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April 26, 2002

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

Re: Case No. 16791 Appeal; Father Flanagan's Boys Home

Dear Chairman Griffis:

Enclosed are one original and 12 copies of property owner's Draft Findings of Fact and Conclusions of Law for the above-referenced case. We have also enclosed a diskette with a copy of this document as well.

Please call us with any questions or comments.

Sincerely,

Martin Sullivan

BZA
Case No. 16791
Exhibit No. 71

Board of Zoning Adjustment
District of Columbia
CASE NO.16791
EXHIBIT NO.71

ShawPittman LLP

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2002, a copy of Draft Findings of Fact and Conclusions of Law was served by first class mail to:

Andrea Ferster, Esquire
1100 17th Street, N.W.
Washington, D.C. 20036

Toye Bello
Acting Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20002

Charlotte Parker, Esquire
Office of the Corporation Counsel
441 Fourth Street, N.W.
Room 600 South
Washington, D.C. 20001

Kenan Jarboe
Chair, ANC 6B
711 10th Street, SE
Washington, DC 20003

Martin P. Sullivan

Martin P. Sullivan, Esq.
Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037

Document #: 1237979 v.1

PROPERTY OWNER'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Appeal No. 16791 of Southeast Citizens for Smart Development, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decisions of Michael D. Johnson, Zoning Administrator, in issuing zoning approvals leading to the issuance of four building permits, each to permit the construction of a youth residential care home housing up to six children and two adults. Permit No. B438336, for 1314 Potomac Avenue, S.E., Square 1045, Lot 134; Permit No. B438337, for 1312 Potomac Avenue, S.E., Square 1045, Lot 135; Permit No. B438338, for 1310 Potomac Avenue, S.E., Square 1045, Lot 136; Permit No. B438335, for 1308 Potomac Avenue, S.E., Square 1045, Lot 137.

HEARING DATES: **December 4, 2001 and February 5, 12, 19 and 26, 2002**

DECISION DATE: **May 7, 2002**

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PROCEDURAL HISTORY:

1. This appeal ("**Appeal**") was filed on September 10, 2002, by Southeast Citizens for Smart Development Inc. ("**SCSD**") to challenge the Zoning Administrator's zoning approvals in relation to the issuance of four building permits, each permit authorizing the construction of a youth residential care home to house no more than six children and two resident supervisors. The building permits (collectively referred to as "**Building Permits**") and corresponding properties are as follows:

(i) Permit No. B438336, for 1314 Potomac Avenue, S.E., Square 1045, Lot 134;

(ii) Permit No. B438337, for 1312 Potomac Avenue, S.E., Square 1045, Lot 135;

(iii) Permit No. B438338, for 1310 Potomac Avenue, S.E., Square 1045, Lot 136;

(iv) Permit No. B438335, for 1308 Potomac Avenue, S.E., Square 1045, Lot 137

2. Advisory Neighborhood Commission ("**ANC**") 6B joined in the Appeal with SCSD (ANC 6B and SCSD are collectively referred to as "**Appellant**").

3. Father Flanagan's Boys Home ("**Girls and Boys Town**") is the owner of the four properties which are the subject of the Building Permits: Lots 134, 135, 136 and 137 in Square 1045 in the District of Columbia ("**Subject Properties**"). As the owner of the Subject Properties, Girls and Boys Town is automatically a Party in the Appeal pursuant to the definition of "Party" under 11 DCMR § 3199.1.

PRELIMINARY MATTERS:

1. Board Member Hannaham disclosed that he had served as an officer of the Board of Trustees of the Committee of 100 along with Appellant's counsel, Ms. Andrea Ferster, and with Appellant's expert witness, Mr. J. Kirkwood White. Board Member Hannaham stated that these relationships would not affect his ability to decide the Appeal fairly. No objection was raised.

2. Chairperson Griffis stated that he also was a previous trustee of the Committee of 100 with Ms. Ferster and Mr. White, but that these relationships would not affect his ability to decide the Appeal fairly. No objection was raised.

3. Vice Chairperson Renshaw disclosed that, in a case before the Board of Zoning Adjustment five or six years ago, Appellant's counsel represented an organization of which Vice Chairperson Renshaw was a member. Vice Chairperson Renshaw stated that this relationship would not affect her ability to decide the Appeal fairly. No objection was raised.

