5 _____ **REASONABLE ACCOMMODATION FOR PERSONS WITH A HANDICAP PURSUANT TO THE FAIR HOUSING ACT, AS AMENDED, 42 U.S.C. §§ 3601-3619**

1. This section implements the policy of the District on requests for reasonable accommodation in its rules, policies, and procedures for handicapped[1] individuals as required by the Fair Housing Act, as amended ("the Act"), 42 U.S.C. § 3604(f)(3)(B) (Supp. 1996).[2]

2. Any person eligible under the Act may request a reasonable accommodation as provided by the Act, 42 U.S.C. § 3604(f)(3)(B), pursuant to the procedures set out in this section in lieu of the procedures that would otherwise apply to such requests under other chapters of this Title. A request for a reasonable accommodation does not affect a person's obligations to act in compliance with other applicable District laws and regulations not at issue in the requested accommodation.

3. All requests for reasonable accommodation under the Act shall be submitted to the Director, Department of Consumer and Regulatory Affairs, 614 H Street N.W., Room _____, Washington, D.C. 20001, or such other Office as the District may assign or delegate.

4. All requests for reasonable accommodation shall be in writing and provide, at a minimum, the following information:

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[1] These regulations incorporate the Fair Housing Act definition of handicap. See 42 U.S.C. § 3602(h).

[2] Other applicable laws, such as the Americans with Disabilities Act, may also require the District to make reasonable accommodations in certain circumstances.

Board of Zoning Adjustment
District of Columbia
CASE NO.16791
EXHIBIT NO.32A2

a. Name and address of person requesting accommodation;

b. Name and address of dwelling owner;

c. Name and address of dwelling at which accommodation requested;

d. Description of the requested accommodation and specific regulation or regulations for which accommodation is sought;

e. Reason that the requested accommodation may be necessary for the person or persons with a handicap to use and enjoy the dwelling; and

f. If the requested accommodation relates to the number of persons allowed to occupy a dwelling, the anticipated number of residents, including facility staff (if any).

The applicant shall mark as "CONFIDENTIAL" any information submitted with the application that the applicant believes should not be made public. The Director shall maintain this information in a confidential file separate from the application. Only those agency personnel explicitly authorized by the Director shall have access to the confidential file.

5. The Director, Department of Consumer and Regulatory Affairs, or his/her designee, or such other officer as the District may assign or delegate (hereinafter "the Director") may conduct an appropriate inquiry into the request for reasonable accommodation and may (a) grant the request, (b) grant the request subject to specified conditions, or (c) deny the request.

6. If necessary to reach a decision on the request for reasonable accommodation, the Director may request further information from the applicant consistent with the Act, specifying in detail the information required.

7. The Director may consult with other District agencies in assessing the impact of the requested accommodation on the rules, policies, and procedures of the District.

8. Not more than forty-five (45) days after receiving a written request for reasonable accommodation, the Director shall issue a written final decision on the request; provided that, in the event that the Director requests further information pursuant to paragraph 6 above, the running of this period shall be tolled until the applicant responds to the request.

9. The Director may consider the following criteria when deciding whether a request for accommodation is reasonable: (1) whether the requested accommodation would require a fundamental alteration of a legitimate rule, policy, and/or procedure of the District; and (2) whether the requested accommodation would impose undue financial or administrative burdens on the District government.

10. The Director shall set forth in writing the decision on the request for reasonable accommodation. If the Director denies the request in whole or in part, the Director shall explain in detail the basis of the decision, including the Director's findings on the criteria set forth in paragraph 9. The Director's Decision and Notice shall be sent to the applicant by certified mail.

11. If the Director fails to render his/her decision on a request for reasonable accommodation within the time allotted by paragraph 8 above, the request shall be deemed granted.

12. The Director's Decision pursuant to paragraph 10 above or granting of the request for reasonable accommodation pursuant to paragraph 11 above shall be deemed a final decision of the District of Columbia government, and, therefore, there shall not be any further resort to administrative remedies.

13. The Director shall maintain a file of all requests for reasonable accommodation under the Fair Housing Act and a file of all decision made on such requests. The file may be reviewed in the Office of the Director upon request during regular business hours, or such other Office as the District may delegate; provided, however, that any material identified as CONFIDENTIAL by the applicant as permitted by paragraph 4 above shall not be made available for public inspection.

14. Upon written notice to the Director, an applicant for reasonable accommodation may withdraw the request without prejudice.

15. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the dwelling that is the subject of the request shall remain in full force and effect.

16. The provision of this section shall only apply to requests for reasonable accommodation made after the effective date of this section. Any person who has previously submitted a request for reasonable accommodation may resubmit the request for processing pursuant to the procedure set forth in these regulations.



Witness List

Armando Lourenco – Zoning Expert, Resume Attached as Exhibit I.

Gladys Hicks – Zoning Expert, Resume Forthcoming

Connie Washington – Site Director, Girls and Boys Town of Washington, D.C.

Karen Burditt – Esocoff and Associates, Architect

Document #: 1182538 v.6

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- CURRICULUM VITAE -

August 00 - Present **President**
Lourenco Consultants, Inc.
Washington, DC
Manages and directs operations of consulting firm in regulatory compliance, code consulting and related services, in support of the development industry and of municipal regulatory agencies.

July 98 - August 99 **Acting Zoning Administrator**
Building and Land Regulation Administration
Washington, DC
Managed directly the operations of the Zoning Division of BLRA, on an interim basis. Met with zoning attorneys and community representatives on zoning matters and made or sanctioned decisions on non-routine Zoning review matters. Represented the Zoning Division on matters before BZA.

June 98 - August 00 **Administrator**
Building and Land Regulation Administration
Washington, DC
Oversaw operations of an Administration with a budget of $6M, encompassing six Divisions: Zoning, Historic Preservation, Permit Processing, Fire Protection, Building Inspection and Surveyor's Office. Acted as Building Code Official for the District of Columbia. Directed a staff of 95, including 42 inspectors and 19 professional staff (engineers, architects and historians) with plans review and field inspection responsibility in the disciplines of zoning regulations, historic preservation law, official surveying records, construction, plumbing, mechanical, electrical, fire protection, boiler and elevator codes. The Administration processed and issued 35,000 permits annually, including 10,000 building permits.

Dec 97 - May 98 **Project Director, Schirmer Engineering Corporation**
Miami Regional Office, North Miami Beach, Florida
Started-up and managed new regional code consulting and fire protection engineering office of leading nationwide corporation. Directed office day-to-day operations and business development and managed projects in South Florida.

Dec 96 - Dec 97 **Project Director, Schirmer Engineering Corporation**
Washington Regional Office, Arlington, Virginia
Provided technical direction to the engineering staff of the regional office. Assisted the regional manager in the day-to-day operations and in business development and managed major nationwide projects within the purview of the office, including new anchor stores for a major upscale department store chain.

Aug 95 - Dec 96 **Senior Engineer, Schirmer Engineering Corporation**
Eastern Regional Office, Falls Church, Virginia
Responsibilities included oversight of consultation and design engineering services within the eastern regional office, including building and fire code consultation, as well as management of major projects within the purview of the office.

Feb 94 - Aug 95 **Deputy Director, Code Enforcement Bureau**
Fire Department, City of Alexandria, Virginia
Assisted the Director in the management of the Bureau, with a staff of 43 and a budget of $2M. Duties included oversight responsibility for the daily operations of the New Construction Inspections and the Administrative Division.

June 90 - Feb 94 **Program Manager, Permit Processing Division**
Building and Land Regulation Administration
Washington, DC
Managed the Division and headed the Permit Center, with a staff of 40, including 15 engineers. Division processes and issues 35,000 permits annually, including 10,000 building permits for a construction total in the order of one billion dollars. Had overseeing responsibility for the enforcement of the D.C. Construction Codes (including BOCA Building, Mechanical, Plumbing and Energy Conservation codes) in plan review. Ensured, through the permit issuance processes, the appropriate enforcement of other local regulations in areas as diverse as environmental impact, land use, historic preservation, health, water quality, sanitation, and noise control.

