IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

FATHER FLANAGAN'S BOYS HOME **14100 Crawford Street** **Boys Town, NE 68010,** **Petitioner,**	)	
v.	)	**No. _____**
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT **One Judiciary Square** **441 4th Street, N.W.** **Suite 210-S** **Washington, D.C. 20001,** **Respondent.**	)	

RECEIVED
D.C. OFFICE OF ZONING
2002 JUL 23 AM 11:09

PETITION FOR REVIEW OF AN ORDER OF
THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Petitioner, Father Flanagan's Boys Home (hereafter "**Girls and Boys Town**"), respectfully petitions this Court for review of an Order of Respondent, the District of Columbia Board of Zoning Adjustment ("**Board**" or "**BZA**"), concerning Appeal No. 16791, brought by the Southeast Citizens for Smart Development, Inc. and Advisory Neighborhood Commission 6B (collectively, "**Appellants**"). Appeal No. 16791 was an appeal of the zoning approval of four building permits issued by the Zoning Administrator of the District of Columbia. The Board ruled that the Zoning Administrator erred in interpreting the District of Columbia Zoning Regulations and ordered the revocation of all four building permits. The Board issued its ruling in Order No. 16791, dated June 21, 2002 ("Order"), a copy of which is attached hereto.

BZA
Case No. 16791
Exhibit No. 76

Board of Zoning Adjustment
District of Columbia
CASE NO.16791
EXHIBIT NO.76

Jurisdiction

1. This Court has jurisdiction to review the Order pursuant to D.C. Codes §§ 1-1510 and 11-722 as well as Rule 15 of this Court's Rules.

Parties

2. Petitioner, Girls and Boys Town, is a not-for-profit, Nebraska corporation and is the fee simple owner of the real property for which the building permits were issued and the holder of the building permits which were revoked by the BZA. Petitioner intervened as a party in the proceeding held by Respondent.

3. Respondent, District of Columbia Board of Zoning Adjustment, is an independent agency of the Government of the District of Columbia D.C. Code §6-641.07.

Summary of Proceedings

4. Appeal No. 16791 before the Board constitutes a contested case within the meaning of the District of Columbia Administrative Procedure Act, D.C. Code §§ 1-1501 *et seq.*

5. The following building permits were issued to the Petitioner on September 6, 2001: (1) Permit No. B438336, for 1314 Potomac Avenue, S.E., Lot 134 in Square 1045; (2) Permit No. B438337, for 1312 Potomac Avenue, S.E., Lot 135 in Square 1045; (3) Permit No. B438338, for 1310 Potomac Avenue, S.E., Lot 136 in Square 1045; and (4) Permit No. B438335, for 1308 Potomac Avenue, S.E., Lot 137 in Square 1045.[1] Appellants appealed these permits to

[1] The Appellants' initial filing before the BZA, as well as the Order, incorrectly identified the subject lots as lot numbers 134, 136, 137 and 138.

Respondent which held public hearings on the subject of the appeal and issued the Order, dated June 21, 2002, revoking the permits.

6. The Order states that the Zoning Administrator failed to follow the Zoning Regulations because he did not "combine" the four building permit applications, which were for four separate structures on four separate lots of record, and view the four structures as one in interpreting the Zoning Regulations. The Order does not provide any statutory authority for its decision, and the Order does not articulate what standards, law or regulation the Zoning Administrator failed to follow in approving the four separate building permit applications.

7. The Order suggests that Girls and Boys Town seek a special exception from the Board, an action which itself would not comply with the Zoning Regulations.

8. Enforcement of and compliance with the Order will interfere with Girls and Boys Town's right to construct and operate youth residential care homes, as is permitted under the Zoning Regulations.

9. Girls and Boys Town is adversely affected and aggrieved by the Board's Order.

Allegations of Error

10. Petitioner submits that the Board's Order is legally deficient and unlawful and must be reversed for the following reasons:

a. Respondent exceeded its statutory authority and limitations, inter alia, it imposes land use regulatory requirements based on the ownership of the properties;

b. Respondent exceeded its statutory authority and limitations, inter alia, because it supercedes the letter and intent of Zoning Regulations recently enacted by the District of Columbia Zoning Commission;

c. Respondent's decision is not supported by any evidence in the record of the proceedings, and the Order's findings are conclusory, incomplete and unsupported by the evidence and its conclusions do not flow rationally from the findings;

d. The Order is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with applicable law, including, without limitation, the D.C. Administrative Procedure Act, § 1-1501, *et seq.*;

e. Respondent is estopped from enforcing the Order since its interpretation of the pertinent Zoning Regulations in this case is completely contrary to its ruling in a previous BZA Order upon which Petitioner relied.

f. The Order was adopted without compliance with the procedures and processes required by law;

g. The Order violates the rights of Girls and Boys Town and its prospective clients, including those guaranteed housing under the Federal Fair Housing Amendments Act and the District of Columbia Human Rights Act, D.C. Code § 2501 *et seq*;

h. Respondent failed to apply the appropriate legal standard in evaluating the ruling of an administrative officer, the Zoning Administrator; and

i. The Order is plainly erroneous and inconsistent with the purposes of the Zoning Act, the District of Columbia Zoning Regulations and other District of Columbia law.

WHEREFORE, Petitioner respectfully prays that this Court

(a) Hold unlawful, reverse and set aside the Order; and

(b) Grant such other and further relief as this Court may deem just and proper.

Dated: July 19, 2002

Respectfully submitted,

Phil T. Feola (#290387)
Deborah B. Baum (# 393019)
Martin P. Sullivan (#460458)
SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037
Phone: 202-663-8000

Attorneys for Petitioner
Father Flanagan's Boys Home

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of July, 2002, copies of the foregoing Petition for Review of an Order of the Board of Zoning Adjustment were served by first class U.S. mail, postage prepaid to the parties who formally participated in the proceedings before the agency:

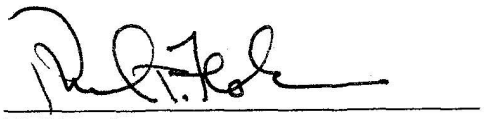
Mr. Geoffrey Griffis, Chairperson
District of Columbia Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Southeast Citizens for Smart Development, Inc.
c/o Andrea Ferster, Esquire
1100 17th Street, N.W.
Washington, D.C. 20036

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

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

Office of Corporation Counsel
Appellate Division
441 Fourth Street, N.W.
6th Floor, South
Washington, D.C. 20001



Phil Feola

Document #: 1255212 v.3