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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.

BZA
Case No. 16791
Exhibit No. 2

Board of Zoning Adjustment
District of Columbia
CASE NO.16791
EXHIBIT NO.2

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.