Jan 88 - Jun 90 **Chief, Mechanical Engineering Section**
Building and Land Regulation Administration
Washington D.C.
Headed the engineering section, with a staff of 5 engineers, including mechanical and plumbing plans review on an average of 10,000 building permits annually, including approximately 1,000 projects ranging from $75K to multi-million-dollar developments.
Occupied positions of progressively higher responsibility, through 1990, including Acting Chief of the Technical Review Branch (engineering plans

review).

Sep 86 - Jan 88 **Mechanical Engineer, Mechanical Engineering Section**
Building and Land Regulation Administration
Washington D.C.

EDUCATION

1979 - 1980 **MS Nuclear Engineering**
National Institute of Nuclear Sciences and Technology, Saclay, France
Major: Structural Mechanics

1966 - 1972 **BS Mechanical Engineering**
Lisbon University of Technology, Lisbon, Portugal
Major: Production Management & Mechanical Structures

PROFESSIONAL REGISTRATION

1989 Licensed Professional Engineer (P.E., Mechanical) - Registered in District of Columbia.

1993 Certified Building Official (CBO) - Council of American Building Officials (CABO)

PROFESSIONAL CERTIFICATIONS

1994	Certified Plans Reviewer - NCPCCI	Mechanical Plumbing
1994	Certified Inspector - NCPCCI	Mechanical Plumbing
1995	Certified Plans Reviewer - NCPCCI	Building Fire Protection
1995	Certified Inspector - NCPCCI	Building Fire Protection

APPOINTMENTS AND MEMBERSHIPS

1996-Present Chair of the Issues and Policy Subcommittee of the Mayor's Building Code Advisory Committee (BCAC). District of Columbia

1998 Chair of the District of Columbia Land Use and Building Code Work Group created under the Regulatory Reform initiative of the Financial Responsibility and Management Assistance Authority

1997-Present Member of the Construction Codes and Standards Liaison Task Group of the Society of Fire Protection Engineers (SFPE).

1998 - 1999 Member of the International Mechanical Code Development Committee International Code Council (ICC)

1996 - 1998 Member of BCAC representing the Chesapeake Chapter of SFPE. District of Columbia

1996 - 1998 Active in several BCAC's technical subcommittee (Fire and Life Safety - Existing Structures). District of Columbia

1997 - 1998 Member of NFPA Technical Committee on Fire Protection of Nuclear Facilities Alternate - NFPA 801-805

1997 - 1998 Member of NFPA Technical Committee on Air Conditioning Alternate - NFPA 90

1994 - 1996 Member of the BOCA Code Interpretations Committee
Building Officials and Code Administrators International (BOCA)

1992 - 1994 Member of the Mayor's Building Code Advisory Committee (BCAC)
District of Columbia

1988 - 1994 Active in several of BCAC's technical subcommittees (Fire and Life Safety - Existing Structures - Mechanical - Plumbing - Accessibility)

1987- Present Member of Building Officials and Code Administrators (BOCA) International
1987 - 1993, Active Member representing the District of Columbia
1994 - 1995, Active Member representing the City of Alexandria
1995 - 1998, Professional member
1998 - 2000, Active Member representing the District of Columbia
2000 - Present, Professional member

BUILDING CODES DEVELOPMENT

1990 - Present Proponent of numerous code changes approved by BOCA membership and currently in the BOCA Codes and International Mechanical Code (e.g., Chapters 10 and 11 of the Mechanical Code; Dead end aspect ratio exception)

1988 - 1991 Author or co-author of several of the current provisions of the D.C. Construction Codes (e.g., Chapter 36 - Existing Structures; Windows on lot lines; Smoke control provisions; Mechanical ventilation).

1996 - 1998 Author or co-author of numerous proposed administrative provisions of the 1998 D.C. Construction Codes.



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REPORT ON BZA APPEAL NO. 16791

Appeal of Southeast Citizen's for Smart Development, Inc. of Zoning Administrator's administrative decision to allow a residential group home (Father Flanagan's Boys Town Phase I) in a C-2-A District

Upon review of the case docket and of the project construction documents submitted to DCRA, to document the details of the proposed four detached houses, several comments to the project and the merits of the appeal are pertinent. The four permits issued on September 6, 2001 (Permits nos. B438335, B438336, B438337 and B438338) were issued on projects that are matter of right development, for square 1045, record lots 137, 134, 135 and 136, respectively. The appellants argue that, by his decision, the Zoning Administrator *"improperly applies applicable zoning regulations"* and, as a result, allows a use that *"is expressly prohibited."*

I personally reviewed a copy of the plans that were submitted with the building permit applications. These plans are very clear and define in detail the buildings, setbacks, open spaces, lot dimensions and areas, lot occupancy, bulk, height and interior arrangement of the buildings, as proposed by the applicant for the referred lots. Nothing in the documents I reviewed appears to be in conflict with any of the applicable regulations with which I am very familiar, in particular with the Zoning Regulations of the District of Columbia. The plans define unequivocally all the features that are relevant to the administration and enforcement of the Zoning Regulations. In my professional opinion, the Zoning Administrator's decision to approve the four applications before him was correct, followed longstanding practice in the enforcement of the regulations and observed the letter and the intent of the regulations. In this case, the Zoning Administrator not only applied the regulations equitably, he made the only possible decision that was consistent with the law, when he approved the permits.

Relevant Regulations

The declared intent of the Zoning Regulations is expressed in general terms in §101.1, where among the cited goals are *"to prevent undue concentration of population and the overcrowding of land"* and *"to provide distribution of population, business and industry and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural*

opportunities; and that will tend to further economy and efficiency in the supply of public services." It is important to keep these goals in mind as we further analyze this case.

To achieve these stated intents, the Zoning Commission uses tools that are common to zoning regulations of most jurisdictions: it divides the District of Columbia into zoning districts (§105.1); it limits the uses allowed in each type of district, listing those allowed as a matter of right and those that require specific approval by BZA; and it imposes minimum lot sizes, maximum lot occupancy rates, maximum FAR and minimum clear spaces around buildings, to control concentration of development.

The Zoning Administrator has to examine each application for building permit submitted to DCRA and judge it on its own merits. The basic factors in each case are the zoning district, the area and dimensions of the lot, the proposed size of the building, the proposed uses in the building and its location in relation to lot lines. In certain cases the Zoning Administrator may have to review additional information but, as a rule, armed with these basic facts, the Zoning Administrator can make objective decisions that are consistent with the law and the regulations. Considerations of ownership or management of the property, or of methods of organization or operation of the entities applying for the permit have no place in the Zoning Administrator's decision. Other considerations, extraneous to the Zoning Regulations and to the authority of the Zoning Administrator, such as strategic planning and Comprehensive Plan components not adopted by the Zoning Commission, should also be absent from the Zoning Administrator's decision process.

The correct path of application of the Zoning Regulations to each of the four applications in question for "youth residential care facilities for 6 residents and 2 adult supervisors" is as follows:

– First the Zoning Administrator determines that the lot is in a C-2 district and verifies whether the proposed use is a matter of right use, starting at §721.1.
– §721.1 allows, as a matter of right, in a C-2 district, any use permitted in C-1 districts under §701.
– §701.2 permits as a matter of right, in a C-1 district, any use permitted in any R-5 district under §350.4 and §350.5, except a CBRF for seven (7) or more persons not including resident supervisors. A simple math comparison (6 < 7) allows the Zoning Administrator to proceed after determining that the proposed 6-resident home is not excluded by §701.2.
– §350.4(a) permits as a matter of right in an R-5 district, any use permitted in the R-4 district subject to the requirements of §410 and §353. The Zoning Administrator verifies that §410 (group of attached one-family dwellings or apartment buildings in a single lot of record) and §353 (new residential development of attached dwellings or apartment buildings) do not apply to the proposed youth residential care facilities.
– §330.5(a) permits as a matter of right in an R-4 district, any use permitted in R-3 districts under §320.3.

