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January 16, 2003

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Mr. Geoffrey Griffis, Chairman
D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: Case No. 16791 Appeal; Father Flanagan's Boys Home

Dear Chairman Griffis:

Enclosed are one original and 20 copies of our response, on behalf of the Intervenor/Property Owner Father Flanagan's Boys Home, to the Appellant's January 7, 2003 pre-hearing status.

Please call us with any questions or comments.

Sincerely,

Martin Sullivan

Document #: 1230473 v.1

BZA
Case No. 16791
Exhibit No. 80

Board of Zoning Adjustment
District of Columbia
CASE NO.16791
EXHIBIT NO.80

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Southeast Citizens for Smart Development, Appellant
ANC 6B

Appeal No. 16935
Public Hearing: January 21, 2003

RESPONSE OF FATHER FLANAGAN'S BOYS HOME, OWNER

I.
Introduction

On August 1, 2002, Southeast Citizens for Smart Development ("**Appellant**") filed an appeal of the issuance of four building permits for four single family homes - Board of Zoning Adjustment ("**BZA**") Case No. 16935 ("**Second Appeal**"). This statement is Girls and Boys Town's response to the Appellant's pre-hearing submission filed on Tuesday, January 7, 2003.

II.
BZA Lack of Jurisdiction

Pursuant to 11 DCMR 3100.2, the Board shall hear and decide appeals where it is alleged that there is error in any decision made by an administrative officer in the administration or enforcement of the Zoning Regulations.

Pursuant to §3112.2, however, an appeal to the Board must be timely filed. The D.C. Court of Appeals has ruled consistently that the Board does not have the jurisdiction to hear an appeal that has not been timely filed. The Second Appeal was not timely filed and must therefore be dismissed (see separately-filed Motion).

III.
Owner as Party

Pursuant to 11 DCMR 3199.1, the definition of "Party" in appeals cases before the Board automatically includes ". . .(3) [t]he owner, lessee, operator or contract purchaser of the property involved in the administrative decision, if he or she is not the appellant;. . ." Boys Town is the owner of the record lots underlying the Building Permits, and therefore submits this Statement as a Party to this proceeding.

IV.
Facts Surrounding the Appeal

A. Background and Timeline.

1. September 6, 2001.

On September 6, 2001, DCRA issued the following building permits (collectively, "**Building Permits**"): (1) Permit No. B438336, for 1314 Potomac Avenue, S.E., Lot 134; (2) Permit No. B438337, for 1312 Potomac Avenue, S.E., Lot 135; (3) Permit No. B438338, for 1310 Potomac Avenue, S.E., Lot 136; and (4) Permit No. B438335, for 1308 Potomac Avenue, S.E., Lot 137. The Building Permits authorized the construction of four residences ("**Homes**"), each with a proposed use as a youth residential care home for up to six children and two adults.

2. September 12, 2001.

On September 12, 2001, the Appellant filed a timely appeal of the Building Permits, challenging the use of the Homes as youth residential care homes ("**First Appeal**"). The subject of the First Appeal was related entirely to the proposed use of the Homes. No violation of area zoning requirements, including those related to side yard setbacks and parking, was alleged.

3. December 4, 2001 – May 7, 2002.

The Board heard the First Appeal, over the course of five hearings, beginning on December 4, 2001, and ending with the Board's decision meeting on May 7, 2002. Throughout the course of these hearings, the Appellant and the Board scrutinized plans underlying the Building Permits, including cross-examination of the project's architect.

4. June 21, 2002.

On June 21, 2002, the Board issued BZA Order No. 16791 approving the First Appeal, thereby overturning the Zoning Administrator's decision to permit *the proposed use* of the Homes as youth residential care homes. There were no Findings of Fact relating to the Zoning Regulations for side yard setbacks or parking requirements. The Order, however, did provide certain false dicta that the plans underlying the Building Permits did not meet certain parking and side yard setback requirements relating to single family dwellings, despite the absence in the record of any testimony, evidence or discussion to that effect. The Order did note that the property owner could utilize the property for other, matter-of-right uses.

5. July 2, 2002.

In accordance with the Board's direction, Girls and Boys Town filed revised permit applications changing the proposed use of the Homes to single family dwellings. The change in proposed use was the *singular alteration to the Building Permits.* Appellant apparently agrees, stating in its pre-hearing statement that the revised permits "...appeared to indicate only a change in use, not a change in the physical aspects of construction."(p.2.)