4. Board Member Etherly disclosed that he is a resident in the neighborhood

where the Subject Properties are located and, prior to becoming a Board Member, he signed a petition in favor of the proposed development that is the subject of the Appeal. Board Member Etherly stated that this would not affect his ability to decide the Appeal fairly. No objection was raised.

5. In conjunction with the Appeal, Appellant filed a Request for Stay to halt the issuance of further permits or licenses for the Subject Properties. The Board dismissed this request, ruling that it had no jurisdiction to hear such a request.

6. In conjunction with the Appeal, the Appellant filed a request for the Board to issue a Stop Work Order on the execution of any construction work authorized by the Building Permits. The Board also dismissed this request as outside its jurisdiction.

7. The Appellant filed a motion requesting that the Capitol Hill Restoration Society be permitted to testify as part of the Appellant's case, and that such testimony be admitted into the record. Chairperson Griffis acknowledged that the Capitol Hill Restoration Society's testimony had been admitted into the case file and was part of the record.

8. Advisory Neighborhood Commission (ANC) 6B requested of the Board that ANC 6B be considered a co-appellant with SCSD in the Appeal. Kenan Jarboe, Chair of ANC 6B, testified that ANC 6B, at its regular meeting in October, 2001, voted 7-0 to join the Appeal and become a co-appellant. Mr. Jarboe further requested that counsel for SCSD, Andrea Ferster, also be permitted to represent ANC 6B. Appellant's counsel stated that the Appellant had no objection to that arrangement.

9. On November 29th, 2001, Girls and Boys Town filed a Motion to Strike Portions of the Appellant's Pre-hearing Submission. The Appellant had filed three (3)

two-inch binders as exhibits to its pre-hearing submission. Boys Town asked that certain sections be stricken as irrelevant to the issues in the Appeal. Upon discussion, the Board struck and/or suppressed and admitted portions of these exhibits as well as agreeing to allow prospective evidence and testimony, as follows:

a) Information regarding future development by Girls and Boys Town, whether planned or speculative. The Board deferred regarding planned development – but ruled that evidence and testimony regarding speculation of future development would not be admitted (Tr. at 49-50, 65; Dec. 4).

b) A pending lawsuit filed by Girls and Boys Town – stricken and suppressed, as it would not have been considered in the Zoning Administrator's decision (Tr. at 50-51; Dec. 4).

c) The Comprehensive Plan – admitted (Tr. at 51-57; Dec. 4)

d) Other community planning efforts – stricken/suppressed (Tr. at 51-57;Dec. 4).

e) Information on the selling price for nearby homes – stricken/suppressed (Tr. at 57; Dec. 4).

f) Information on Girls and Boys Town's financial situation – stricken/suppressed (Tr. at 57; Dec.4).

g) The number of CBRFs in Ward 6 – deferred (Tr. at 57-58; Dec. 4).

h) All references to Phase II of the project – deferred (Tr. at 59; Dec. 4)

i) All references to Boys Town's Sargent Road site – admitted: The Zoning Administrator's memo in the Sargent Road case, the Board's Decision and Order and any other information relevant to the question of whether the Zoning Administrator erred in issuing zoning approval for the Building Permits. Suppressed: all other testimony and evidence related thereto (Tr. at 59-64; Dec. 4)

j) Testimony regarding other social services in the District, such as city jails and the D.C. General Hospital – suppressed (Tr. at 64; Dec. 4).

k) State of the real estate market in the surrounding area – suppressed (Tr. at 64; Dec. 4).

l) The central operations of Boys Town – deferred (Tr. at 65-66; Dec. 4).

m) Economic development in the area – stricken/suppressed (Tr. at 67-69; Dec. 4).

n) Discussion, evidence or testimony regarding the Fair Housing Amendments Act – stricken/suppressed (Tr. at 69, 102; Dec. 4).

FINDINGS OF FACT:

1. On December 19, 2000, Girls and Boys Town submitted four building permit applications (collectively referred to as "**Applications**") with the Building and Land Regulation Administration ("**BLRA**") of the Department of Consumer and Regulatory Affairs ("**DCRA**"), each for the construction of a youth residential care home for six children or less and two resident supervisors.