– §320.3(a) permits as a matter of right in an R-3 district, any use permitted in an R-2 district under §300.3.
– §300.3(a) permits as a matter of right in R-2 districts, any use permitted in R-1 districts under §201.
– §201.1(n)(1) permits as a matter of right in R-1 residence districts, a youth residential care home *"for not more than six (6) persons, not including resident supervisors or staff and their families; or for not more than eight (8) persons, including resident supervisors or staff and their families; Provided that the number of persons being cared for shall not exceed six (6)."*
– The Zoning Administrator makes a couple of simple math comparisons (6 does *"not exceed six (6)"*; and 6+2 is *"not more than eight (8) persons"*).
– The Zoning Administrator notes that, for the size of facility proposed by the applicant, §201.1(n) contains no proximity restrictions (contrary to what occurs with §201.1(p) for homes with seven (7) or eight (8) residents). In other words, the regulations promulgated by the Zoning Commission allow the development of a legally established record lot with a youth residential care home for six (6) as proposed, without regard for any existing facilities in the vicinity or in the same square.
– At this point the Zoning Administrator can draw the only conclusion a reasonable person would draw: that the proposed use is a matter of right development in the zoning district C-2-A, as well as in all other more restrictive districts, starting with R-1-A.

This is how the Zoning Regulations are supposed to be applied to this case. This path is so straight forward, and the language of the regulations in §201.1(n)(1) is so clear that one has to wonder if the appellant has the correct version of the Zoning Regulations. Arbitrarily starting at a section that serves a preconceived point, without regard for the applicability (or lack thereof) of such section, is a dangerous practice that the BZA should repudiate because it can lead to the most bizarre conclusions.

A review of the Zoning Regulations reveals, very clearly, that, when disability of the residents is not an issue, the regulations deal with *youth residential care homes* in five tiers, by capacity of the facility: (a) homes with six (6) or less residents who receive care; (b) homes with seven (7) or eight (8) residents who receive care; (c) homes with nine (9) through fifteen (15) residents who receive care; (d) homes with sixteen (16) through twenty-five (25) residents who receive care; and (e) homes with twenty-six (26) or more residents who receive care.

The first tier is allowed in an R-1 or less restrictive zone, as a matter of right, subject to the capacity limitations of §201.1(n)(1), without any additional conditions or exclusionary criteria. The second tier is first allowed in an R-1 zone as a matter of right, subject to the exclusionary tests of §201.1(p). Successively higher constraints apply to the third, fourth and fifth tiers, based on the capacity of the homes. But youth residential care homes with 6 or less residents have no conditions other than those stated in §201.1(n)(1).

The myth of §721.5

Half of the appellants' case hinges on their perceived "plain language" or "plain *meaning*" of §721.5. As explained above, §721.5 is never in the path of the sections applicable to any of the building applications in question. There is a good reason for that: the plain language of §721.5 which states (emphasis added):

> *"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, shall be permitted in a C-2 district as a matter of right; Provided, that there shall be no property containing an existing community based residential facility for seven (7) or more persons in the same square and that there shall be no property containing an existing community based residential facility for seven (7) or more persons within a radius of five hundred feet (500 ft.) from any portion of the subject property."*

The math in this section is really not complicated. It is plainly clear that this section does not apply to homes or facilities with 6 or less residents or with 16 or more residents (excluding in both cases resident supervisors or staff). Therefore it does not apply to the Father Flanagan's Boys Home's four houses.

Another important point that yields from this section is that the presence of one matter of right youth facility for six (6) residents, permitted under §201.1(n)(1), has no effect on the subsequent location of another youth facility. As §721.5 states, the two exclusionary tests (within a 500 ft radius or located in the same square) are applied only in relation to any "existing community based residential facility for seven (7) or more persons" therefore it does not apply in relation to existing (or proposed) youth residential care homes for six (6) or less persons.

The importance of the record lot in Zoning enforcement

The record lot is a fundamental tool of the Zoning Regulations to control *development density*. The proper application of the zoning provisions hinges entirely on the correct use of the record lot subjacent to each proposed building. This is so important that the Zoning Regulations specifically mandate, in §101.6, that lots be subdivided only if not in violation of its provisions for *"minimum lot width, minimum lot area (...) applicable to that lot or any lot created."*

Once the regulations allow a given use (allowable intensity of development), they achieve reductions of impact of the use in more restrictive zones by requiring larger lot sizes, thus reducing the concentration of the population associated with the use. Lot size is, therefore, the primary tool in controlling density of use in the most restrictive (residential) zones. As zones become less restrictive (e.g., higher density residential or commercial), density is controlled through FAR, which is also tied to the size of the underlying record lot. Without relating a proposed development to a specific lot, it is virtually impossible to administer the Zoning Regulations consistently and equitably.

Finally, another regulation that is relevant to help establish the intent of the zoning review of a permit application is found at §107.15 of the D.C. Construction Codes. Although the Construction Codes are not under the purview of BZA, §107.15 contains submittal requirements that are specifically for the purpose of enabling the zoning compliance review. It states, in relevant part (emphasis added):

> **"107.15 Zoning Compliance Review Data:** The applicant shall provide to the Zoning Division of the Department not less than four (4) copies of plans drawn to a scale indicated numerically as well as depicted graphically, showing orientation of the property as to true North, and the following:
>
> 1. The shape, dimensions and topography of the lot to be built upon, in sufficient detail to allow determination of heights above existing and proposed finished grade of all proposed structures, so as to allow determination of compliance with pertinent height limitations of Title 11 DCMR, Zoning Regulations.
> 2. The width of all public streets and public rights-of-way contiguous to the lot, with elevations at measuring points along them sufficient to determine compliance with the Height Act of 1910, as amended.
> 3. The shape and location in plan of all existing and proposed structures, fully dimensioned, including orientation and distances to lot lines so as to define without ambiguity the dimensions and location of said structures.
>
> (...)
>
> 6. Other information necessary to determine compliance with Title 11 DCMR, Zoning Regulations.
>
> **107.15.1 Zoning Data on Building Plat:** For the purpose of zoning compliance review, the following data shall be provided on the building plat required by Section 107.16, as applicable, in addition to the information required by Section 107.16.1:
>
> 1. The number, size, shape and location of all open parking spaces, open loading berths, and approaches to all parking and loading facilities.
> 2. Other information necessary to determine compliance with Title 11 DCMR, Zoning Regulations."

These sections of the Construction Codes were drafted in 1998 by Mr. Lindsley Williams, former Chair of the Zoning Commission, as part of the Regulatory Reform efforts and under the auspices of a work group I co-chaired with Ms. Jerrily Kress and Ms. Sheila Cross-Reid, who at the time chaired the Zoning Commission and BZA. Those cooperative efforts evolved into significant changes to the Zoning Regulations, made by the Zoning Commission, and substantial additions to the Construction Codes. It was generally agreed that the above cited sections of the Construction Codes would enhance the ability of the Zoning Administrator to properly enforce the Zoning Regulations by requiring the applicant to provide clearly defined information relating to the project. The text reproduced above illustrates the importance given to obtaining accurate data about the lot, as a basis for determination of compliance with 11 DCMR.

The issue of the subdivision into four lots of record

The appellants argue that by allowing the applicant to carve four lots out of the originally assembled site, the Zoning Administrator had allowed the applicant to "skirt the (...) regulations." According to the appeal, some of the appellants live on Potomac Avenue,

in an R-4 zone, directly across from the four lots in question, which are located in the less restrictive zone C-2-A. It is not unusual for residents in zones that adjoin less restrictive zones to feel unfairly impacted by potentially more dense development next to their properties. Such zone boundary concerns are a reality in many areas of the city. The reality of the Boys Town development, however, is exactly the opposite.

First, one must recognize that the lot subdivision that preceded the submission of the four building permit applications in question was done in full observance of the Zoning Regulations and in particular of §101.6. From the point of view of the oversight role of the BZA, the appropriateness of the subdivision is the only fact that is relevant to the matter of the creation of the four record lots.