6. July 8, 2002.

DCRA issued revised permits ("**Revised Permits**"), with the one and only revision to the original Building Permits being related to the proposed use. The Zoning Regulations relating to area zoning restrictions for both youth residential care homes and single family dwellings are *one and the same*. The permit plans for the four structures, and the Zoning Regulations that determine their physical characteristics, remain today as they existed on September 6, 2001. No change to side yard setbacks or parking was necessary; therefore, no changes were made.

7. August 1, 2002.

Almost eleven months after the issuance of the Building Permits, the Appellant, on August 1, 2002, filed the Second Appeal. The Second Appeal alleges that the Revised Permits were issued in error because they do not meet certain parking and side yard requirements of the Zoning Regulations. The revision of the permits in July of 2002, however, made no changes whatsoever to any aspect of the Homes relating to parking or side yard setbacks, or any other area zoning restrictions. The Appellant is appealing a decision of the Zoning Administrator noticed almost eleven months before. On the date that the Second Appeal was filed, construction of the Homes was nearly completed.

The Appellant now alleges, *for the first time*, violations relating to the four *structures*, despite its complete knowledge of these permits since September 6, 2001. As of September 6, 2001, the Appellant has known or should have known all pertinent facts relating to the allegations it brought on August 1, 2002. In addition to its own efforts in scrutinizing every aspect of the subject permit applications, the Appellant has also employed zoning lawyers and zoning experts.

V.
Allegations of the Appellant

A. Parking Space on Each Lot (§2116.1).

The Appellant, in its Notice of Appeal, alleges violations of 11 DCMR 2116.1. Section 2116.1 requires that each of the four homes have a parking space on its own lot. Attached hereto as Exhibit A is a copy of permit plans underlying the approved building permits showing the four parking spaces. These plans show clearly one parking space located on each lot. Therefore, the permit applications are in compliance with §2116.1. The Appellant has simply, with knowledge, filed a false allegation.

B. Parking Access (§2117.4).

The Appellant alleges that all four building permit applications are in violation of the Zoning Regulations because they do not meet §2117.4 regarding access to parking spaces. Section 2117.4 states:

> ...each required parking space shall be accessible at all times directly from improved streets or alleys or shall be accessible from improved streets and alleys via graded and unobstructed private driveways which form an all-weather impervious surface. Improved streets or alleys providing access to required parking spaces shall have a minimum width of ten feet (10 ft.) and be paved in compliance with the standards of the District of Columbia Department of Public Works. 11 DCMR 2117.4

The Appellant's allegation is based on it's incorrect quote of a Zoning Regulation. Section 2117.4 simply **does not include the phrase *"under the ownership or control of the particular lot,"*** a phrase that the Appellant uses and reuses. Girls and Boys Town does not know from what source the Appellant grafted this phrase to "amend" the real §2117.4. It is noteworthy that Exhibit 5 to the Appellant's Pre-Hearing Statement includes copies of

applicable Zoning Regulations. A copy of §2117.4, however, is not included. This groundless allegation can be swiftly dismissed.

As for Girls and Boys Town's response to this allegation, David Clark's letter dated October 17, 2002, to Kenan Jarboe, Chairperson of ANC 6B, explains Girls and Boys Town's compliance in a very clear and concise manner. See again Exhibit A, showing that each parking space is, indeed, "accessible via a graded and unobstructed private driveway which forms an all-weather impervious surface." The construction of this driveway was also approved by The Department of Public Works, in compliance with §2117.4.

C. Side yard.

It must be noted that the Homes are not all "single family detached dwellings" as characterized by the Appellant. All but one are "single-family semi-detached dwellings" as defined in the Zoning Regulations.

Regarding the one single-family *detached* dwelling, 1308 Potomac Avenue, it consists of the two required side yards. The remaining three homes, located on 1310, 1312 and 1314 Potomac Avenue, S.E., are correctly defined as semi-detached dwellings. Pursuant to §199.1 of the Zoning Regulations, semi-detached dwellings are defined as "a one-family dwelling, the wall on one (1) side of which is either a party wall, or lot line wall, having one (1) side yard". All three of these homes meet this definition. Each home consists of one (1) lot line wall and one (1) side yard, measuring the required eight feet (Exhibit B).