2. On August 30, 2001, the then Zoning Administrator of the District of Columbia, Michael Johnson, wrote a letter to the Appellant explaining his office's decision to grant zoning approval on the Applications. Mr. Johnson's letter stated that (i) based on the Applications and the accompanying architectural drawings, the structure proposed on each of the Applications was to be a youth residential care home for six children or less; (ii) such use was permitted as a matter of right in the C-2-B Zone District; and (iii) no restrictions based on proximity of other community based residential facilities applied to youth residential care homes of six children or less. Mr. Johnson's letter concluded therefore, that the Applications were in compliance with the Zoning Regulations.

3. Appellant claimed that the Zoning Administrator erred because he was required to view the four proposed youth residential care homes as one youth residential

care home housing 24 children, based on the fact that the Subject Properties are held in common ownership, and based on the Appellant's allegation that Girls and Boys Town planned to operate the four homes as a single facility.

4. Appellant claimed in the hearing, although not originally in its appeal, that if the Zoning Administrator had considered the Applications together as located on one "lot for zoning purposes," then the one "home" would be considered to have 24 children and § 732.1 of the Zoning Regulations would apply to make the proposed development subject to special exception review by this Board.

5. Appellant claimed that the legal authority for its position derived from the following:

(i.) the overall "intent" or "spirit" of the Zoning Regulations, which generally contains provisions that limit occupancy of community based residential facilities, required the Zoning Administrator to view the four homes together as one home in determining the occupancy limit;

(ii.) the definition of "lot" in the Zoning Regulations (§ 199.1) required the Zoning Administrator to combine the four Subject Properties in evaluating the Applications because the phrase "a lot may or may not be a lot of record" within such definition gives the Zoning Administrator the authority to view separate record lots as one "lot for zoning purposes"; and that in this particular case, the Zoning Administrator was <u>required</u> by this Section of the Zoning Regulations to view the four Applications as one application as if

on one "lot for zoning purposes";

(iii.) the definition of "facility" in Webster's dictionary, which includes a phrase relating to the function of something, required the Zoning Administrator to combine the four homes for zoning purposes because such homes will share a similar function;

(iv.) certain provisions of the Comprehensive Plan require the Zoning Administrator to deny zoning approval on the four Applications despite the fact that its own zoning expert, testified that the Ward 6 element of the Comprehensive Plan does not supercede the Zoning Regulations, and that if there was a disparity between the Comprehensive Plan and the Zoning Regulations, it was for the Zoning Commission to correct such a disparity; and

(v.) general principles of zoning.

6. Appellant did not present testimony or evidence to dispute the Zoning Administrator's position that each of the subject homes, considered individually, qualified as a youth residential care home for six children or less. Appellant did not present testimony or evidence to dispute the Zoning Administrator's position that, considered individually, each home was permitted as a matter-of-right. Rather, the Appellant alleged that because the four homes were adjacent to one another and to be owned and operated by the same entity, that the Zoning Administrator was required to view the four homes together for zoning purposes, as if there was one building permit application for one lot.

7. Appellant claimed that the Zoning Administrator erred by reviewing each

of the Applications individually, without considering adjacent properties owned by Girls and Boys Town.

8. Appellant's zoning expert, Mr. J. Kirkwood White, testified that:

(a) the Zoning Administrator, in evaluating the Applications, followed the Zoning Regulations "by the book," rather than looking at a bigger picture;

(b) in the case of the subject Applications, the Zoning Administrator acted within the rules of the Zoning Regulations and that the Zoning Administrator did not violate the Zoning Regulations;

(c) he thought the Zoning Administrator made a mistake by not looking outside the recorded lot lines underlying each of the Applications although he admitted that in his experience he had never seen a case, a project or a building permit in which the Zoning Administrator ruled beyond the confines of a record lot or looked to an adjacent property in effecting a zoning analysis on a particular lot;

(d) he was not able to cite a situation in the past 30 years in which the Zoning Administrator evaluated a building permit application outside of the recorded lot lines underlying such application;

(e) campus plans were an example of a situation in which the Zoning Administrator reviewed several lots together, although he admitted that campus plans were specifically provided for in the Zoning Regulations and applied only to institutions of higher learning;

(f) as an analogy, if 300 townhouses were attached together, they would not be considered an apartment building, but would be considered separate facilities for zoning purposes;

(g) Zoning Regulation §3202 provided that a building permit shall not be issued . . . unless the land for the proposed construction has been divided so that each structure will be on a separate lot of record. Mr. White further testified that each of the four Building Permits was for a structure on a lot of record; and

(h) if the Subject Properties were held by a for-profit developer and four single family homes were built on these four separate record lots, then the Zoning Administrator would not need to look at the cumulative effect of those four properties, but that the Appellant's argument is one that applies solely to community based residential

facilities and solely to the future occupants of the proposed homes.

