ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

February 22, 2002

VIA HAND DELIVERY

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

RECEIVED
D.C. OFFICE OF ZONING
2002 FEB 22 PM 12: 51

Re: BZA Appeal No. 16791, Intervenor's Opposition to Office of Planning Report

Dear Chairperson Griffis:

At the Board of Zoning Adjustment ("**BZA**") hearing on February 5, 2002 in the above captioned case, the Chair of the BZA indicated that the BZA intended to ask the Office of Planning ("**OP**") to file a report in this appeal and during its February 19 hearing session, the BZA asked the parties to submit their respective position on such request. On behalf of the Intervenor/Property Owner, Father Flanagan's Boys Home, we respectfully oppose this request for a report from OP because such a request is unprecedented and inappropriate.

The Home Rule Charter, which creates the authority under which the Zoning Commission and the Board of Zoning Adjustment operate, specifically directs that the Mayor of the District of Columbia shall be responsible for the interpretation and enforcement of the Zoning Regulations (see D.C. Code §5-427). By Reorganization Order No. 55, the pertinent parts of which are attached hereto as Exhibit A, the Mayor has delegated this authority to the Zoning Administrator. It has resided in this office solely and exclusively for thirty years. This authority is not shared with other agencies. It is the BZA's responsibility and the BZA's alone, to determine whether or not the Zoning Administrator made his decision in concert with the Zoning Regulations of the District of Columbia (see D.C. Code §5-424; 11DCMR 3100.2 (Zoning)). The Zoning Administrator, as noted above, is the only agency of the District government which has the authority to interpret the Zoning Regulations and it is the Board of Zoning Adjustment's charge to determine whether, or not, that interpretation is sound. It is not appropriate for other District agencies such as the Office of Planning (or any other agency) to make comment on that interpretation. The BZA's own rules do not provide for such reports or recommendations (see 11 DCMR §3117.11).

BZA
Case No. 16791
Exhibit No. 58

Board of Zoning Adjustment
District of Columbia
CASE NO.16791
EXHIBIT NO.58

We have made a cursory search of the BZA decisions involving appeals of Zoning Administrator decisions and have been unable to find a single appeal in which the BZA has entertained a report from the Office of Planning, or any other agency, in an appeal of a decision of the Zoning Administrator.

The issue before the BZA is a narrow, legal one. This appeal is not a planning issue nor a special exception, but must be determined solely on the merits on the Zoning Regulations and the Zoning Administrator's interpretation thereof. Thus, we respectfully oppose the Board's request for a report from the Office of Planning or any other agency of the District of Columbia government in this matter.

Sincerely,

Phil Feola

Martin P. Sullivan

cc: Michael McGill, Esq.

Attachment

DISTRICT OF COLUMBIA CODE

ANNOTATED

FILED
OCT 2 0 2000
CLERK
U.S. DISTRICT COURT
00CV2436

1973 EDITION

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), IN FORCE ON JANUARY 2, 1973

NOTES TO DECISIONS THROUGH DECEMBER 1972

VOLUME ONE

TITLE 1—ADMINISTRATION
TO
TITLE 17—REVIEW

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1973

C. That the Corporation Counsel and such of his assistants as he may designate in writing are hereby authorized to execute in the name of the District of Columbia any release in connection with the settlement of any claim of the District of Columbia in the following cases:

1. Where the full amount of the claim as it appears on the books of the Accounting Office has been paid; or

2. Where the full amount set forth in the original demand for payment has been paid; or

3. Where the full amount of any settlement or compromise as approved by the Commissioners has been paid; or

4. Where damaged property of the District of Columbia has been satisfactorily repaired at the expense of the party responsible for such damage.

D. That the Corporation Counsel is hereby authorized to waive any claim and release any lien arising under the provisions of Section 18 of the Public Assistance Act of 1962 (Section 3–217, D.C. Code, 1967 ed. [now 1973 ed.]) when, in his judgment, such waiver or release is appropriate.

CHANGE OF NAME

"Public Utilities Commission", wherever it appears in this order, was changed to "Public Service Commission of the District of Columbia" by Act Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21. See § 2–2418.

