GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPEAL NO. 16791 – Southeast Citizens for Smart Development, Inc., Applellant

As Director of the Office of Zoning, I hereby certify and attest that on SEP 17 2001 a copy of the attached appeal filed with this office on September 12, 2001, was mailed first class, postage prepaid, or delivered via inter-agency mail to each of the persons listed below:

Will Hill, Chair
Southeast Citizen's for Smart Development, Inc.
701 14th Street, S.E.
Washington, D.C. 20003

Michael D. Johnson, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20009

Charlotte Parker, Esq.
Office of Corporation Counsel
441 4th Street, N.W., 7th Floor
Washington, D.C. 20001

Kenan P. Jarboe, Chairperson
Advisory Neighborhood Commission 6B
921 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Kalimah Abdul-Sabur, Single Member District Representative 6B09
Advisory Neighborhood Commission 6B
921 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Councilmember Sharon Ambrose
Ward Six
Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

BZA
Case No. 16791
Exhibit No. 18

Board of Zoning Adjustment
District of Columbia
CASE NO.16791
EXHIBIT NO.18

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E., 4th Floor
Washington, D.C. 20009

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, N.W., 7th Floor
Washington, D.C. 20001

ATTESTED BY: 

JERRILY R. KRESS, FAIA
Director

BZA Form 1
(Revised 7/17/95)

Docket No. 16791

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPEAL

NOTE: See reverse side of this form for filing instructions, filing fees and information required by the Board.

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DO NOT MAIL DO NOT MAIL

TO THE BOARD OF ZONING ADJUSTMENT:

Pursuant to Sections 3105 and 3106 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the administrative decision of Michael D. Johnson, Zoning Administrator
(Name of administrative officer and title)

made on August 30, 2001, to the effect that the first phase of the Boys Town development on Potomac Avenue, SE, is in compliance with current zoning regulations.
(Date of decision)

Premises affected are located at 1308, 1310, 1312 and 1314 Potomac Ave., SE
(Street Address)

Lot(s) 137, 136, 138 + 134, Square(s) 1045
(Phase II construction also affects Lots 127, 128, 817, 818, 828, 836, 837, 840 + 841 of Sq. 1045)
in the District of Columbia, in Zoning District _____.

Present Use of Property: Empty Lot.

Proposed Use of Property: Residential Group Homes.

Owner of Property: Father Flanagan's Boys Home.

Address of Owner: 14100 Crawford St, Boys Town, NE 68010.

Name and address of appellant, if other than owner:
Southeast Citizens for Smart Development, Inc. c/o Will Hill
701 14th St., SE Wash. DC 20003.

State manner in which appellant is aggrieved by administrative decision: See Attachment to this form.

State briefly the allegations of error in administrative decision:
See Attachments to this form.

Relevant Sections of the Zoning Regulations:
DCMR Title 11, Section 721.5 + 303.

Date: Sept. 10, 2001 Signature: Vice Chair Southeast Citizens for Smart Development, Inc. and ANC 6B
(Appellant)*

*If appeal is filed by agent of the appellant, Form 1 (notice of appeal) shall be accompanied by a letter signed by the appellant authorizing the agent to act on his behalf in this appeal.

TO BE NOTIFIED OF HEARING AND DECISION:

Name: Southeast Citizens for Smart Development, Inc. c/o Will Hill, Chair

Address: 701 14th St., SE Washington, DC 20003

Zip Code 20003 Phone No. 544-3785

ANY APPEAL THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

Docket No. 16791

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

REQUEST FOR STAY

Appellant: Southeast Citizens for Smart Development, Inc.

Appellant, Southeast Citizens for Smart Development, Inc., as part of its APPEAL of the Administrative decision of Michael D. Johnson, Zoning Administrator, dated August 30, 2001, pertaining to 1308, 1310, 1312 & 1314 Potomac Ave., SE (Square 1045, Lots 137, 136, 138 & 134), hereby requests, pursuant to 11 DCMR, Section 3106.1, in conformity with the provisions of D.C. Code Sections 5-413 to 5-432 (1981), that this Board immediately order a stay on the issuance of any construction or other permits for the noted property until this matter is decided by the Board.