The appellants argue that the applicant subdivided the site into four lots of record to circumvent Zoning Regulations controls. The opposite is exactly true. In reality, the applicant is required by the City to subdivide and create one lot of record for each separate building it proposes to build, as a condition to file for the respective building permits. This has been a standard requirement of the Zoning Division of DCRA for as long as I can remember. If the Zoning Administrator did not require a separate lot of record for each new structure, it would be impossible to enforce minimum lot sizes and minimum lot widths and it would be possible to build on zoned land in excess of allowable densities.

Although the BZA should limit its analysis of the actions of the Zoning Administrator to the technical aspects of the Zoning Administrator's decision, it is worth reviewing what Boys Town is doing for the neighborhood. In the case of square 1045, Father Flanagan's Boys Home opted for a low impact development policy. The site occupied by the four lots could have been subdivided, legally and as a matter of right, into a much higher number of lots. The part of square 1045 where lots 134, 135, 136 and 137 are located is zoned C-2-A and the regulations do not impose a minimum lot size nor a minimum lot width in this zone.

Let us assume for a moment that the site was owned by a private residential developer instead. For the sake of argument, let us also assume that this developer is a reasonably conciliatory person and he is sensitive to the fact that his C-2-A land fronts on an R-4 zone, so he agrees to develop the land in a manner that is neutral in relation to the neighbors across the street. This private developer who volunteers to develop his land as if it were in the more restrictive R-4 zone, can subdivide his 29,188 square feet of land into 16 lots. Each lot would be approximately 1,824 square feet, with a width of at least 19.65 ft, and the developer could have built 16 row houses on the site. Such a matter-of-right row house development would have resulted in a *"concentration of population"* and *"overcrowding of land"* four times greater than the four youth residential facilities of the Boys Town development. It is natural to expect that the vehicular traffic generated by those 16 row houses would have been much higher than what the eight new adult residents will generate. Boys Town is arguably more in harmony with the general intent of the Zoning Regulations than the alternative matter-of-right row house development.

Inasmuch as the Zoning Regulations are intended to "*prevent undue concentration of population and the overcrowding of land*" a quantitative analysis of the result of the Boys Town development is pertinent. The average lot size of the four lots of record is 7,297 square feet, 46% larger than what would have been required if the land were zoned R-1-B. The density of single-family dwelling development that a zone R-1-B would have allowed on a site of this size, would be 68.5% higher than proposed by Father Flanagan's Boys Home. If we took the residential zone across Potomac Avenue (zone R-4) as the yardstick, the lots created by the applicant are, in average, 305% larger than what would have been required in zone R-4. In other words, the proposed density is only 25% of what the zone across the street allows.

The flawed argument of the common ownership and simultaneous development

The Appellant's argument that the Zoning Administrator erred in not recognizing that the same developer had purchased the land of the four lots at the same time and was developing them simultaneously is both legally flawed and logically wrong. The courts have recognized that zoning goes with the land, not with the ownership of the land. The Zoning Administrator was, therefore, correct in disregarding the common ownership of the four lots, as has always been done in the enforcement of the Zoning Regulations.

The argument that an allowable matter-of-right use without exclusionary conditions (such as an exclusion radius) next to another identical allowable use should be considered cumulatively defies logic and subverts the very foundation of the Zoning Regulations. Transported to the fairly common scenario of various single-family dwellings, each in its own 7,500 square-foot lot, in an R-1-A zone, developed by a single developer, the same argument would result in having to consider such a development as a thinly disguised apartment building complex, with plans "architecturally contrived" to skirt the regulations. This argument would take us into the realm of never ending nonsense.

The flawed argument of common management and organization

The Appellant's argument that the Zoning Administrator erred in not recognizing that the four structures should be considered as a single facility. The Appellant's arguments are twofold: (a) the four facilities are centrally managed by Father Flanagan's Boys Home; and (b) they operate in accordance with a uniform set of employees, programs and administrative system. Both these arguments are irrelevant for the administration of the Zoning Regulations.

Again, carrying these arguments to their ultimate consequences, we would draw the conclusion that a cluster of office buildings in the District of Columbia, centrally managed by the same company (which probably would operate them under a single administrative system, using a single set of employees and in accordance with a uniform set of programs) would have to be considered a single facility from the point of view of Zoning. Some of those buildings might be located so as to be eligible to receive TDRs. Being a single

facility, the other buildings would also be eligible to receive the TDRs. This absurd conclusion is the natural corollary to an absurd premise.

On another scenario, a large supermarket chain already established in the District will likely operate all of their facilities centrally, with the same administrative system, using a single set of employees and in accordance with a uniform set of programs. Following the same flawed argument, all of its sites should be considered a single facility. Furthermore, opening a new store should not require Zoning approval because the new site would also be part of the same existing single facility. Or, conversely, opening one new store would require reevaluation of all the existing scattered sites, because the new store would change the single facility.

The same bizarre conclusion could be drawn in relation to the Boys Town. The Sargent Road facility was approved by BZA. It is managed centrally by Father Flanagan's Boys Home, and it also operates in accordance with the same uniform set of employees, programs and administrative system. Therefore, according to the Appellant's flawed argument, the Sargent Road site and the Potomac Avenue site must be a single facility.

These conclusions are such an aberration that the argument behind them has to be repudiated by BZA. Entertaining such far-fetched theories, that yield unnatural results, does not serve any useful purpose: it erodes the fundamental role of BZA, diverts BZA's attention from real zoning issues that are important for the community and wastes city and private funds at a time when all surrounding jurisdictions emphasize conservation of means and economic recovery.

The pseudo-precedent of the Boys Town at Sargent Road

Finally, the Appellant notes that even the existing Boys Town facility at 4801 Sargent Road was permitted only after BZA review, as a special exception. Five important points distinguish the two cases: (a) the Sargent Road facility is located in a more restrictive zoning district, R-2, than the Potomac Avenue homes; (b) the Sargent Road facility operated with one larger facility for short-term residents and one youth home for six residents, on a single lot of record and was originally approved as a special exception; (c) the Sargent Road facility was expanded, on a single lot of record, to add to a use approved pursuant to a special exception three more youth residential homes, increasing the capacity of the lot to a total of 44 youth residents; (d) the Sargent Road facility has one facility that houses 20 persons; and (e) the Sargent Road facility was permitted before the 1993 Zoning Commission Order Nr. 725 which amended the Zoning Regulations and added §201.1(n), bringing the Zoning Regulations in compliance with provisions of the federal Fair Housing Amendments Act and . Drawing a parallel between the two cases is, therefore, inappropriate from a regulatory point of view.

November 28, 2001

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16531 of Father Flanagan's Boys Town of Washington, pursuant to 11 DCMR § 3104.1 for a special exception for the construction of four youth residential care buildings under Section 303, each housing not more than six persons, and an addition to an administrative building; or, in the alternative, the construction of four youth residential care buildings, each housing not more than six persons, and the conversion of the existing residential unit into administrative use in the R-2 District at premises 4801 Sargent Road, N.E. (Square 3977, Lot 811).

HEARING DATES: January 19, 2000; February 23, 2000

DECISION DATES: April 5, 2000; April 12, 2000; October 3, 2000

DECISION AND ORDER

PRELIMINARY MATTERS:

Applicant. The applicant in this case is Father Flanagan's Boys Town of Washington (Boys Town), a subsidiary of Boys Town USA, the owner of the property that is the subject of the application. Boys Town USA is a nonprofit, nonsectarian organization serving troubled boys and girls in nine states. It is the family and community-based extension of Father Flanagan's Boys Town, founded in 1917 in Omaha, Nebraska. The applicant is represented in these proceedings by ShawPittman.