9. Mr. Kenan Jarboe, Chair of Advisory Neighborhood Commission 6B, testified on behalf of ANC 6B. Mr. Jarboe stated that it was the intent of the zoning law to provide for the control of density of community based residential facilities and it did not anticipate the construction of several contiguous youth residential care homes by the same owner. Mr. Jarboe stated that the ANC believed that the Zoning Administrator's error was in considering each of the four homes as a separate home. Mr. Jarboe did not cite any section of the Zoning Regulations to support ANC 6B's position.

10. The ANC 6B submitted a report which stated that it was the conclusion of ANC 6B that the Zoning Administrator erred and his decision must be reversed to avoid setting a dangerous precedent; and further, that the spirit of the zoning law does not anticipate the construction of several contiguous buildings by the same developer, but rather provides for the control of the density of community based residential facilities. The report did not cite particular provisions of the Zoning Regulations in support of its position.

11. Brian Furness, a non-expert witness community member, gave testimony in relation to the Ward 6 element of the Comprehensive Plan. Mr. Furness stated that the Comprehensive Plan's policy regarding over-concentration of community based residential facilities required the Zoning Administrator to view the four Applications as one for zoning purposes. Mr. Furness also testified that, to the best of his knowledge, the Comprehensive Plan did not directly control development of community based residential facilities. He testified that such development was controlled through the zoning, permitting and licensing processes of the District Government.

12. Mr. Robert Nevitt, a resident of 1000 South Carolina Avenue, S.E., testified on behalf of the Capital Hill Restoration Society, in support of the Appellant. Mr. Nevitt stated that, in his opinion, the case turned on the definition of the term facility, which as defined in Webster's was "something that is built, constructed, installed or established to perform some particular function, or to serve or facilitate some particular need." Mr. Nevitt further testified that since this definition focused on performance of a function, the four youth residential care homes were actually only one youth residential care home because the four homes performed a common function.

13. Mr. Nevitt also testified that the existence of the "troubled youths" in the four homes was the key reason that the community believed that this project would have an adverse effect on them.

14. Wilbert Hill, Chair of SCSD, testified that the community was concerned about over-concentration of community based residential facilities. He stated that facilities such as Boys Town have a huge impact on the community and that was the reason that SCSD filed the Appeal. Mr. Hill also stated that oversight by the Board of Zoning Adjustment was required because Boys Town refused to meet with the community in June 2001.

15. Ellen Opper-Weiner testified as Vice Chair of the Appellant. Ms Opper-Weiner stated that she resides at 223 10th Street SE. Ms. Opper-Weiner stated that SCSD thinks the Zoning Administrator made an error in saying that this was a matter-of-right project. She further stated, however, that this was not her area of expertise and she could not answer questions as to what was or was not under the Zoning Administrator's control, purview and direction in reviewing the Applications.

16. Appellant presented Ms. Patricia Harden as an expert in social work. The Zoning Administrator and Girls and Boys Town objected to Ms. Harden's testimony on the basis that it was wholly irrelevant to the zoning matter before the Board. Ms. Harden testified that she had no knowledge of, or experience with, zoning matters. Ms. Harden also testified that she had no knowledge of Boys Town's operations. Furthermore, Ms. Harden testified, and Appellant's counsel reiterated, that Ms. Harden had no knowledge of the Zoning Regulations, had no knowledge of how a Zoning Administrator should define the uses which were the subject of the four Applications, and was not qualified to provide expert testimony as to what the Zoning Administrator should or should not evaluate in making his determination of whether each of the four youth residential care homes qualified under the Zoning Regulations as uses permitted as a matter-of-right. Under cross-examination, Ms. Harden testified that she had no knowledge of whether or not the Zoning Administrator was required to consider any of the factors that she had testified to as controlling in the Zoning Administrator's decision. Ms. Harden further testified that she had never been involved with any zoning matters in any prior projects. Upon questioning from the Board, Ms. Harden testified that she could not comment on Boys Town's operations, as she had no personal knowledge of such.