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ATTACHMENT TO BZA Form 1

Appellant: Southeast Citizens for Smart Development, Inc.
C/O Will Hill, Chair
701 14th St., S.E.
Washington, D.C. 20003

Administrative Decision Appealed from:

Zoning Administrator's Determination on Boys Town Phase I (Residential Units 1308, 1310, 1310 and 1314 Potomac Avenue, S.E.), August 30, 2001, by Michael D. Johnson, Zoning Administrator (copy attached).

State manner in which appellant is aggrieved by administrative decision:

Appellant is aggrieved by the administrative decision because it improperly applies applicable zoning regulations and, thereby, purports to permit as a matter of right a use of the property which is expressly prohibited. By this decision, the owner/contractor, Father Flanagan's Boys Home Omaha Nebraska, will be permitted to construct residential group homes for youth, among other structures. Appellant, Southeast Citizens for Smart Development, Inc. ("SCSD"), is a nonprofit corporation organized to facilitate community involvement and education in planning of neighborhood development in Ward 6. SCSD is composed of and represents a variety of residents within the immediate area (i.e., 3-4 block radius) of the owner/contractor's proposed development on Potomac and Pennsylvania Avenues, S.E. Included it the SCSD's membership are Glenn R. and Patricia M. Harden, who own the residence at 1371 Potomac Ave., S.E., which is directly across the street and within 200 feet of the proposed development at issue in this appeal. The proposed construction will directly impact the Appellant's memberships' use and enjoyment of their properties, and deny them their equal protection and good faith reliance upon applicable "matter of right" zoning regulations.

State briefly the allegations of error in administrative decision:

Administrator's decision is in error on at least three grounds.

1) First, Administrator states that the applicable regulation, Section 721.5, applies to residential care homes for seven to fifteen persons. Administrator then claims that the owner/contractor's application indicates that no more than six residents will be housed in each of the four proposed structures. The Administrator's decision thus sanctions the artificial division into four separate projects made by the applicants that the owner/contractor has proffered to the District's licensing authorities. This submission is both legally and factually flawed.

The Administrator's decision ignores the plain fact that the proposed construction is one extensive project containing twenty-four residents and must be viewed in the aggregate. The facts of the proposed construction support this view:

- the four units are owned by the same owner/contractor;
- the owner/contractor purchased the site as one overall unit in one overall real estate transaction, presumably where the $8.2 million purchase price was not broken down into a per lot price;
- separate permits were applied for simultaneously;
- the construction is to occur simultaneously on land purchased simultaneously by the same owner/contractor;
- the units have been designed by the same architect/engineer simultaneously;
- the units will be constructed simultaneously by the same general contractor, as part of one overall construction project;
- the units are to be occupied and operated simultaneously by the same owner/contractor with staff hired, controlled and paid for by the same owner/contractor;
- the units will be part of the same overall residential compound which will also contain the owner/contractor's administrative offices;
- contractors servicing the facility will likely service all units simultaneously under the same service and maintenance contracts;
- residents chosen to live in the units will be selected by the same owner/contractor who will have the option to place residents in whichever of the four homes it chooses.

In sum, this is not four discrete projects, but one large institutional development, whose owner/developer has architecturally contrived its plans and applications to skirt the very regulations enacted to control such large-scale projects. The Administrator's decision, by failing to view the project as an aggregate development for 24 residents, ignores these facts and thus fails to apply properly the controlling regulations.

2) The Administrator's decision also is in error because it fails to apply the express limitations set forth in the regulation cited. Section 721.5 states, in brief, that there shall not be another community based residential facility in the same "square". The Administrator's decision states that the proposed construction is not prohibited since "each building will be on a separate lot of record and as such, not subject to the radius limitation set forth in Section 701.3". In Section 721.5, which the Administrator's decision claims is the applicable regulation, the limitation refers to "the same square" not the same "lot." This distinction is significant since there are many lots in a square. The regulation on its face plainly seeks to limit precisely the type of concentration which the Administrator's decision claims is allowed. This is incorrect and must not be sustained.