Application. Boys Town filed an application pursuant to 11 DCMR § 3104.1 with the Board of Zoning Adjustment on October 29, 1999, for a special exception under Section 303 of the Zoning Regulations to construct four detached youth residential care home building units, each housing not more than six youths, and to convert the existing youth residential care building to administrative use or, alternatively, to construct an addition to the existing administrative building. By the time of the hearing, Boys Town had settled on the proposed site plan identified in the application as "Alternative C." With respect to the administrative uses, Boys Town no longer sought approval in the alternative, but rather sought approval for both the conversion of the existing building and the construction of the addition.

The zoning relief requested in the application was self-certified pursuant to 11 DCMR § 3113.2. Due to concerns that 11 DCMR § 303.1 authorizes special exception relief for youth residential care homes for 9 to 15 persons, while Boys Town proposed increasing the total number of persons approved for its existing youth residential care home on a single lot from 15 to 24, the Board requested the Zoning Administrator to review the application. The Zoning

Administrator concluded that Boys Town had sought complete and proper relief, since each proposed home would house not more than six youths. If the subject property had been subdivided so that each home was on a separate lot, each of the four homes could have been used as a youth residential care home as a matter of right. *See* 11 DCMR § 300.3. The Zoning Administrator also noted that in adopting the community-based residential facilities regulations, the Zoning Commission had endorsed the policy of encouraging smaller facilities to lessen their impact on, and to increase their compatibility with, neighboring properties and to provide alternatives to institutional settings. *See* Ex. 62. Accordingly, the Board processed the application as a special exception rather than a variance.

Notice of Application and Notice of Hearing. By memoranda dated November 3, 1999, the Office of Zoning advised the Office of Planning, the Zoning Administrator, the Department of Corrections, the Department of Public Works, and Advisory Neighborhood Commission (ANC) 5A, the ANC for the area within which the subject property is located, of the application.

The Board scheduled a hearing on the application for January 19, 2000. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 5A a letter dated December 9, 1999, providing notice of hearing. Notice of hearing was also published in the *D.C. Register* on December 10, 1999, at 46 DCR 10,041. The applicant's affidavits of posting and maintenance indicate that a zoning poster was placed and maintained in front of the subject property in plain view of the public beginning on January 3, 2000, and again on February 7, 2000.

On January 4, 2000, ANC 5A submitted a written request that the hearing be postponed to allow for community meetings, a public meeting of the ANC, and preparation of the ANC's report. The Board granted the ANC's request at the Board's January 19th hearing and publicly announced the continuation of the hearing to February 23, 2000.

Applicant's Case. The applicant presented testimony from Constance Washington, Site Director, Boys Town; Amy Weinstein, Project Architect, Weinstein Associates Architects; and Tim Riordan, Civil Engineer, A. Morton Thomas and Associates, Inc.

Public Agency Reports. The Department of Public Works (DPW) submitted a report dated January 13, 2000, Exhibit 26, finding the parking to be provided by Boys Town sufficient to accommodate the proposed increase in the number of youth residents, the proposed increase in staff, and the visitors likely to come to the facility. Finding little or no measurable impact on the transportation system in the area, DPW supported the application.

ANC Report. In its hearing report dated February 22, 2000, the ANC recommended that the Board deny the application until such time as Boys Town has addressed water drainage problems associated with the property. The report also expressed concern whether there was proper supervision of the youth residents, given the number of police calls for service. The ANC complained that the applicant had failed to abide by conditions in the order in Application No. 15805 approving the existing Boys Town facilities that require Boys Town to establish an advisory committee to meet quarterly and to report to the ANC annually.

The ANC's final report dated September 19, 2000, recommends that the Board deny the application for the following reasons: As of the date of the report, (1) The applicant failed to meet the Board's requirement stated at its April 12, 2000, decision meeting that all storm water runoff controls not directly associated with the proposed new construction be installed and operating; (2) While Boys Town took some measures to reduce noise from the emergency generator and cooling tower, the noise continues to disturb nearby property owners; (3) While Boys Town established a community liaison committee, the committee does not have proper rules of procedure or clearly defined representation of the community; and (4) Although the site director presented a written security plan to the community liaison committee, she did not coordinate the plan with either the ANC or the Commander of the 5th District Police Precinct.

Persons in Support of the Application. Raymond Dickey, the ANC single member district commissioner for the area within which the subject property is located, submitted written and oral comments supporting the application on the condition that community concerns relating to water drainage and noise be resolved.

The North Michigan Park Civic Association, which had been assured by Boys Town that a storm water drainage system would be installed on the north side of the property, voted at its February 2, 2000, meeting to support the application. The Queens Chapel Civic Association, Inc., voted at its February 14, 2000, meeting to approve the Boys Town proposal for expansion on the condition that Boys Town and DPW coordinate on completing the repairs necessary to satisfy the community's environmental concerns.

Persons in Opposition to the Application. Edward D. Lewis; James E. Glascow; Carmen Gilmore Scott; Cynthia Reid, chairperson of Concerned Neighbors in North Michigan Park; Mary Baird, ANC 5A-06 single member district commissioner; Ethan P. Norman; and Reverend David Turner spoke in opposition to the application. They were concerned about the applicant's failure to address long-standing water drainage problems, noise, security and supervision of the youths, lack of community outreach, and failure to comply with previous requirements and commitments in these regards.

Ms. Scott and Mr. Glasgow also submitted letters to the Board detailing their water drainage and noise concerns. In addition, over 60 individuals submitted forms to the Board, approximately half of which requested the Board to defer approving the application pending the applicant's resolution of existing water drainage and security concerns, while the other half indicated that the application should be denied based on drainage and security concerns.

Closing of the Record. The record was closed at the conclusion of the public hearing on February 23, 2000, except for specific materials that the Board requested from the applicant, Concerned Citizens of North Michigan Park, and the Zoning Administrator. On April 5, 2000, the Board continued its scheduled decision meeting to April 12, 2000, to allow the Zoning Administrator time to complete a written review of the application. The Board requested additional reports from the applicant and the ANC at its April 12th decision meeting.

Decision Meeting. On April 12, 2000, the Board deferred making a decision on the application for six months in order to afford the applicant an opportunity to resolve community

concerns. Voting 3 to 0, (Sheila Cross Reid, Anne M. Renshaw, and Robert N. Sockwell, to defer the final decision on the application; Kwasi Holman and Rodney L. Moulden, not present, not voting), the Board required the applicant to establish and convene an advisory community liaison committee, to meet at least twice prior to September 20, 2000; to install and have operational all storm water runoff controls not directly associated with the new construction; to install noise abatement controls for the emergency generator and cooling tower; and to develop a security plan that meets with the approval of the neighbors and the commander of the area's police precinct. By September 20th, the applicant and ANC 5A were to inform the Board in writing on how these outstanding issues had been resolved.

The Board scheduled a decision meeting for October 3, 2000, to review the applicant's and the ANC's reports and to decide the case. At the October 3rd decision meeting, voting 5 – 0, the Board approved the application, subject to conditions.

FINDINGS OF FACT

The Subject Property and the Surrounding Area

1. The property that is the subject of this application is located at 4801 Sargent Road, N.E. (Square 3977, Lot 811), in the North Michigan Park community. It is in an R-2 Zone District.

2. The property consists of approximately 526,310 square feet (12.1 acres) of land. It is bounded on the west by Sargent Road. On the northern boundary, there is a church property and a public alley and to the north of that are the Delafield Street residences and the North Michigan Park and Recreation Center. To the east and the south is St. Anselm's School and Abbey. There are also a number of homes to the south on 13th Place, a cul-de-sac off of South Dakota Avenue.

3. The surrounding area is characterized by low-density residential development and institutional uses.

4. The property is currently improved with two main buildings and two ancillary structures (an enclosed swimming pool that is in a state of disrepair and a carport).

5. From 1927 to 1993, the property was the site of St. Gertrude's School and Development Center, a 24-hour care and educational facility for up to 50 mentally and emotionally handicapped children. St. Gertrude's received two special exceptions for improvements and expansion in Application Nos. 9208 and 12530. St. Gertrude's ceased operations at the end of the 1992-1993 school year and sold the property to Boys Town, USA.