17. Ms. Harden nevertheless testified that, in her opinion, the Zoning Administrator should consider the four youth residential care homes as one facility if the overall development has the following characteristics: (i) the facilities have a single contract with D.C. Child and Family Services; (ii) intake is done centrally by Boys Town and children are assigned by Boys Town rather than by each living unit; (iii) staff for the homes is centrally hired, trained and supervised; (iv) one back-up resident supervisor

serves all four homes; (v) there is one set of standards, or rules for behavior for all the homes; (vi) food service is centrally ordered and delivered, and often prepared in accordance with assigned menu plans, all home residents basically eating the same food purchased from the same vendors; (vii) the four homes will share commonly owned vehicles; (viii) the four homes will share common home maintenance services; (ix) tutoring programs, after school activities and recreational activities will be coordinated for the four homes together.

18. Alternatively, Ms. Harden testified that the Zoning Administrator should review the following characteristics to determine if the homes are separate homes: (i) day-to-day living expenses are handled by the home and not by the central facility; (ii) each home makes its own arrangements for transportation; (iii) each home does its own shopping; (iv) each home makes its own arrangements for home maintenance; (v) day-to-day activities are arranged by the home and not necessarily in conjunction with other group homes.

19. Mr. Olutoye Bello, the Acting D.C. Zoning Administrator, testified that:

(a) he personally reviewed the four Applications;

(b) he reviewed each of the Applications independently, as each Application was filed as a separate permit application and each proposed structure would be located on a separate lot of record, as was required by the Zoning Regulations, and that the focus of the Zoning Administrator's analysis was on each of the Applications and its corresponding lot of record;

(c) the Zoning Administrator's review process is a mechanical one, and that after the Zoning Administrator's analysis is complete, the subject permit application must be granted a zoning approval by law;

(d) in his review of the Applications, the Zoning Administrator looked specifically at the question of whether the proposed use on each building permit application was permitted as a matter-of-right;

(e) the Zoning Regulations, § 201.1(n)(1) permits youth residential care homes for six children or less, without restrictions relating to proximity to other community based residential facilities;

(f) in order to determine whether or not a use proposed by building permit applicant is consistent with such application, the Zoning Administrator reviews the permit drawings accompanying a building permit application to determine if such information is consistent with the Applicant's proposed use and in these Applications, all information submitted as part of each Application was consistent with the use of the proposed structure as a youth residential care home for six children or less;

(g) his conclusion upon review of each of the four Applications was that the proposed construction on each site met all applicable requirements of the Zoning Regulations and therefore was approved, because youth residential care homes of six children or less are permitted as a matter of right in the C-2-B Zone District pursuant to Zoning Regulations § 201.1(n)(1);

(h) his determination that the proposed homes were permitted as a matter-of-right was based on the information included in the Applications, including the applicant's representations, as well as the fact that the permit drawings submitted were consistent with the proposed use;

(i) there was no basis upon which the Applications could have been rejected by the Zoning Administrator without exceeding the authority vested in the Zoning Administrator's office under District of Columbia law;

(j) all decisions of the Zoning Administrator must have a basis in the Zoning Regulations, and that the Zoning Administrator's authority to act is granted only by the limits and authority of the specific sections of the Zoning Regulations;

(k) if the Board upholds this appeal, the Board would, in his opinion, be rewriting the Zoning Regulations;

(l) the Comprehensive Plan is not a self-executing document, and the Zoning Administrator does not possess the authority to rewrite or

amend the Zoning Regulations when inconsistencies with the Comprehensive Plan are alleged; and the Zoning Administrator must adhere to the Zoning Commission's interpretation of the Comprehensive Plan;

(m) in the case of a perceived inconsistency between the Comprehensive Plan and the Zoning Regulations, the Zoning Commission has the exclusive authority to remedy such inconsistencies;

(n) in his 12 years of experience in the office, the Zoning Administrator's office had never looked at the cumulative effect of record lots sitting side-by-side to determine whether or not zoning relief was needed;

(o) the Zoning Administrator is not authorized to look to other projects or other property owned by a permit applicant in making a decision on a permit application;

(p) it is not unusual for a single owner/builder to simultaneously apply for a group of building permits on separate, adjacent record lots and that it would not be unusual for a developer proposing to build ten single-family houses in a row to simultaneously file such building permit applications;

(q) the Zoning Administrator's office, in his experience, has never looked beyond the recorded lot lines with regard to occupancy limits dictated by the Zoning Commission;