The Appellant claims that BZA Order No. 16811 is the precedent supporting its allegation of side yard violations. It is ironic that the Appellant would rely so heavily on a precedent from a BZA case when it argued so strongly against that concept in the First Appeal. Regardless, BZA Appeal No. 16811 consists of a set of facts and law entirely

different from those present in the Second Appeal. The BZA states in Order No. 16811, in its Conclusions of Law and Opinion that "the issue in this case is whether the owner of a one-family semi-detached dwelling in an R-4 district may convert the dwelling to a row dwelling as a matter of right, where the dwelling will not share on both sides a common division wall with an adjacent building."(p. 7.) The Board's eventual conclusion was that "the Zoning Administrator erred in approving the issuance of the permit, to allow as a matter of right the construction of an addition to a semi-detached dwelling, where the addition does not provide a side yard on its free-standing side."(p.10.) Appeal No. 16811 does not apply here. Girls and Boys Town has provided semi-detached dwellings as defined in the Zoning Regulations with the required eight foot side yards.

VI.
Witnesses

Karen Burditt or Phil Esocoff, Esocoff & Associates Architects.

VII.
Conclusion

In our Statement filed in the First Appeal, we stated that "the Appellant has one goal: to keep youth residential care homes for neglected, abused and handicapped children out of their neighborhood, by any means possible." As the original intended use of the four Homes has already been denied by this Board, we do not know what goal the Appellant now pursues. We also question here how the Appellant is aggrieved by the Zoning Administrator's decisions. Nevertheless, the information herein proves that the four structures, now completely built, comply with the Zoning Regulations. The Zoning Administrator has acted in accordance with the Zoning Regulations in issuing its zoning

approval for each of the four Building Permits. For this reason, the Appeal must be denied and the decision of the Zoning Administrator must be upheld.

Respectfully submitted,

Phil T. Feola/by MS
Phil T. Feola

Martin P. Sullivan
Martin P. Sullivan

Document #: 1298844 v.2

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2003 I served a copy of the foregoing Response of Father Flanagan's Boys Home, Owner, via hand delivery, to:

Andrea Ferster, Esq.
Law Offices of Andrea Ferster
1100 17th Street, N.W.
Washington, D.C. 20036

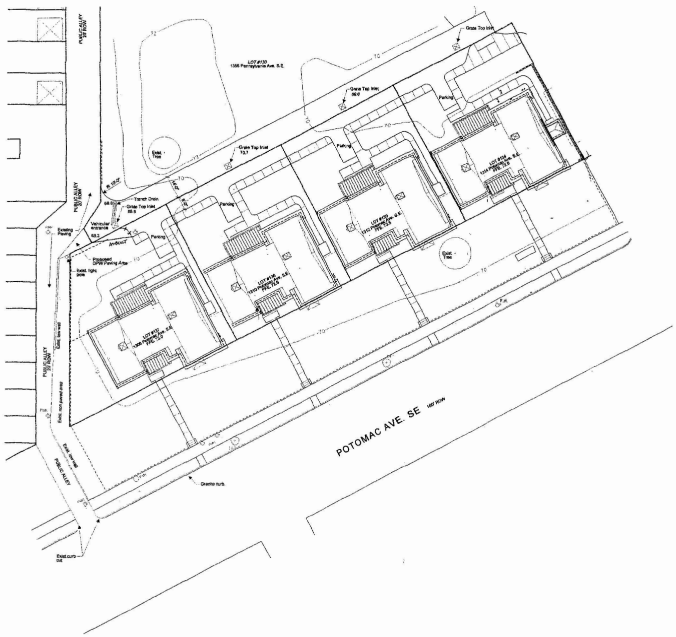
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Washington, D.C. 20037