6. On June 2, 1993, in Application No. 15805, the Board granted Boys Town, USA, special exception relief to establish Father Flanagan's Boys Town of Washington on the property, a long-term youth residential care home for 15 abused and neglected children, age 12 to 17 years, and an emergency shelter for up to 20 abused and neglected children, age 12 to 17 years.

The Proposed Structures and Use

7. The subject property currently consists of one youth residential care home comprised of one residential building housing six youths and an emergency shelter housing a maximum of 20 youths. Although authorized to house up to 15 persons in the youth residential care home, the applicant has limited the home to six youths due to physical space limitations and the nature of its program.

8. The applicant proposes the construction of four detached youth residential care home building units, each housing not more than six persons in a family-style setting, in the approximate center of the property; the conversion of the existing youth residential care home into administrative use; and an addition to the existing administrative building, a one-story training room for the applicant's parent training program.

9. The applicant would demolish a group of sheds, the carport, and the enclosed pool. The applicant would also remove an existing basketball court that had been the subject of noise complaints and replace it with free-standing basketball areas near the proposed homes.

10. The existing parking lot would be expanded and directionally down lit. The applicant would also add driveway and site lighting, to consist of residential-grade street-type lighting.

11. The long-term residential care program is designed to help abused and neglected children put their lives back together through a program of responsibility, nurturing, and love. The applicant would provide foster care in a structured, secure home-life atmosphere for youths who want help and who function within the normal range of intelligence. The average age upon admission is expected to be 14 years, with the average length of stay expected to be 18 months.

12. Upon admission into the long-term residential care program, Boys Town explains its rules to each youth. Boys Town provides each youth with an individualized treatment program designed to change behaviors by teaching appropriate skills in a family-style setting. The ultimate treatment goal is the development of skills that will allow the youth to be reunited with his or her family, if possible, or to live independently or to pursue a college education at age 18.

13. The physical environment of the long-term residential care home or "family home" would mirror a middle-class home in design, décor, and atmosphere.

14. The primary staff in the "family home" would be a married couple, called "family teachers," who would reside in the home and function as parents. Once selected, family teachers must successfully complete an intensive training program. The family teachers would be assisted by full-time and part-time assistant family teachers, a program coordinator, and the site director, who would oversee the operation of the program. The staff-to-youth ratio in each of the youth residential care home building units would be one to two, allowing for close supervision.

15. Food, clothing, and other essentials would be purchased in the community in the same manner as goods and services are purchased by other families. Meals would be prepared and consumed family-style. House-keeping would be a family responsibility.

16. Boys Town staff receive extensive and continuing training on responding to "significant events," including emotional crises and disruptive behavior. In the youth residential care home, the family teachers are primarily responsible for responding to significant events.

Number of Youth Residents

17. The application requests a small increase in the number of youths housed in the previously approved Boys Town youth residential care home, from 15 to 24. A maximum of six youths would be housed in each of the four proposed youth residential care home building units.

Off-Street Parking

18. None of the youth residents would have automobiles. There would be 56 to 60 employees; however, due to the 24-hour nature of the operations, not more than 30 employees would be on the site at any given time.

19. Visitors to the site are expected to be family members and counselors. The youths in the youth residential care home are expected to receive an average of two such visits per month.

20. Delivery vehicles would be limited to the delivery of office supplies, approximately six times a year. Service vehicles would be limited to those maintenance workers who would visit the site on an as-needed basis.

21. The applicant plans to expand the existing parking lot, which currently provides 23 spaces, and to construct two parking spaces adjacent to each of the proposed homes, for a total of 45 on-site parking spaces.

22. The open space and wooded areas on the property provide buffering and screening for the parking areas.

23. Based on the above, the Board finds that there is adequate, appropriately-located, and screened off-street parking to provide for the needs of the occupants, employees, and visitors to the facility.

Compliance with Applicable Code and Licensing Requirements

24. Both the existing youth residential care home and the emergency shelter are properly licensed and staffed, with full-time 24-hour attendants.

25. The applicant has sufficient staff on the premises to attend to the physical, psychological, and social needs of the children.

26. The Board finds that the proposed homes are expected to meet all applicable code and licensing requirements.

Impacts on the Neighborhood from Traffic, Noise, Operations, and Number of Similar Facilities in the Area

27. Traffic. The existing facilities do not adversely affect traffic conditions in the neighborhood. Given the small increase in the number of staff and in the number of visitors likely to come to the proposed facility, there is no evidence that the facility would adversely impact traffic conditions in the neighborhood.

28. Noise. By the time of the February 23, 2000, hearing, the applicant had removed an outdoor basketball hoop that was too close to neighboring residences and had caused adverse noise impacts.

29. The existing facilities have an emergency generator and a large cooling tower that produce noise that disturbs nearby property owners.

30. As of the Board's October 3, 2000, decision meeting, the applicant had obtained a building permit to enclose the emergency generator with a sound attenuation shed. This prefabricated shed will provide a decibel attenuation of 40Db, the maximum protection available. The applicant anticipated that this noise abatement project would be complete and fully operational by the end of October 2000.

31. In addition, the applicant added a new switching device to the cooling tower that lowers the level of noise produced when the cooling tower turns on. The existing enclosure around the cooling tower is being heightened and improved. The existing brick wall will be extended to hide the equipment from the north. The wall will also be increased in height with an exterior insulation finishing system and acoustical batts will be placed on the inside face of the wall. These measures are expected to significantly reduce the noise produced by the cooling tower equipment.

32. Operations - Security and Supervision of Youths. Since the long-term residential care program serves abused and neglected youth, the primary security concern presented by the application involves youths who would abscond from the home. Nearly all of the police service calls at the existing Boys Town facilities were in response to reports of missing youths, many of which resulted from youths who did not return to the facilities on time. Further, the majority of police service calls were in response to incidents involving youths housed in the emergency shelter, not the youth residential care home. Only a small number of the police service calls were in response to incidents involving juvenile delinquency.

33. Prior to the Board's October 3, 2000, decision meeting, the applicant created a Safety (Security) Plan in consultation with the 5th District of the Metropolitan Police Department and AccuTech Systems, Inc., a security consulting firm. The applicant provided a copy of the Safety Plan to Timothy Thomas, the ANC Commissioner for the affected single member district; the

North Michigan Park Civic Association; The Concerned Neighbors of North Michigan Park; Queens Chapel Terrace Civic Association; former ANC 5A Commissioner Raymond Dickey; and the advisory community liaison committee.

34. The draft Safety Plan addresses the community's security and safety-related concerns. It covers the intake process, monitoring of youth, intervention strategies, staff training, facilities equipment, and reporting to the advisory community liaison committee.

35. The Board finds that the applicant's close supervision of the youth and implementation of the Safety Plan would mitigate and prevent adverse security impacts from facility operations on the surrounding neighborhood.

36. Operations - Community Outreach and Compliance with Zoning Orders. Boys Town had failed to comply with the condition in the Board's order in Application No. 15805 requiring the establishment of a community liaison committee. Just prior to the hearing on this application, Boys Town had begun the process of establishing such a committee. Since February 2000, Boys Town has convened the committee 12 times to address issues that have arisen regarding Boys Town's operations.

37. In addition, Boys Town prepared reports on August 18 and September 20, 2000, focusing on the water runoff, noise abatement, community liaison committee, and security issues that are of concern to the neighborhood. Boys Town distributed these reports through the mail and by posting them in the public library and on the Internet through a Ward 5 e-group. Boys Town will continue to prepare and distribute these reports on a quarterly basis to allow members of the community to keep informed about issues involving Boys Town's use of the property.

38. Finally, Father Val Peter, the Executive Director of Father Flanagan's Boys Home in Omaha, Nebraska, has adopted an organization-wide policy that individual site directors must be responsible for undertaking due diligence to fulfill any conditions placed on their site by local zoning authorities and for passing on these obligations to their successors in office.

