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

Re: BZA Appeal # 16791

Dear Chairman Griffis:

As requested by the Board at the hearing on this matter held on February 12, 2002, Appellant Southeast Citizens for Smart Development, Inc. hereby provides the following discussion regarding the proposal for seeking a report from the Office of Planning (OP) on this appeal. This Board plainly has the authority to request such a report from OP and believes that such a request is warranted in this case.

First, this Board plainly has the authority to request the views of the Office of Planning in any zoning matter. The D.C. Code explicitly provides as follows:

> Nothing in this part shall be construed to prevent the Office of Planning from continuing to provide recommendations and reports to the Zoning Commission and the Board of Zoning Adjustment on any zoning case. The Office of Planning shall review and comment upon all zoning cases, and the Zoning Commission and the Board of Zoning Adjustment shall give great weight to the recommendation of the Office of Planning. *Upon request of the Zoning Commission or the Board of Zoning Adjustment, the Office of Planning shall provide recommendations, information, or technical assistance in a timely manner.*

D.C. Code § 6-623.04 (2001 ed.) (emphasis added). This provision is plain on its face, and requires OP to respond with "recommendations, information, or technical assistance in a timely manner" upon request by the Board of Zoning Adjustment. Nothing in the statute governing the authority of the Board of Zoning Adjustment limits the Board's statutory authority under this section to request assistance from OP in any context, nor is there any judicial decision limiting the Board's broad authority to seek OP's views and recommendations. See D.C. Code § 6-641.07, and cases annotated therein (formerly D.C. Cod § 424, 1981 ed.)

Likewise, the fact that the BZA's Rules of Practice and Procedure only contemplate the automatic presentation of the "report and recommendation" from the Office of Planning in the context of applications (see 11 DCMR § 3117.11)

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cannot be construed as limiting or repealing the BZA's statutory authority to request additional assistance from OP. To the contrary, the intent of D.C. Code § 6-623.04 is plainly to expand, not limit, the BZA's access to the views and expertise of the Office of Planning. The regulatory requirement for the report and recommendation of the Office of Planning in the context of applications predated the enactment of D.C. Code § 6-623.04, which became effective in 1991 as part of the Office of Zoning Independence Act of 1990 (D.C. Law 8-163, 37 D.C. Register 4676 (Sept. 20, 1990). The 1990 law indicates an intent *not* to limit in any way OP's obligation to continue to provide "reports and recommendations" in the context of applications, by specifically stating that "[n]othing in this part shall be construed to prevent the Office of Planning from continuing to provide recommendations and reports to the Zoning Commission and the Board of Zoning Adjustment on any zoning case." D.C. Code § 6-623.04. But, in addition to these reports and recommendations, the 1990 law specifically granted the BZA authority to request that OP provide "recommendations, information, or technical assistance." D.C. Code § 6-623.04. Thus, the statute confirms that OP will continue to provide the reports and recommendations under the existing BZA regulations, and gives the BZA explicit authority to request additional assistance and guidance from OP at any time and in any context.

The view of the Intervenor/property owner that D.C. Code § 5-427 (1981 ed.) (now re-codified as D.C. Code § 6-641.10(a)) somehow limits the BZA's authority to request the views of the OP is simply wrong. Requesting the views and assistance of OP in the context of an appeal of a building permit does not in any way undercut the statutory authority of the Zoning Administrator "to enforce the [zoning] regulations." D.C. Code § 6-641.10(a) (2001 ed.) (formerly D.C. Code § 5-427). Nor is there anything in Reorganization Order No. 55 that undercuts the statutory role of the Office of Planning to provide assistance to the BZA in any zoning matter, including appeals from determinations of the Zoning Administrator, simply because the Zoning Administrator is charged with making an initial interpretation of the zoning regulations. Indeed, the position of Boys Home goes too far, since if it is correct, OP would likewise be precluded from providing a report and recommendation in applications for special exceptions or variances, which may also be based on an interpretation by the Zoning Administrator. See, e.g. Concerned Citizens of Brentwood v. DCRA. 634 A.2d 1234, 1241 n. 14 (D.C. App. 1993) (After considering report of OP in variance application proceeding, BZA overruled Zoning Administrator's interpretation of zoning regulations that building permit application required a variance).[1]

Second, Appellant strongly believes that OP would provide valuable assistance to this Board in providing neutral, nonpartisan expert views on many of the questions of first impression concerning the interpretation of the D.C. zoning regulations raised by this Appeal. For example, a key issue for this Board to

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[1] Appellants are unpersuaded that there is no precedent for requests by the BZA for the views of OP in appeals, based on Intervenor's admittedly "cursory review" of BZA decisions.

resolve is whether Section 3202.3 of the Zoning Regulations bars the Zoning Administrator from considering two or more buildings on adjacent lots of record as being part of a single "facility," as the owner contends, or whether, as the Appellants contend, the zoning regulations (including Section 3202.3) are simply silent on this issue. The views of the Office of Planning will be highly instructive on this issue, as well as on the issue of whether the Zoning Administrator and this Board may (or must) look to the Comprehensive Plan in making a determination upon which the Zoning Regulations provide no specific or dispositive guidance.

Please feel free to contact me, at (202) 974-5142, if you have any questions or need any additional information.

Sincerely,



Andrea C. Ferster

cc: Phil T. Feola, Esq.
Kenan Jarboe, Chair, ANC 6B
Marie-Claire Brown, Esq.