[The name of the Municipal Court, wherever it appears in this order, was changed to "District of Columbia Court of General Sessions" by Act July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; and subsequently changed to "Superior Court of the District of Columbia" by Act July 29, 1970, Pub. L. 91–358, § 155(a), 84 Stat. 570.]

[The name of the Municipal Court of Appeals was changed to "District of Columbia Court of Appeals" by Act July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6; and subsequently again changed to "District of Columbia Court of Appeals" by Act July 29, 1970, Pub. L. 91–358, § 155(b), 84 Stat. 570.]

REORGANIZATION ORDER NO. 51.—OFFICE OF THE CORONER

Reorganization Ord. No. 51, L.S. 4241–B, June 29, 1953, as amended July 17, 1953, and Mar. 5, 1965, was rescinded by section 3 of Commissioner's Order No. 71–16, dated Jan. 26, 1971, which also transferred all positions, personnel, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available, related to the functions assigned to the Office of the Coroner, to the Office of the Chief Medical Examiner. Commissioner's Order No. 71–16 is set out as a note under section 11–2301.

REORGANIZATION ORDER NO. 52.—DISTRICT OF COLUMBIA POUND

Reorganization Ord. No. 52, June 30, 1953, as amended Apr. 3, 1958, combined with Reorganization Order 57, amended and redesignated as Organization Order No. 141, dated Feb. 11, 1964, and effective Feb. 11, 1964.

REORGANIZATION ORDER NO. 53.—DEPARTMENT OF HIGHWAYS AND TRAFFIC

Reorg. Ord No. 53, June 30, 1953, which established a Department of Highways and Traffic, was redesignated Organization Ord. No. 122.

REORGANIZATION ORDER NO. 54.—DEPARTMENT OF VEHICLES AND TRAFFIC

Reorg. Ord. No. 54, June 30, 1953, which established a Department of Vehicles and Traffic, was repealed May 17, 1955, by Organization Orders No. 105, 106, 107, and 108.

REORGANIZATION ORDER NO. 55.—DEPARTMENT OF LICENSES AND INSPECTIONS

[Functions as stated in Reorg. Ord. No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order (Organization Action) No. 69–96, dated Mar. 7, 1969, as amended.]

Reorganization Ord. No. 55, L.S. 4263–B, June 30, 1953, as amended Aug. 13, 1953, Dec. 17, 1953, June 30, 1954, Oct. 26, 1954, Aug. 11, 1955, Jan. 31, 1956, July 10, 1956, Oct. 2, 1956, Oct. 16, 1956, June 13, 1957, Nov. 27, 1957, July 22, 1958, June 1, 1960, Feb. 21, 1961, Nov. 7, 1961, Dec. 4, 1962, May 12, 1964, June 17, 1965, Mar. 16, 1967, and Feb. 28, 1969, ordered that:

PART I

Department of Licenses and Inspections.—There is established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Director shall have full authority over such Department and all functions and personnel assigned thereto, including the power to redelegate to other officials and employees of the Department such of the powers herein delegated as, in his judgment, are warranted in the interests of efficiency and good administration. However, the power to grant variances from the requirements of the housing code shall be limited to the Director and Deputy Director or, in their absence, the Acting Director of the Department. All authority vested in the Director shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Department of Licenses and Inspections is established for the purpose of: administering the laws enacted by Congress and the regulations for the control of construction, zoning and occupancy use, erection, maintenance and repair, inspection and removal of all buildings and their appurtenances, and electrical and mechanical equipment within the District of Columbia, excepting public buildings or premises under the control of the Federal Government; enforcing the Consumer Affairs Regulations (effective July 1, 1969); administering the D.C. Standard Weights and Measures Law [D.C. Code, § 10–101 et seq]; supervising and controlling the municipal markets and collecting annual revenue for rents and space and for wharfage at the Municipal Fish Wharf [D.C. Code, § 10–135]; administering the License Act of 1932, as amended [D.C. Code, § 47–2301 et seq.], and regulations promulgated thereunder requiring licenses of certain businesses and callings in the District of Columbia; administering the acts requiring licenses for Cooperative Associations, Credit Unions, Pawnbrokers, and Loan Brokers; administering such portions of the Acts as require licenses for: Cigarette Vending Machine Operators and Retail and Wholesale Cigarette dealers [D.C. Code, § 47–2804]; administering the portions of the Act of July 5, 1945 which require the payment of a dog tax and the issuance of a dog tag [D.C. Code, § 47–2001 et seq.]; administering the provisions relating to the licensing of peddlers and the granting of permits for the use of public space contained in the act of August 6, 1956, known as the "Presidential Inaugural Ceremonies Act [D.C. Code, §§ 1–1202, 1–1204];" administering and interpreting all laws and regulations governing housing in the District of Columbia; and proposing to the Commissioner appropriate provisions for codes and regulations relating to such housing: provided, however, that the Department of Public Health shall fully collaborate in the development and presentation to the Commissioner of such proposed provisions to the extent that they affect the public health of the community and its individual members.