39. Other Nearby Properties Containing Community-Based Residential Facilities. In its previous order in Application No. 15805 approving the Boys Town emergency shelter and youth residential care home, the Board determined that the cumulative effect of locating the two facilities in the same square and within 500 feet of each other would not adversely affect the neighborhood because of traffic, noise, or operations. As discussed above, the small increase in population requested in this application, from 15 to 24 youths, to be divided among the four detached homes, would not result in adverse impacts on the neighborhood because of traffic, noise, or operations. The Board therefore finds that its previous determination regarding the cumulative effects of the two facilities remains applicable.

Harmony with the Zoning Regulations and Map

40. The allowable lot occupancy in an R-2 District is 40 percent. With the proposed construction, the total lot occupancy would amount to five percent.

41. The minimum rear yard requirement is 20 feet. With the proposed construction, the minimum rear yard would be 190 feet.

42. The minimum side yard requirement is eight feet. With the proposed construction, the minimum side yard would be 40 feet.

Other Impacts on the Use of Neighboring Property

43. Water Drainage. There is a serious water drainage problem in the neighborhood that is partly attributable to surface water runoff from the applicant's property. Several homes located just north of the applicant's property have suffered water damage, including wet basements, cracked pavement, soil erosion, wet and soggy yards, moss growth, foul odors, and the accumulation of sludge. The lack of proper drainage contributes to public health and safety problems, supplying mosquito breeding grounds and aggravating wintertime ice conditions.

44. The Environmental Health Administration in the Department of Health, DPW, the Department of Consumer and Regulatory Affairs, and the Water and Sewer Authority have investigated the neighborhood drainage problem and recommended various improvements, a number of which are beyond the scope of this Board's jurisdiction.

45. According to an Environmental Health Administration report prepared after a January 7, 2000, field visit, a high groundwater table, underground springs, and the presence of clayey and unstable soils in the area are the probable cause of the drainage problems. Drainage problems have been ongoing since the mid-to late 1970's, but worsened after St. Gertrude's permitted the subject property to be used as a fill site for soils from the excavation of the Metrorail green line tunnel and stations.

46. The applicant submitted soil data from Schnabel Engineering and an accompanying memorandum from the civil engineering firm, A. Morton Thomas and Associates, showing that soil in the fill area on the subject property is "normal" for fill material. The engineer's report also states that data from four soil borings in the fill area suggest that the water table in the fill area did not rise after the fill was compacted.

47. The applicant acknowledged, and the Board finds, that existing storm water runoff from the Boys Town property is partially responsible for the water drainage problems in the neighborhood.

48. The Board finds that construction of the applicant's proposed storm water management improvements is likely to alleviate the runoff from the Boys Town property to the neighboring properties. In order to proceed with these improvements, Boys Town secured building permits and a public space permit that authorize the construction of a retaining wall and french drain along the edge of the Boys Town property, as well as repairs in the alley area on the north side of the property. Boys Town encountered delays in the permitting and construction process; however, by the time of the Board's October 3, 2000, decision meeting, its general contractor

had started work on the site and intended to proceed diligently to complete the work as soon as possible.

49. The new construction proposed in this application is not likely to create additional water problems due to the de minimis excavation needed for the buildings and the installation of new storm water runoff controls. In addition, all drainage, storm water management, and sediment control issues relating to the new construction will be addressed by the appropriate District of Columbia agencies during the building permit process.

50. Tree Damage. In response to neighborhood complaints about the overgrowth of trees along the northern property line, Boys Town trimmed the trees and committed to monitor their growth and to take appropriate steps to protect against property damage caused by any overgrowth.

CONCLUSIONS OF LAW AND OPINION

The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code § 5-424(g)(2)), to grant special exceptions as provided in the Zoning Regulations. Father Flanagan's Boys Town of Washington applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR § 303 to allow the construction and use of four youth residential care home building units, each housing not more than six persons, the conversion of the existing home into administrative use, and the construction of an addition to the existing administrative building. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met.

To meet its burden of proof under Subsection 3104.1, the applicant must demonstrate that the proposed youth residential care home meets the specific conditions listed in the pertinent subsections of Section 303; that it would be in harmony with the general purpose and intent of the Zoning Regulations and Maps; and that it would not adversely affect the use of the neighboring property in accordance with the Zoning Regulations and Maps. Subsection 303.4 requires adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility. Subsection 303.5 provides that the proposed facility must meet all applicable code and licensing requirements. Under Subsection 303.6, the facility may not adversely impact the neighborhood due to traffic, noise, operations, or the number of similar facilities in the area. Under Subsection 303.8, the Board may approve more than one community-based residential facility in a square or within 500 feet of each other only if the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations.

The Board's discretion in reviewing an application for a special exception for a youth residential care home is limited to the determination of whether an applicant has met the requirements of Sections 303 and 3104.1. If the applicant meets its burden of proof, the Board must ordinarily grant the application. *See The Washington Ethical Society v. District of Columbia Bd. of Zoning Adjustment,* 421 A.2d 14, 18 (D.C. 1980).

Further, the Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; D.C. Code § 1-261(d)) to give great weight to the recommendations of the ANC for the area within which the subject property is located. Under Section 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135, 47 DCR 5519 (2000)) (to be codified at D.C. Code § 1-261(d)(3)(a)), the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances, articulating specific findings and conclusions with respect to each of the ANC's issues and concerns. The Board has carefully considered the ANC's reports; however, for the reasons stated below, the Board does not find the ANC's final recommendation to deny the application persuasive. By the time of the Board's October 3, 2000, decision meeting, the applicant had made substantial progress in correcting existing problems related to storm water runoff, noise, security and supervision of youth, and community outreach. While the applicant encountered some delays in completing the measures required by the Board, the Board finds that the applicant proceeded diligently and in good faith, such that the application may be approved at this time, subject to conditions.

The Specific Requirements of Section 303

With respect to the specific requirements of Section 303, the Board concludes as follows. First, the Board concludes that the applicant would provide adequate, appropriately located, and screened off-street parking to provide for the needs of residents, employees, and visitors to the facility. The proposed youth residential care facility would house 24 youths and the emergency shelter houses up to 20 youths, for a total of 44 youths. Under the schedule of required parking spaces in Subsection 2101.1, the number of parking spaces required for a community-based residential facility in an R-2 District housing 16 or more persons is subject to determination by the Board. Since the residents do not have vehicles, the staff work in shifts, and there are relatively few visitors to facilities, the Board concludes that the 45 off-street parking spaces to be provided by the applicant are adequate in number. As previously found, they are appropriately located and screened.

Second, based upon findings numbered 24 – 26, the Board concludes that the proposed facility, given its staffing levels and operational history, is likely to meet all applicable code and licensing requirements.

Third, as detailed in the above findings of fact, the Board concludes that the applicant would not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area. The Board further concludes that the cumulative effect of the emergency shelter and the proposed youth residential care home building units would not have an adverse impact on the neighborhood because of traffic, noise, or operations.

Traffic. Based upon finding number 27, the Board concludes that the proposed facility would not adversely affect traffic conditions in the neighborhood.

Noise. The ANC and the neighboring property owners presented evidence of adverse noise impacts. As a result of this application and hearing process, the applicant has and will be taking steps to correct and prevent noise disturbance, including replacing an inappropriately located outdoor basketball court with more suitable and buffered basketball hoops, enclosing the emergency generator with a sound attenuation shed, and installing a new switching device for and improving the existing enclosure around the cooling tower. The applicant had substantially completed these tasks by the time of the Board's October 3, 2000, decision meeting. The completion of these tasks should address the ANC's concerns that noise from the emergency generator and cooling tower continues to disturb nearby property owners.

Operations. A primary concern relating to operations involves security and the supervision of youth. The Board found that nearly all police service calls to the facility involve missing or tardy youths, not incidents of juvenile delinquency. The applicant has prepared a draft safety (security) plan in consultation with the police department and the affected ANC single member district commissioner, among others. To address the ANC's concern that the applicant did not coordinate with the full ANC or the commander of the 5th District Police Precinct in preparing the plan, the Board is requiring the applicant to submit the draft plan to ANC 5A, not just the single member district, and to the commander of the 5th District Police Precinct for review and recommendations. The Board concludes that the preparation and implementation of the final safety plan is likely to reduce and prevent adverse security impacts on the neighborhood resulting from facility operations.

