Park's Motion To Obtain Party Status Nunc Pro Tunc, be and is hereby GRANTED, and it is further

ORDERED that Plaintiff Concerned Neighbors of North Michigan Park shall have until _____ to submit any motions or response to the BZA's Decision and Order issued on December 21, 2000, as per all applicable rules and regulations contained in Title 11 DCMR.

SO ORDERED.

_____
Jerrily R. Kress, FAIA,
Director
D.C. Board of Zoning Adjustment

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

December 9, 1999

'00 JAN 31 P3:35
OFFICE OF ZONING
DISTRICT OF COLUMBIA

APPLICATION NUMBER 16531

TO WHOM IT MAY CONCERN:

Notice is hereby given that the Board of Zoning Adjustment will hold a public hearing in Suite 220, 441 4th Street, N.W., Washington, D.C., 20001 on Wednesday, January 19, 2000. Your attention is invited to the following application:

> **Application of Father Flanagan's Boys Town of Washington,** pursuant to 11DCMR 3104.1 for a special exception for the construction of four residential care buildings under Section 303 each housing no more than six persons and an addition to an administrative building, or in the alternative; the construction of four residential care building units, each housing not more than six persons and the conversion of the existing residential unit into administrative use in the R-2 District at premises 4801 Sargent Road, N.E. (Square 3977, Lot 811).

At the public hearing, all interested persons will be given an opportunity to express their views. However, you may submit written views about this case. All written views should be sent to the address below, and must be received by the Board before the hearing on the case is concluded.

This case is in Advisory Neighborhood Commission 5A. Cases in this area will be heard between 1:00 p.m. and 6:00 p.m. Cases will be heard in the order listed on the Board's hearing agenda.

If you have any questions about this application, you may call the Office of Zoning on (202) 727-6311, or come to 441 4th Street, N.W., Suite 210, Washington, D.C. 20001.

PLEASE USE THE APPLICATION NUMBER WHEN YOU WRITE OR CALL ABOUT THIS CASE.

Sincerely,

JERRILY R. KRESS, FAIA
Director

BZA
Case No. 16531
Exhibit No. 27

Exhibit 1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF ZONING
441 4TH STREET, N.W., SUITE 210
WASHINGTON, D.C. 20001

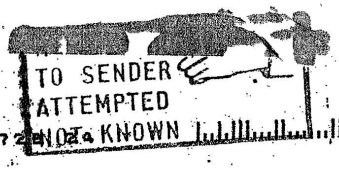
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U.S. POSTAGE

John Canto & Greg D'Arco
4805 South Dakota Avenue, N.E.
Washington, D.C. 20017





20017-2721



GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

December 9, 1999

APPLICATION NUMBER 16531

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PLEASE USE THE APPLICATION NUMBER WHEN YOU WRITE OR CALL ABOUT THIS CASE.

Sincerely,

JERRILY R. KRESS, FAIA
Director

BZA
Case No. _____
Exhibit No. 17

Exhibit 2

GW

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO: 16531

As Director of the Board of Zoning Adjustment, I certify and attest that letters of notice have been prepared and mailed to all owners of property within 200 feet of the property that is the subject of this application based on the listing of owners submitted by the applicant as required by instructions on the BZA Application Form.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

DATE: DEC 9 1999

attestationltr

BZA
Case No. _____
Exhibit No. 20

DC OFFICE OF ZONING
441 4th Street, NW, Suite 210
(202)727.0364 Phone
(202)727.6072 FAX
bbailey@dcoz.dcgov.org

TO: **Cynthia Reid, Concerned Neighbors of North Michigan Park**

FROM: **Beverley A. Bailey**

DATE: **Friday, April 21, 2000**

RE: **BZA Case 16531**

Pages: **2 plus cover**

- ☐ Urgent
- ☐ For Review
- ☐ Comment
- ☐ As Requested
- ☑ Your Information

Please find a copy of our Memo To File on Boys Town. Don't hesitate to call me if I can be of assistance in anyway.

Exhibit 3

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Friday, April 21, 2000

MEMO TO FILE

Application No. 16531 of Father Flanagan's Boys Town of Washington, pursuant to 11 DCMR 3104.1 for a special exception for the construction of four residential care buildings under Section 303, each housing no more than six persons and an addition to an administrative building, or in the alternative, the construction of four residential care building units, each housing not more than six persons and the conversion of the existing residential unit into administrative use in the R-2 District at premises 4801 Sargent Road, N.E. (Square 3977, Lot 811).

Hearing Dates: January 19, 2000 and February 23, 2000
Decision Dates: April 5, 2000 and (pending) October 3, 2000

The Board indicated that the Applicant needed to address specific concerns prior to its decision. The Board delayed making its decision for six months to afford the Applicant and residents time to resolve the community's concerns. At the end of six months, the Applicant and Advisory Neighborhood Commission (ANC) 5A are to inform the Board how the outstanding issues have been resolved. The issues to be worked on are:

- **Water Run Off:** All storm water run-off controls not directly associated with the proposed new construction must be installed and operating.

- **Noise Abatement:** The Applicant shall take measures to reduce noise from the emergency generator and the cooling tower.

- **Community Liaison Program:** The Applicant shall establish and convene an Advisory Liaison Committee to meet at least twice prior to September 20, 2000, report deadline. The meetings shall be scheduled to afford the community liaison committee a meaningful opportunity to report to the ANC, which will then provide the ANC's report to the Board.

- **Security Plan:** The Applicant is to develop a Security Plan. This initiative is to be coordinated with ANC 5A and the Commander of the area's Police Precinct.

The Applicant and ANC 5A are to each submit a report to the Board by **SEPTEMBER 20, 2000** verifying that the above-conditions have been met. The Board will make a decision on the application at its **OCTOBER 3, 2000** public meeting.