(r) it is not unusual for building permit applications submitted at the same time to be reviewed as a group or simultaneously, which would not affect the independent zoning analysis required for each application;

(s) in the case of campus plans, campus plan approval is subject to Zoning Commission review pursuant to specific regulations and only pertains to institutions of higher learning, which, it was determined, Boys Town was not;

(t) the fact that four building permit applications were received simultaneously is not relevant to his zoning analysis, unless such direction is specifically required by the Zoning Regulations;

(u) there is nothing in the Zoning Regulations that would authorize the Zoning Administrator to combine the four Applications, on four

separate lots of record, as one application on one "lot for zoning purposes;" and

(v) the fact that Girls and Boys Town was the applicant on all four Applications was irrelevant, and that, if the Applications had been submitted by four separate owners, his review would not have been any different.

20. Mr. Armando Lourenco, former D.C. Acting Zoning Administrator, recognized by the Board as an expert in zoning, testified that, in his opinion,:

(a) the Zoning Administrator's analysis of the Applications followed standard review procedures that have been in place for a long time in the District of Columbia, and the Applications were processed and approved correctly;

(b) based upon his review of the Applications and related permit drawings, the Applications fully complied with the Zoning Regulations;

(c) the Sections of the Zoning Regulations that contain proximity restrictions apply only to community based residential facilities of seven or more persons;

(d) it was very clear that the Zoning Commission, in Zoning Commission Order No. 725, amended the Zoning Regulations to permit as a matter-of-right youth residential care homes for six children or less without proximity restrictions;

(e) the determination of the Zoning Administrator in this case is consistent with longstanding practice of the Office of the Zoning Administrator, and that the plans were reviewed accordingly and in strict observance of the Zoning Regulations; and by approving the Applications, the Zoning Administrator made the only possible decision that was consistent with the District of Columbia Zoning Regulations;

(f) the Zoning Administrator had before him four separate building permit applications on four separate record lots and it was the Zoning Administrator's charge to evaluate each application on its merits in that particular zone district;

(g) in this case, Girls and Boys Town legally subdivided the property

into four separate record lots and filed a building permit application for a youth residential care home on each record lot, as is permitted in the C-2-B Zone District;

(h) it is not relevant that the Applications were filed or reviewed simultaneously; that considerations of common ownership or management are not relevant to the Zoning Administrator's analysis and that the Zoning Regulations do not allow for the consideration of such aspects in this case;

(i) the proposed facilities fit exactly the definition of youth residential care homes pursuant to the Zoning Regulations; and

(j) § 201.1(n)(1) was enacted by the Zoning Commission to remove certain proximity restrictions previously contained in the Zoning Regulations for youth residential care homes of six children or less.

21. Ms. Gladys Hicks, former D.C. Acting Zoning Administrator, recognized as an expert in zoning by the Board, testified that she reviewed the Applications, the permit drawings and buildings plats and, in her opinion, the Zoning Administrator made a correct determination in issuing its zoning approval for the Applications.

22. Ms. Gladys Hicks testified that the Zoning Administrator must analyze each structure on each lot and must verify for each lot what the proposed use is intended to be and whether the proposed use is permitted as a matter of right.

23. Ms. Constance Washington, the Director of Father Flanagan's Boys Home of Washington, testified that:

(a) she is responsible for the day to day operations of Girls and Boys Town in Washington, D.C.;

(b) no more than six children will reside in each subject home;

(c) a married parent-teacher couple will also reside in the home with the six children;

(d) food shopping for each of the homes will be done as a family activity within each of the four homes individually;

(e) each home will have it's own vehicle and will not share commonly owned vehicles with the families in the adjacent homes;

(f) the four homes will be operated each as an individual household and that each parent-teacher couple is responsible for managing their own budget, doing their own shopping and preparing their own family's meals;

(g) that the six children and parent-teacher couple in each home will eat together as a family, and prepare their own menus;

(h) each child, once assigned to a particular youth residential care home, will reside only in that home;

(i) the parent-teacher couple living in a home will be responsible for the educational needs of only their own children;

(j) each home has one assigned, non-resident social work assistant to aid the parent-teacher couple;

(k) the children will either walk to school or be transported by their own parent-teachers;

(l) the parent-teachers and the residents of each particular home will be responsible for the maintenance of their own residential units; and

(m) the operations of the four homes would not be different in any way if the four homes were located in different locations throughout the city.