The applicant's history of lack of community outreach and failure to comply with conditions in the Board's previous order of approval in Application No. 15805 are also of major concern. With the filing of the instant application, Boys Town began the difficult process of rebuilding community relations and coming into compliance with previous requirements and commitments relating to its zoning approval. An effective community outreach program and the exercise of due diligence in complying with zoning orders, as required by the new directive from Father Flanagan's Boys Home, will help to assure that facility operations do not adversely affect the neighborhood. While the Board concurs with the ANC that the advisory community liaison committee would benefit from having clearly defined community representation and rules of procedure, the Board does not agree that the application should be denied on the grounds that these elements are presently lacking. The Board concludes that in the past year, the applicant has made substantial progress in the areas of community outreach and compliance, such that facility operations in this regard are not likely to adversely impact the neighborhood.

Cumulative Impacts. Given the small increase in the number of abused and neglected youths and the fact that they would be housed in four detached family-style homes, the Board concludes that there would be no adverse impacts resulting from the number of similar facilities in the area or from the presence of the Boys Town emergency shelter within the same square and within 500 feet.

The General Requirements of Section 3104.1

Finally, the Board concludes that this application meets the general requirements of Subsection 3104.1. First, the R-2 District is a low-density residential zone that permits youth residential care homes as a matter of right for up to eight persons. Larger homes, up to 15 persons, are permitted if approved by the Board as a special exception. This special exception will allow Boys Town to construct four homes to accommodate 24 youths; however, each individual home will only accommodate six youths, which, if the property had been subdivided, could have been constructed and used under 11 DCMR § 300.3 as youth residential care homes as a matter of right. Further, the property has been used since the 1920's to provide care and assistance for children, and its continued use for such purposes is appropriate. The proposed construction would also comply with the area restrictions of the Zoning Regulations. Therefore, the Board concludes that the proposed youth residential care home is in harmony with the general purpose and intent of the Zoning Regulations and Maps.

Second, in addition to its conclusions relating to parking, traffic, noise, operations, and the cumulative impacts of similar and nearby facilities, the Board concludes that the applicant has addressed, and is required to continue to address, storm water runoff and the overgrowth of trees on its property, both of which have adversely affected neighboring property. By the time of the Board's October 3, 2000, decision meeting, the applicant had made substantial progress in completing the installation of storm water runoff controls to address the existing drainage problem. The Board does not concur with the ANC that the application should be denied on the basis that the controls were not in place and fully operational by October 3rd, since many of the delays encountered by the applicant in constructing the improvements were outside of its control. The new construction will be subject to review and approval by the District of Columbia agencies responsible for regulating erosion control and storm water management. The Board therefore concludes that the proposed facility would not adversely affect neighboring properties.

For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby **ORDERED** that the application is **GRANTED**, subject to the following conditions:

1. The applicant shall house no more than six youths in each of four youth residential care home building units to be constructed pursuant to this order, for a maximum total of 24 youths.

2. To alleviate the existing storm water runoff problems, the applicant shall promptly complete the construction of the retaining wall and french drain along the edge of the Boys Town property as authorized in Building Permit No. B428974. The certificate of occupancy for the four new youth residential care facility building units may not issue until these improvements are complete and fully operational.

3. To alleviate the existing storm water runoff problems, the applicant shall promptly complete the storm drain repairs in the alley area as authorized in Building Permit No. B532709. The certificate of occupancy for the four new youth residential care building units may not issue until these repairs are complete and fully operational.

4. The applicant shall provide effective storm water management controls for the construction and operation of the four new homes and for the other construction approved in this order, to include the plans submitted as Exhibits F and G to the applicant's March 13, 2000, post-hearing submission, which plans and controls are subject to review and approval by the District of Columbia agencies responsible for erosion control and storm water management.

5. The applicant shall maintain in good working condition the new switching device that has been added to the cooling tower.

6. The applicant shall enclose the existing emergency generator with a prefabricated sound attenuation shed as authorized in Building Permit No. B425723.

7. The applicant shall complete the installation of and maintain the sound attenuation fence at the cooling tower and emergency generator as authorized in Building Permit No. B425062.

8. The applicant shall consult with ANC 5A, the Community Advisory Liaison Committee, and the Commander of the 5th District of the Metropolitan Police Department prior to finalizing the draft Safety Plan, and to the maximum extent feasible, incorporate their recommendations into the final plan.

9. By no later than February 28, 2001, the applicant shall finalize the draft Safety Plan. The applicant shall begin implementation of the Safety Plan immediately upon its finalization.

10. The applicant may amend the final Safety Plan from time to time as needed, following consultation with ANC 5A, the Advisory Community Liaison Committee, and the 5th District of the Metropolitan Police Department.

11. The applicant shall landscape the property and provide appropriate shrubbery for privacy and fencing.

12. The applicant shall continue to monitor the growth of trees along the property boundary lines and take all necessary or appropriate steps to protect against property damage resulting from their overgrowth.

13. The applicant shall continue to convene the Advisory Community Liaison Committee on a not less than quarterly basis to provide an ongoing dialogue between the members of the community, the ANC, and Boys Town. The Committee shall report to the ANC annually.

14. No later than the first regularly scheduled meeting of the Advisory Community Liaison Committee after the issuance of the Decision and Order in this case, the applicant shall bring before the Committee for discussion and action a proposal relating to community representation on the Committee and a proposal for rules of procedure.

Chapter 32 of the Zoning Regulations sets forth provisions with respect to enforcement and penalties for violations of the regulations. Section 3205 requires compliance with conditions in orders of the Board and provides that if a building permit or certificate of occupancy has been issued pursuant to a decision of the Board to approve a special exception, then each condition to the approval of that special exception shall be treated as a condition to the issuance of the building permit or certificate of occupancy as well. 11 DCMR § 3205.3. The failure to abide by the conditions, in whole or part, shall be grounds for the revocation of any building permit or certificates of occupancy issued pursuant to this order.

VOTE: 5 – 0 (Sheila Cross Reid, Rodney L. Moulden, Robert N. Sockwell, Anne M. Renshaw, and Kwasi Holman, to approve).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order and authorized the undersigned to execute this Decision and Order on his or her behalf.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: DEC 21 2000

UNDER 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6 OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE AND UPON ITS FILING IN THE RECORD AND SERVICE ON THE PARTIES.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

PURSUANT TO D.C. CODE § 1-2531 (1999), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANTS ARE REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. TITLE 1, CHAPTER 25 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF THE APPLICANTS TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

#16531/MS/poh

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

BZA APPLICATION NO. 16531

As Director of the Office of Zoning , I hereby certify and attest that on DEC 21 2000, a copy of the foregoing Decision and Order on BZA Application 16531 was mailed first class, postage prepaid, to each party and public agency that appeared and participated in the public hearing concerning this matter and who is listed below:

Phil T. Feola
Paul A. Tummonds, Jr.
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Washington, D.C. 20037-1128

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Advisory Neighborhood Commission 5A
Slowe School Demountable
1404 Jackson Street, N.E.
Washington, D.C. 20017

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Office of Intermodal Planning
Department of Public Works
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Washington, D.C. 20009

Honorable Vincent B. Orange
Councilmember, Ward 5
Council of the District of Columbia
441 – 4th Street, N.W., Suite 702
Washington, D.C. 20001

Michael D. Johnson, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

ATTESTED BY:

JERRILY R. KRESS, FAIA
DIRECTOR

ShawPittman

A Law Partnership Including Professional Corporations

FAX COVER PAGE

FROM: Phil T. Feola

DATE: December 22, 2000

TOTAL PAGES (INCLUDING COVER): 18

PHONE NUMBER: 202.663.8789

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