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January 26, 2001

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BZA
Case No. 16531
Exhibit No. 89

Board of Zoning Adjustment
441 4th Street, NW, Room 210
Washington, DC 20001

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

Dear Members of the Board:

On behalf of Boys Town, the applicant in the above-captioned matter, this letter is in response and opposition to a Motion to Obtain Party Status filed with the Board of Zoning Adjustment ("BZA") on January 16, 2001, by Ellen Opper-Weiner, attorney for the Concerned Neighbors of North Michigan Park ("CNNMP"). This Motion has no basis in law, is untimely and should be denied by the Board of Zoning Adjustment ("BZA").

A. CNNMP's Request is Untimely and Should be Denied.

CNNMP did not request party status at anytime during the hearing. In fact, the Zoning Regulations require persons who seek to participate as a "party" to file for such status at least 14 days before the date set for hearing (11 DCMR §3106). Neither CNNMP nor any of its members requested party status either before or during the hearing.

CNNMP claims that there was no "announcement" with regard to party status at the start of the hearing. However, the Zoning Regulations do not require the BZA to "announce", at the start of a hearing, the status of participants in the hearing process. In fact, since the Regulations require that filing for such party status, must occur two weeks before the hearing such an "announcement" would be irrelevant. Further, the record in this application closed on February 23, 2000, with the exception of specific items (and responses thereto) requested by the BZA. Counsel's allegations No. 5,6 and 7 allege incidents which happened 8 to 12 months after the record was closed. Events that happen after the record closes in a contested case are patently irrelevant to the BZA's decision in that case. As the BZA is fully aware, it must decide cases on the record, and solely on the record. Thus, to allege, as CNNMP's counsel does here, that somehow CNNMP was prejudiced by events that happened after the record closed is absurd.

B. CNNMP is not injured.

In any event, neither CNNMP, nor its members, can show injury due to its failure to seek, and achieve, party status. It, and its members, were afforded every opportunity to apply for party status and chose not to. However, members of CNNMP, identified in its Motion

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were heavily involved in this case and took full advantage of the opportunity to be heard. While no CNNMP member asked to be a party, they nonetheless were afforded amply opportunity to express their opinions, submit evidence into the record and fully participate. The only procedural item CNNMP was not afforded was the right to cross-examine witnesses. The right to cross-examine witnesses cannot affix now, months after the record is closed. Does CNNMP expect the BZA to "order" witnesses to return to the witness table to be cross-examined almost a year after their direct testimony? CNNMP's request for party status is irrelevant at this stage of this application.

Conclusion

CNNMP did not seek party status, as required by the Zoning Regulations, before the hearing in this case and, in any event, is not prejudiced by its non-party status. Conversely, Boys Town will be prejudiced, and the BZA will set bad precedent, if the BZA grants CNNMP party status almost a year after the hearing. CNNMP's request must be denied.

Sincerely,

Phil T. Feola

Martin P. Sullivan

cc: Father Val Peter
Ms. Connie Washington
Marie Sansone, Esq.
Office of Planning

bcc: Ms. Sharon Robinson

ShawPittman

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2001, a copy of the foregoing response to a Motion filed by the Concerned Neighbors of North Michigan Park dated January 16, 2001 was delivered by first-class, postage prepaid to:

Ellen Opper-Weiner, Esq.
3 Bethesda Metro Center
Suite 700
Bethesda, Maryland 20814

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

Phil T. Feola

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