24. Ms. Washington testified that if each of these four homes were located in different quadrants of the city, the homes would still operate as they are planned to be operated on the Subject Properties and will have the same type of administrative support from a central location that they will have at the Subject Properties.

25. Ms. Karen Burditt testified as the architect for the four proposed homes. Ms. Burditt guided the Board through an explanation of the floor plans and layout for each of the four subject homes and testified that they were designed to be separate, free

standing single family homes, with no physical connections or common elements such as kitchens or playrooms and that each house is a separate, discrete living unit.

CONCLUSIONS OF LAW

The Board of Zoning Adjustment has jurisdiction to hear this appeal and render a decision and order pursuant to D.C. Code § 5-424(f). Pursuant to 11 DCMR § 3119.2, the Appellants have the burden of proof in this matter. In considering an application for a building permit, the Zoning Administrator is required to determine whether the plans for the proposed building meet the requirements of the Zoning Regulations. To reverse the Zoning Administrator's decision approving the issuance of the building permit, the Appellants must demonstrate to the Board, by a preponderance of the evidence, that the building permit was issued in error because the proposed building would violate the Zoning Regulations, (see BZA Order No. 16604).

The Board concludes that Section 725.1 of the Zoning Regulations does not apply here because that section only applies to homes for seven (7) to (15) children. Because the Zoning Administrator has correctly determined that each of the four homes will be a separate youth residential care home for six persons.

The Board also concludes that, for the same reasons, pursuant to Zoning Regulation §201.1(n)(1), §732.1 of the Zoning Regulations relating to radius restrictions is not applicable to youth residential care homes containing six or less children. The Board concludes that the Zoning Administrator did not err in determining that each proposed structure qualifies as a youth residential care home for six children or less, and therefore proximity, or radius, restrictions do not apply.

The Board concludes that the Girls and Boys Town's proposed use of the Subject

Properties for youth residential care homes, each to house six children or less and two adults, is permitted as a matter-of-right in the C-2-B Zone District. The Board concludes that such use is clearly permitted under §201.1(n)(1) of the Zoning Regulations and that this regulation was specifically adopted in January, 1993 by the Zoning Commission to ensure that the Zoning Regulations would not violate the Federal Fair Housing Amendments Act.

The Zoning Administrator determined, based on his review of the Applications and the permit drawings included therein, that the proposed construction on each of the four lots was to be a separate youth residential care home for six children or less. The Zoning Administrator also determined that the proposed use was permitted as a matter-of-right, without proximity, or radius, restrictions. The Appellant presented no evidence or testimony disputing the Zoning Administrator's determination that each one of the homes, by itself, would be a youth residential care home housing six children or less. Further, the Appellant presented no evidence or testimony disputing the Zoning Administrator's determination that each one of the homes, by itself, is a use permitted as a matter of right pursuant to the Zoning Regulations. Finally, the Appellant did not present evidence or testimony to argue that such homes are not permitted to be adjacent to one another pursuant to the Zoning Regulations. The Appellant argued that the Zoning Administrator was required to combine the occupancy levels of all four homes, for purposes of occupancy limits on community based residential facilities under the Zoning Regulations, but presented no convincing evidence to support this proposition. To the contrary, the Zoning Administrator and Girls and Boys Town have presented overwhelming evidence in support of the Zoning Administrator's position.

1. The intent of the Zoning Regulations. The intent behind § 201.1(n)(1) is unambiguous. The Board concludes that the plain language of § 201.1(n)(1) and that Section's legislative history, Zoning Commission Order No. 725, clearly show that the Zoning Commission intended to amend the Zoning Regulations to permit youth residential care homes of six or less as a matter of right without proximity, or radius, restrictions.

Prior to the revision of § 201.1(n)(1) in 1993, the Zoning Regulations permitted youth residential care homes for six children or less, but subjected such uses to one or more proximity restrictions, such as the "500 ft. rule," the "1,000 ft, rule" and/or the "same square rule." In Zoning Commission Order No. 725, the Zoning Commission removed all such proximity restrictions for youth residential care homes of six or less. It is obvious that by removing proximity restrictions, the Zoning Commission intended to permit youth residential care homes in close proximity to one another. If the Zoning Commission promulgated Zoning Regulations that permit youth residential care homes of six children or less adjacent to one another, then the Zoning Administrator is required to follow such Regulations, and did so in this case.