The motion to defer making a decision was made by Sheila Cross Reid, seconded by Anne M. Renshaw (Sheila Cross Reid, Anne M. Renshaw and Robert Sockwell to approve).

SHERI M. PRUITT
Secretary to the BZA

CC: Phil Feola, Wilkes, Artis, Hedrick and Lane (By FAX)
Norma M. Broadnax, ANC 5A (By FAX)
Cynthia Reid, Concerned Neighbors of North Michigan Park

BAB/4.20.00

CONCERNED NEIGHBORS OF NORTH MICHIGAN PARK
P.O. BOX 29091 WASHINGTON, DC 20017-0091
202-529-0022

November 3, 2000

Sheila Cross Reid, Chairwoman
District of Columbia Board of Zoning Adjustment
441 Fourth Street, N.W. Second Floor
Washington, DC 20001

Board of Zoning Commissioners:

This letter serves to hereby inform you that Concerned Neighbors of North Michigan Park has retained the services of Ellen Opper-Weiner to represent the neighbors in the 200 foot radius of Boystown. All matters concerning the BZA Application 16531 for the expansion of Father Flanagan's Boys Town should be directed to her attention as well as the Chair of CNNMP.

Ms. Opper-Weiner can be contacted at 3 Bethesda Metro Center, Suite 700, Bethesda MD, 20814. Her telephone number is 301-664-8434.

Sincerely,

Cynthia M. Reid
Chairwoman, CNNMP

cc: ANC Commission 5A
Ms. Norma Broadnax, Chair

Exhibit 4

Government of the District of Columbia
BOARD OF ZONING ADJUSTMENT



PARTY STATUS

(Excerpt From Title 11 DCMR Zoning Regulations)

3106 APPEARANCE AND REPRESENTATION

3106.1 In a proceeding before the Board, any person or party may appear on his or her own behalf. Any person or party may be represented by any other person duly authorized in writing to do so. The authorization shall state specifically that the authorization includes the power of the agent or representation to bind the person in the case before the Board.

3106.2 Except for the appellant, applicant, or the ANC, to participate as a party in a proceeding before the Board, any affected person shall file with the Board, not less than fourteen (14) days prior to the date set for the hearing, the following information.

(a) The person's name and address;
(b) A request to appear and participate as a party;
(c) Whether the person will appear as a proponent or opponent of the appeal or application;
(d) Whether the person will appear through legal counsel and, if so, the name and address of the legal counsel; and
(e) A written statement setting forth why the person should be granted party status, including reference to the following:
  (1) The property owned or occupied by the person, or in which the person has an interest, that will be affected by the zoning relief requested of the Board;
  (2) The legal interest the person has in the property, such as owner, tenant, trustee, or mortgagee;
  (3) The distance between the person's property and the property that is the subject of the appeal or application before the Board;
  (4) The environmental, economic, social, or other impacts likely to affect the person and/or the person's property if the zoning relief requested of the Board is approved or denied; and
  (5) An explanation of how the person's interests as identified in response to paragraph (4) would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning relief than those of other persons in the general public.

3106.3 In considering any request for party status pursuant to §3106.2, the Board shall grant party status only if the person requesting party status has clearly demonstrated that the person's interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning relief than those of other persons in the general public.

3106.4 No member of the Board or the Zoning Commission shall represent any person before the Board other than himself or herself while he or she is a member of the Board or the Zoning Commission.

3106.5 No former member of the Board or the Zoning Commission shall represent any person before the Board other than himself or herself for a period of six (6) months after the date that the member's service on the Board of Zoning Commission terminates.

3106.6 No former member of the Board or former employee of the Government of the District of Columbia shall represent any person other than himself or herself in a particular matter for which the member or employee had a substantial responsibility while he or she was a member of the Board or an employee of the District.

Exhibit 5

CONCERNED NEIGHBORS OF NORTH MICHIGAN PARK
P. O. BOX 29653 WASHINGTON, DC 20017-9653 * 202-529-0022

COPY - FYI May 17, 1999 COPY - FYI

Ms. Connie Washington
Boys Town USA
4801 Sargent Road, N.E.
Washington, DC 20017

Dear Ms. Washington;

Our first concern regarding The Neighborhood Advisory Council for Boys Town USA is that the community has fair and equitable representation. It would be an insult to allow someone that is not recognized by the collective community as their representative, to personally hand pick people to sit on this council. It would also demonstrate a continuing effort by Boys Town to deceive this community.

We believe this situation can be remedied by selecting persons that will speak on behalf of the abutting properties, the community at large and child welfare professionals. We feel this can be achieved with representation from the following:

Abutting Properties -	1200 Block of Delafield Place N.E.	1
	4800-4900 Block of Sargent Road N.E.	1
	13th Place Court (of off S. Dakota Ave.)	1
	St. Anselm's Abbey Boys School	1
	North Michigan Park Recreation Center	1
Community Leaders -	North Michigan Park Civic Association	1
	Queens Chapel Civic Association	1
	ANC Commissioner 5A04	1
Industry Professionals -	DCHS Child Welfare Services Department	1
	Boys Town USA	1
	TOTAL	10

We realize that you may not intend to have this many people on the Council, however, anything less than this number must still reflect the same weight and equity. Furthermore, we are only addressing the selection of the Council right now. We will submit a formal proposal for resolution at a later date, once the community has had the opportunity to voice their concerns and recommendations.

We appreciate the opportunity to participate in this process and pledge to continue this form of open and constructive dialogue until we have reached a resolution that is satisfactory to both Boys Town and the residents of this community.

Sincerely,

Cynthia M. Reid
Chairperson - CNNMP

Exhibit 6