3) The Administrator decision's third error is that it fails to address the limitation for such proposed construction within 500 feet of an existing community based residential facility. Presently, and since approximately 1990, eight residents have been

housed and cared for in a community based residential facility at 901 14th Street, S.E., immediately across the street from the owner/contractor's proposed construction. D.C. Health Care, Inc., the facility's contractor, has acknowledged that this preexisting facility has been licensed to care for seven or more residents for the period noted. (See attached.) Because the proposed facility, when viewed in the aggregate as the one development that it is, will contain 24 residents, the proposed construction directly violates the applicable regulation. Accordingly, the Administrator's decision, which ignores these regulatory limitations, must not be sustained.

Appellant reserves the right to supplement and amend this appeal in the future, and to submit any additional facts, argument and other evidence in support of this appeal.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Zoning Administrator

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August 30, 2001

Ms. Ellen Opper-Weiner, Vice Chair
C/O Will Hill, Chair
Southeast Citizens for Smart Growth
701 14th Street, S.E.
Washington, DC 20003

Re: Zoning Administrator's Determination on Boys Town Phase I.
(Residential Units 1308, 1310, 1312 and 1314 Potomac Avenue, S.E.)

Dear Ms. Opper-Weiner:

Let me begin by extending an apology for your not receiving my August 08, 2001 determination letter regarding this matter and the initial delay in preparing a response to your inquiries. However, a thorough and factually based analysis was required in order to make a final zoning decision regarding this most important community issue. Accordingly, this letter is in response to your letters dated June 22nd, July 18th and as a follow-up to the June 15th, 2001 site inspection, which you and Mr. Ed Copehaper accompanied Zoning Inspector Yvonne Rockett and me.

The purpose of the inspection was to measure, at your request, the distance from an existing DC Health Care operated Community Based Residential Facility (CBRF), to the four (4) houses proposed as Boys Town, to be located at 1308, 1310, 1312 and 1314 Potomac Avenue SE. Specifically, you believe that the houses will be in violation of DCMR Title 11, Section 701.3, if they are within the 500-foot radius of an existing CBRF.

Since you believe that Section 701.3 is applicable, let me clarify that your interpretation is a misapplication of the regulations. Section 701.3 applies to matter of right uses in a C-1 zone. As a point of clarification, the current subject property is located within a C-2 zoning district. Accordingly, this analysis is based upon applicable requirements of the C-2 zone.

The 500 foot radius limit that is cited in DCMR Title 11, Section 721.5 refers specifically to "A youth residential care home, community residence facility, or health care facility for seven (7) to fifteen (15) persons, not including resident supervisors or staff and their families ...". Based on the plans and applications submitted, the referenced homes will each house no more than six (6) residents. Additionally, each building will be on a separate lot of record and as such, not subject to the radius limitation set forth in Section

701.3. In sum, I have concluded that the first phase of the Boys Town development on the subject site is in compliance with current zoning regulations.

In closing, I trust this response addresses your concerns. And again, I appreciate your concern for the community. Should you have any questions or need additional assistance, please feel free to contact me at 442-4576.

Respectfully,

Michael D. Johnson
Zoning Administrator
District of Columbia

cc: David A.Clark, Director
Theresa Lewis, Deputy Director
J. Gregory Love. Administrator, BLRA
Denzil Noble, Deputy Administrator, BLRA
Lenox Douglas, Chief, Permit Service Center
Toye Bello, Chief, Zoning Review
Yvonne Rockett, Zoning Inspector
Andy Altman, Director, Office of Planning
Jerrily Kress, Director, Office of Zoning

D C HEALTH CARE, Inc.

• 1500 Massachusetts Ave., N.W
• Suite # 825, Box W,
• Washington DC, 20005

June 26, 2001

To Whom It May Concern

This is to certify that we operate a 24 hour residential program for eight developmentally challenged individuals at 901 14th Street, S.E. Washington D.C. 20003.

The program is known as DC Health Care, Inc. which was established in 1982. This site (at 901 14th St. S.E.) began its operation as of 1990.

If you have any further questions, please feel free to call us at 202-659-5588.

Mamta Tiwari

Mamta Tiwari
Deputy Director

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D.C. DEPARTMENT OF HEALTH

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