2. The definition of "lot" in the Zoning Regulations. The Board concludes that Appellant's argument that the definition of "lot" empowers the Zoning Administrator to unilaterally combine adjacent record lots for zoning purposes is unpersuasive. Appellant relies on the phrase, within the definition, that a lot may or may not be a record lot. In this particular situation, the Subject Properties are record lots. Because a "lot" may or may not be a record lot, it does not logically follow that the Zoning Administrator can arbitrarily re-label a lot presented to him. The definition of "lot" allows for both lots of

record, and assessment and taxation lots. It does not also encompass "lots for zoning purposes," as Appellant suggests. Furthermore, the definition of "lot" states that a lot is "land bounded by definite lines," which is in direct conflict with the Appellant's proposition that the Zoning Administrator must reconfigure four legally-subdivided record lots for zoning purposes.

3. The definition of "facility." The Board concludes that the Appellant's interpretation of the definition of the word facility does not support Appellant's position. The Board does not agree with Appellant's logic that since the definition of "facility" includes "function" and "serving a need" that it follows therefrom that adjacent, identical uses are one entity for zoning purposes. This line of reasoning would lead to the conclusion that all adjacent buildings performing a similar function are one entity for zoning purposes. Four single family homes in a row would share a common function, or serve a particular need - this does not make them one house. Indeed, Webster's definition of "facility" more aptly supports the Zoning Administrator's determination that each of the four homes is, independently, a youth residential care home, or, a facility. Because each home, according to its permit drawings, is completely equipped to perform its intended function and serve its intended need of housing six children, it meets the Webster's definition of a facility. The Board agrees that a facility may be made up of more than one building or structure, but a review of record before us shows that this is clearly not the case with these four Applications. For example: if, after beginning operations, one or more of these four facilities were destroyed, the evidence shows that in such a case the remaining facilities would continue to operate unaffected. When perceived in this light, it is obvious, based on the evidence in the record, that each home

is an independent *facility*, and is therefore permitted as a matter-of-right, without reference to proximity restrictions, pursuant to § 201.1(n)(1).

4. The Comprehensive Plan. The Board concludes that the Zoning Administrator can not execute the Comprehensive Plan to overrule a clear and specific provision of the Zoning Regulations. Furthermore, the Appellant has not presented convincing evidence that the Comprehensive Plan supports Appellant's position, even if the Comprehensive Plan is evaluated independent of the Zoning Regulations. Certainly, the Comprehensive Plan can not be said to have put a moratorium on the construction of adjacent youth residential care homes for six or less, when the Zoning Regulations expressly permit such.

5. Common Ownership. The Board concludes that the fact that the Subject Properties are held in common ownership does not change the character of the use which the Zoning Administrator approved. The Zoning Administrator was charged with approving or rejecting each of the four Applications, based on the Zoning Regulations.

The Board concludes that the Zoning Administrator appropriately determined that each of the Applications was for a permitted use, that no proximity restrictions applied to that particular use, and that the Applications were in all ways compliant with the Zoning Regulations.

The Board concludes that the Zoning Administrator had no authority to evaluate issues outside of the subject matter of the Applications or outside the boundaries of the record lot underlying each of the Applications.

6. Conclusion. The Board concludes that the issuance of Building Permits No. B438336, B438337, B438338 and B438335 by the Zoning Administrator of the

Department of Consumer and Regulatory Affairs was appropriate. The record in this case establishes that the Zoning Administrator applied a high level of scrutiny to the review of the Applications, and that the Zoning Administrator's determination of compliance was in accordance with the plain language and intent of the Zoning Regulations and consistent with past precedent of the District of Columbia.

The Board accorded ANC 6B the "great weight" to which it is entitled. However, the Board concludes that the ANC has not offered persuasive testimony or evidence that would cause the Board to conclude that the Building Permits were issued in error. The Board concludes that the Appellant failed to prove, by a preponderance of the evidence, that the Building Permits were issued in error; and therefore, the appeal of SCSD and ANC 6B is denied.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Board of Zoning Adjustment for the District of Columbia **ORDERS DENIAL** of this appeal of the Zoning Administrator's decisions in the issuance of Building Permit No.s B438336, B438337, B438338, and B438335.

For the reasons stated above, the Board concludes that the Appellants have not met their burden, it is hereby **ORDERED** that the appeal be **DENIED**.

VOTE:

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

ATTESTED BY: _____
JERRILY KRESS