ShawPittman

A Law Partnership Including Professional Corporations

RECEIVED
D.C. OFFICE OF ZONING
2001 JAN 26 PM 3:26

January 26, 2001

By Hand Delivery

Board of Zoning Adjustment
441 4th Street, NW, Room 210
Washington, DC

BZA
Case No. 16531
Exhibit No. 88

Re: BZA Application No. 16531
Father Flanagan's Boys Home of Washington ("Boys Town")

Dear Members of the Board:

This letter is in response to a letter dated January 16, 2001 from ANC 5A to Ms. Jerrily Kress requesting a reconsideration and rehearing of the above-referenced case. On behalf of Boys Town, the applicant in the above-captioned matter, we oppose ANC 5A's request. The ANC's Motion neither presents "new" evidence nor does it point out any error in the BZA's decision. It merely reiterate its position in this case (which is amply noted in the record) and expresses its displeasure with the Board's decision.

We will address each of ANC 5A's arguments in turn.

1. ANC is not entitled to a "Closing Argument."

ANC 5A states that it was not given the opportunity to present a closing argument at the February 23, 2000, hearing. Under the Board's procedure, 11 DCMR 3117.11(b), only the applicant is entitled to a closing argument. Thus, the ANC has no legal grounds for this claim. Further, the ANC did not make a request to the Board to make a closing argument during the hearing. If the ANC believed, during the hearing, that it needed to make such a closing presentation, it should have made that request known to the Board. The hearing in this case was lengthy, open and complete, and it is clear from the record that ANC 5A and other interested persons were afforded ample opportunity to express their concerns.

2. Environmental issues have been addressed.

There is no new evidence regarding the Boys Town project that suggests that the project adversely effects the Anacostia River watershed. The project proposes four new "single-family" houses on a twelve (12) acre site with state-of-the-art stormwater management and erosion controls. The site could accommodate 175 semi-detached houses as a matter-of-right under the existing Zone District. Surely a development of 175 houses will result in more environmental issues than the Boystown project which was approved by

Board of Zoning Adjustment
District of Columbia
CASE NO.16531
EXHIBIT NO.88

the BZA. Also, as the Applicant maintained throughout this case, the BZA is not the appropriate forum for resolving environmental issues. Nevertheless, the Board, with the help of the Office of Planning, Department of Health and the Department of Public Works, closely evaluated many environmental issues. In addition, the Department of Health will have jurisdiction to review any, and all, environmental issues during the building permit application process.

3. Deer deaths are not relevant.

The instance of road kill several blocks from the Boys Town facility could not be more irrelevant. The Board, after reviewing all available evidence and testimony, has determined that Boys Town meets the requirements for a special exception to build just four homes on a 12 acre site. Boys Town's entire Sargent Road facility will then have a lot occupancy percentage of 5%, in an area zoned to allow 40%. As mentioned above, any remaining environmental issues will be addressed as part of the building permit process.

4. No response to Board's Order is necessary or permitted.

Neither the Zoning Regulations nor the BZA's rules contemplate, or permit, a "response" from any party to a final order. Such a "response" is neither necessary nor permitted as a matter-of-law. The record herein is closed and reopening the record to permit a "response" from a party will prejudice the applicant and set an unwanted precedent for all of the Board's future cases.

5. Party status of neighbors is not relevant.

Although it is unclear what ANC 5A is trying to communicate, we assume that it is suggesting that the Concerned Neighbors of North Michigan Park ("CNNMP") should have been made a party to this case. This issue is also totally irrelevant. The opportunity to request party status was afforded to CNNMP, as it is to all persons. The Regulations are clear as to the requirements for obtaining party status. CNNMP chose not to request party status prior to, or during, the hearing. Nevertheless, members of this group were afforded ample opportunity to be heard throughout the hearing process. Also, the viewpoints of CNNMP have been in step with those of ANC 5A, as evidenced by ANC 5A's present advocacy for CNNMP. Therefore, not only did CNNMP pass on the opportunity to acquire party status, but also, lack of party status has not prejudiced, in any way, CNNMP nor the ANC.

6. BZA Order accurately reflects the proceeding.

The BZA Order is not intended to be an exact transcript of the hearing. Nevertheless, it clearly illustrates the community's concerns. It also clearly illustrates that the Applicant met the standards required of it to prove its case.

7. ANC's interpretation of Board's action is irrelevant.

The Board's April 12, 2000, Memo to the File requested a written report from the Applicant detailing its progress in addressing community concerns. Boys Town complied with that Memo. Based on the eventual report, and the progress it detailed, the Board voted 5-0 to grant the special exception. This Memo to the File was not an Order of the BZA and is not the final BZA Order in this matter. The BZA is not bound by ANC 5A's interpretation of a Memo to the File issued during the proceeding.

As to enforcement of a previous Order (of which there is only one, Order No. 15805), the enforcement is irrelevant when considering BZA Application 16531. ANC 5A and other community members have repeatedly accused Boys Town of completely disregarding Order No.15805. This is simply not true. Boys Town followed all the requirements of Order No. 15805, save one: Boys Town failed to establish an on-going community advisory committee. Boys Town has since corrected this and has been holding regular, productive community advisory liaison committee meetings. There have been fourteen (14) such meetings since February 2000.

8. Finding of Fact No. 17 is accurate.

All materials submitted to the record, and testimony provided by Boys Town Site Director Connie Washington clearly show that Boys Town currently houses six youths in its long-term care home. However, pursuant to Order No. 15805, Boys Town has permission to house fifteen children.

9. Community Advisory Liaison Committee.

Community Advisory Liaison Committee ("CALC") meetings have been held regularly in the past year and a half. Recently, meetings have been held monthly, despite the Board requiring only quarterly meetings. In fact, the ANC has been invited to every meeting, fourteen (14) in all since February 2000. It has chosen not to attend ten of those fourteen meetings. Boys Town can only "invite" people to the meeting, it cannot force people to attend.

The Board's requirement for a CALC was intended to keep open a dialogue between the parties and the meetings are accomplishing this goal. ANC 5A, in its motion, suggests that CALC meeting minutes are "new" evidence. But these minutes are not "new" evidence, but a documentation of compliance with the Board's Order. In fact, the existence of the "minutes" reflects compliance with the BZA Order. Boys Town and several community members have made every effort to make the CALC meetings as productive as possible and, in fact, there have been on-going successes which demonstrate that the CALC requirement is working as the BZA had hoped.

Conclusion

For the reasons stated above, Boys Town opposes ANC 5A's request. For the past year-and-a-half, Boys Town has expended considerable resources in addressing neighbors' concerns. It has also spent considerable resources to defend itself against arguments such as those presented in ANC 5A's motion. This motion, based on road kill, phantom closing arguments and unstated "new" environmental issues, provides unnecessary and unfair uncertainty and expense to Boys Town. The ANC's arguments are either inaccurate, irrelevant or inconsequential and it is long past the time for Boys Town to proceed in its mission to care for the District's abused and neglected children. We request that the Board deny ANC 5A's motion for reconsideration and rehearing, thus allowing Boys Town to proceed with confidence in accordance with D.C. Law.

Sincerely,

Phil T. Feola

Martin P. Sullivan

Enclosures

cc: Father Val Peter
Peter Garofalo, Esq.
Connie Washington
Office of Planning

ShawPittman

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2001, a copy of the foregoing response to ANC 5A's letter dated January 16, 2001 requesting a reconsideration and rehearing was delivered by (hand/first-class postage prepaid) to:

ANC 5A
14TH & Irving Street, NE
Washington, DC 20017

Phil T. Feola

Document #: 1066801 v.2