DOCKET NO. 16791

AMENDED ATTACHMENT TO BZA Form 1

This amendment is made to add the permit numbers, and copies of the relevant construction permits, for the real property described in this zoning appeal. Upon information and belief, the issuance of these permits was apparently based, in part, on the Zoning Administrator's written decision of August 30, 2001, and thus is at issue in this appeal. The permit numbers are: B438335, B438336, B438337 & B438338; all permits were issued on September 6, 2001. Copies of these permits are attached to this Amended Form.

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.

BZA
Case No. 16791
Exhibit No. 24

Board of Zoning Adjustment
District of Columbia
CASE NO.16791
EXHIBIT NO.24

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
Form BLRA-15
(Rev. 9/30/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B438338

Date 9/6/01 (Type) MISC./NEW CONST.

Address of work 1310 POTOMAC AVENUE SE

Lot 0136 Square 1045

Permission is hereby granted to FATHER FLANAGAN'S BOY'S HOME (Owner)
who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.

NO.

TOTAL PERMIT FEE $

FILING FEE $

DATE

FEE PAYABLE $ 870.00

FOR INSPECTIONS CALL 727-7562 442-4641

Authorized work and conditions of performance thereof:

TWO STORY & CELLAR RESIDENCE W/DRIVEWAY.

Builder—

Value $ No. of Bldgs.

Width of Bldgs. Length Height No. of Stories 2

Zone C2B

To be occupied as HOUSING/6 YOUTHS & 2 ADULTS

Height of terrace above grade

Projections: 1 BAY WINDOW/1 CORNICE

Address of owner BOYS TOWN, NE

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D CLARK 32301

DIRECTOR

Permit Clerk

Receipt# 0001 Department of Consumer and Regulatory Affairs
Receipt# 19[illegible] 09/06/01 11:24 Clk# T
EB2001215 BUILDING STRUCTURE & EQUI Amount $***870.00

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Form BLRA-15
(Rev. 9/30/91

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B438337

PERMIT

Date 9/6/01 (Type) MISC./NEW CONST.

Address of work 1312 POTOMAC AVENUE SE Lot 0135 Square 1045

Permission is hereby granted to

FATHER FLANAGAN'S BOY'S HOME (Owner)

who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.

TOTAL PERMIT FEE $

FILING FEE $

NO. DATE

FEE PAYABLE $ 870.00

FOR INSPECTIONS CALL 727-7562 442-4641

Authorized work and conditions of performance thereof:

TWO STORY & CELLAR-RESIDENCE W/DRIVEWAY.

Builder—

Width of Bldgs. Length Height

Zone C2B

Height of terrace above grade

Address of owner BOYS TOWN, NB

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D. CLARK
DIRECTOR

32301

Value No. of Bldgs.

No. of Stories 2

To be occupied as HOUSING 76 YOUTHS & 2 ADULTS

Projections: BAY WINDOW(1) COURTYARD

Chief, Permit Issuance Branch

By

Permit Clerk

Receipt# 1 343 97A 07/06/01 1124 CLK# 7
EB22001215 Amount $***870.00
BLD, STRUCTURE & EQUI
Baltimore# 0001
National CITY BANK
GOVERNMENT
CASHIER OFFICE

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Form BLRA-15
(Rev. 9/30/91

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B433336

Date 9/6/01 (Type) MISC./NEW CONST.

Address of work 1314 POTOMAC AVENUE SE

Lot 0134 Square 1045

Permission is hereby granted to

FATHER FLANAGAN'S BOY'S HOME (Owner)

who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.

NO.

TOTAL PERMIT FEE $

FILING FEE $

DATE

FEE PAYABLE $ 270.00

FOR INSPECTIONS CALL 727-6562 442-4641

Authorized work and conditions of performance thereof:

TWO STORY & CELLAR RESIDENCE W/DRIVEWAY.

Builder—

Width of Bldgs. Length Height No. of Stories 2

Value $ No. of Bldgs.

Zone C2B

To be occupied as HOUSING/6 YOUTHS & 2 ADULTS

Projections: 1 BAY WINDOW

Height of terrace above grade

Address of owner BOYS TOWN, NE

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D CLARK
DIRECTOR

32301

By
Permit Clerk

Store# 0001 D.C. GOVERNMENT
Location: CRP/DCRA CASHIER OFFICE
Reg# 1 09/06/01 11:23 CLK# 7
Receipt# 191343 Amount $***870.00
ER2001215 BUILDING STRUCTURE & EQUI

PERMIT

★★★ GOVERNMENT OF THE DISTRICT OF COLUMBIA

Form BLRA-15
(Rev. 9/30/91

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B438335

PERMIT

Date 9/6/01 (Type) MISC./NEW CONST./FENCE

Address of work 1308 POTOMAC AVENUE SE

Lot 0137 Square 1045

Permission is hereby granted to

FATHER FLANAGAN'S BOY'S HOME (Owner)

who is authorized to perform the work described hereon at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.

NO.

TOTAL PERMIT FEE $

FILING FEE $

DATE

FEE PAYABLE $ 877.00

FOR INSPECTIONS CALL X2707502 442-4641

Authorized work and conditions of performance thereof:

TWO STORY & CELLAR RESIDENCE W/DRIVEWAY.

EB22001215 BUILDING STRUCTURE & EQUI Receipt# 191843 Amount ****877.00 09/06/01 1124 Clk# 7 Station: 0TR1 CASHIER OFFICE

Builder—

Value $ No. of Bldgs.

Width of Bldgs. Length Height No. of Stories 2

Zone C2B To be occupied as CHF/6 YOUTHS & 2 ADULTS

Height of terrace above grade Projections: 1 BAY WINDOW

Address of owner

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D CLARK 32301

DIRECTOR

Issuance Branch

Permit Clerk

BZA Form 1
(Revised 7/17/95)

Docket No. 16701
EB

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.

RECEIVED
D.C. OFFICE OF ZONING
2001 SEP 12 AM 9:49

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, Sections 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:
Southeast Citizens for Smart Development, Inc.
Name: 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.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2001, I served a copy of the foregoing Amended Attachment to BZA Form 1, with attachments, via first class mail, postage prepaid, to:

Father Flanagan's Boys Home
14100 Crawford St.
Boys Town, NE 68010

Michael D. Johnson
Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE
Washington, DC 20002

Charlotte Parker, Esq.
Office of the Corporation Counsel
441 Fourth St., NW
Room 600 South
Washington, DC 20001

Kenan Jarboe
Chair, ANC 6B
921 Pennsylvania Ave., SE
Washington, DC 20003

Ellen Opper-Weiner
Vice Chair
Southeast Citizens for Smart Development, Inc.
701 14th St., SE
Washington, DC 20003