Document #: 1299866 v.1



SITE PLAN LEGEND

	PROPERTY LINE
	LIGHT POLE
	EXISTING TREE
	EXISTING MANHOLE
	EXISTING PARKING METER TO REMAIN
	NEW FENCE: Metal Picket

1 / DPW SITE PLAN
1 : 20

1030 Fifteenth Street, NW
Suite 430
Washington, D.C. 20005
202 682-1600
Fax 202 682 1672

ESOCOFF & ASSOCIATES | architects

ARCHITECT

GHT Chartered
CONSULTING ENGINEERS
1010 N. GLEBE ROAD
ARLINGTON, VA 22201
703 243-1200
Fax 703 276-1376

MEP ENGINEER

Ehlert/Bryan, Inc.
Consulting Structural Engineers

STRUCTURAL ENGINEER

AMT
A. MORTON THOMAS AND ASSOCIATES, INC.
ENGINEERS · PLANNERS · SURVEYORS · LANDSCAPE ARCHITECTS

CIVIL ENGINEER

KEY PLAN
NORTH

SCALE: AS NOTED

GRAPHIC SCALE

NO.	REVISION / DESCRIPTION	DATE
	DPW	8/19/02
	DPW	4/22/02
	SUBMITTED FOR PERMIT	11 DEC 2000

1308, 1310, 1312, 1314
POTOMAC AVENUE SE

Public Alley/Private Driveway Tie-In

DPW 1

20004

Exhibit A

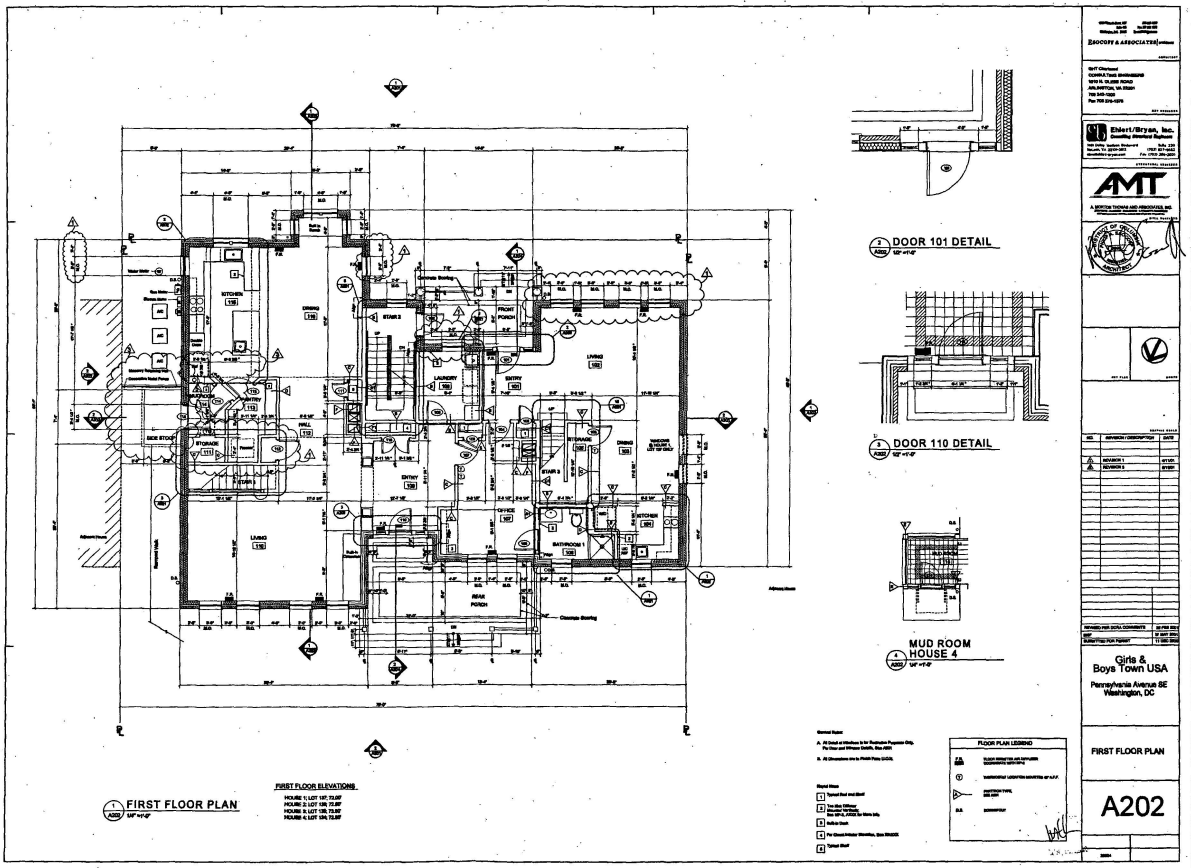

DOOR 101 DETAIL
DOOR 110 DETAIL
MUD ROOM
HOUSE 4
FIRST FLOOR PLAN
FIRST FLOOR ELEVATIONS
HOUSE 1: LOT 107, 73.69'
HOUSE 2: LOT 108, 73.69'
HOUSE 3: LOT 109, 73.69'
HOUSE 4: LOT 104, 73.69'
FLOOR PLAN LEGEND
Girls & Boys Town USA
Pennsylvania Avenue SE
Washington, DC
FIRST FLOOR PLAN
A202

Exhibit B

EXHIBIT 80

FROM

CASE 16791

IS AN OVERSIZED DOCUMENT

PLEASE SEE AT OFFICE