PART III

Organization and functions.—There are established in the Department of Licenses and Inspections the following organizational components, responsible for the performance of the functions outlined below consistent with the purpose specified above:

A. *Office of the Director.*

1. Develops and proposes to the Board of Commissioners major policies and procedures, regulations and revisions thereto, on licensing, permit and certificate issuance, inspection, and related regulatory activities within the purview of the Department's functions, including the issuance of collateral notices in the enforcement of orders for compliance with applicable codes, regulations and statutes administered by the Department.

2. Administers and interprets all housing regulations of the District of Columbia. The Director shall in writing effect a specific delineation of responsibilities between himself and the Deputy Director, particularly in connection with development, interpretation, and enforcement of standards and regulations relating to housing.

matters for which the Department of Public Health is responsible, as outlined in Reorganization Order No. 57, as amended, the action taken shall be the same as that recommended by the Department of Public Health. All determinations relative to these matters may be appealed to the Board of Appeals and Review, and a statement to this effect shall be incorporated in all notices of unfavorable action sent to members of the public.

In cases in which renewal or transfer of licenses requires exercise of discretion and in which licenses were in effect for the year immediately preceding, may issue or transfer such licenses forthwith.

In case of renewal actions which are purely ministerial in nature, renews the permit or certificate without referral to other units of the Department or outside the Department.

When warranted, recommends to the Director the denial, revocation, or suspension of a Pawnbroker's license.

5. Recommends to the Board of Appeals and Review suspension or revocation, for good and sufficient cause, of licenses, permits, and certificates previously issued subject to such review as may be indicated by the Department Director.

6. In those instances in which an appeal is made to the Board of Appeals and Review, except where only a determination by the Department of Public Health is in question, the case will be reviewed by the Department Director or his designee before being submitted to the Board of Appeals and Review. Cases forwarded to the Board of Appeals and Review shall be fully documented so that the Board may be appraised of what has transpired prior to the appeals action, as well as the basis for the denial or proposed suspension or revocation of the license, permit, or certificate. Based upon the decision of the Board of Appeals and Review, performs the operating functions essential to denying, revoking, suspending, or restoring the license, permit, or certificate, as the case may be.

7. Inspects and controls the operations of loan companies, pawnbrokers, motor vehicle dealer sales contracts, and such other appropriate areas of business regulation as the Commissioners may prescribe.

8. Collaborates with the Office of the Collector of Taxes in developing and administering procedures relating to facilities for the collection of fees.

9. Investigates and takes necessary action to obtain compliance with the license, permit, and certificate laws and regulations (such as the Consumer Affairs Regulations (effective July 1, 1969)) enforced by this Department; furnishes expert services to other offices of the Department in non-compliance cases brought to Court; collaborates with the Office of the Corporation Counsel in representing the interests of the Department in legal matters; and provides expert testimony in court as required.

10. Acts as attorney-in-fact for licensed pawnbrokers for the purpose of receiving judicial and other processes and legal notices.

11. In the inspection and control of the operations of licensed pawnbrokers, the Chief of the License and Permit Division is authorized to require by subpena the production of books, papers, and records and the attendance, and examination under oath of all persons whomsoever whose testimony he may require relative to the loans of business of any such licensee, and he shall possess the power vested in the Commissioners by the Act of July 1, 1902 (D.C. Code, 1951 ed. [now 1973 ed.], § 1-237) to administer oaths, and he and his designated representatives are authorized to have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under a pawnbroker's license.

12. Certifies on the District of Columbia motor vehicle operator's permit issued to an applicant for a parking lot attendant's license, in the space on such permit set aside for "restrictions", the number of the license issued such applicant and its expiration date.

13. Assists retail businesses or sales finance companies in devising their installment contract and other forms to comply with the Consumer Affairs Regulations (effective July 1, 1969)

F. *Zoning Division.* The Zoning Division shall be headed by a Zoning Administrator who shall be responsible for administratively interpreting and enforcing the Zoning regulations. All authorities and powers delegated to the Zoning Administrator are delegated through the Director of Licenses and Inspections; however, appeals from zoning decisions by the Zoning Administrator which are properly appealable under the Act of June 20, 1938 to the Board of Zoning Adjustment shall be made direct to said Board of Zoning Adjustment.

The Zoning Division shall be responsible for the performance of the following specific functions:

1. Administers and enforces the Zoning Regulations of the District of Columbia.

2. Administratively interprets the Zoning Regulations and makes administrative decisions thereon. Reviews and approves subdivision proposals for compliance with the Zoning Regulations.

3. Reviews applications for building permits and for certificates of occupancy, and supervises inspections of premises, buildings and other structures in connection therewith to determine if existing or proposed structures and uses comply with the provisions of the Zoning Regulations. Approves or rejects all such applications on the basis of the Zoning Regulations.

4. Develops and furnishes the Office of the Zoning Commission, the National Capital Planning Commission, and other agencies, research and planning data accruing within the Department of Licenses and Inspections for zoning, land use, and other operational needs.

5. Upon the basis of experience in the administration and enforcement of the Zoning Regulations or upon observance of defects in them, may propose changes in the regulations and maps.

6. Prepares and maintains a register of all nonconforming uses. Inspects periodically nonconforming uses and conducts a control operation to bring about elimination of such uses under existing laws and regulations.

7. Inspects intermittently all properties in the District of Columbia to determine compliance with the Zoning Regulations and compliance with conditions imposed by the Board of Zoning Adjustment.

8. Conducts periodic instrument surveys of commercial and industrial properties to determine compliance with the standards of external effects set forth in the Zoning Regulations.

9. Establishes and maintains a zoning information office for use by the public on all matters relating to the Zoning Regulations and Maps and their administration and enforcement.

10. Upon request by the Zoning Commission or the Board of Zoning Adjustment, appears before the requesting body to present to such body facts and administrative interpretation and, on specific request, may make recommendations to assist those bodies in reaching decisions.

11. Maintains permanent and current records relative to the administration, interpretation, and enforcement of the Zoning Regulations.

12. In the enforcement of the Zoning Regulations presents facts and recommendations to the Corporation Counsel for possible prosecution in the courts, provides expert testimony as required and collaborates with the Corporation Counsel in all legal matters where the Corporation Counsel is either enforcing the zoning laws or regulations, or defending a lawsuit arising under the zoning laws or regulations, and maintains a complete record of such actions and their final disposition.

G. *Office of Consumer Affairs.*

1. Conducts studies, investigations and research with respect to retail transactions involving consumer goods and services and retail installment contracts or instruments of security arising from retail installment transactions including collection of the debt or enforcement of the security interest arising from such contracts or instruments.

2. Conducts educational programs, collects and disseminates information with respect to retail transactions in the District of Columbia as described in Paragraph 1 above.

3. Advises with other District Government agencies, when appropriate, to assure enforcement of all laws and

ShawPittman LLP

CERTIFICATE OF SERVICE

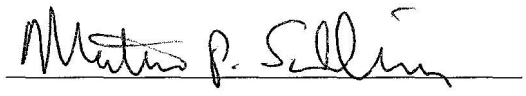
I hereby certify that on February 22, 2002, a copy of the foregoing letter was served by hand-delivery to:

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