Southeast Citizens for Smart Development, Inc.

March 27, 2003

VIA FACSIMILE

BZA
727-CO.72

Jerrily R. Kress, Director
Board of Zoning Adjustment
441 4th St., NW Suite 201
Washington, DC 20001

RECEIVED
D.C. OFFICE OF ZONING
2003 MAR 27 PM 3:53

Re: BZA No. 16935
Filing of Additional Hearing Exhibits

Dear Ms. Kress:

We enclose for filing in the captioned appeal, three additional documents consisting of three letters, which we will rely upon in the presentation of the captioned case before the BZA. The letters are identified as follows: Letter from Ellen Opper-Weiner, Vice Chair, SCSD, to Denzil Noble, Acting Zoning Administrator, dated July 8, 2002; Letter from Denzil Noble, Acting Zoning Administrator, to Ellen Opper-Weiner, Vice Chair, SCSD, dated July 15, 2002; and Letter from Andrea Ferster, SCSD counsel, to Gregory Love, Administrator, BLRA, dated August 5, 2002.

In addition to these three letters, I am also serving via facsimile to Messrs. Parker and Feola, the Written Statement of the Capitol Hill Restoration Society, which was filed with BZA by Mr. Lyle Schauer on January 15, 2003. I believe that all parties already have copies of the Restoration Society's Statement; however, SCSD did not independently serve a set at the time. As noted in our Witness List filed with BZA on January 7, 2003, we intend to rely on the Restoration Society's Written Statement and the expert testimony of Mr. Schauer in support of this appeal. As noted, Mr. Schauer is the Chair of the Zoning Committee for the Restoration Society.

Please call me at (202) 547-5414; (240) 476-6052 or Will Hill at (202) 544-3785 if you have any questions about this or any other appeal issues. Thank you.

Sincerely,

Mary F. Withum

Enclosures
Cc: Arthur Parker, Esq. (w/enclosures)
Phil Feola, Esq. (w/enclosures)

Will Hill, Chair
701 14th St., SE
Washington, DC 20003
202 544-3785 * (Email) willonthehill@starpower.net

BZA
Case No. 16935
Exhibit No. 33

Board of Zoning Adjustment
District of Columbia
CASE NO.16935
EXHIBIT NO.33

Southeast Citizens for Smart Development, Inc.

July 8, 2002

Mr. Denzil Noble, Acting Zoning Administrator
941 North Capitol St., NE – Second Floor
Washington, DC 20002

Re: 1308, 1310, 1312 & 1314 Potomac Avenue, SE

Dear Mr. Noble:

There was a written decision issued on June 21, 2002 by the Board of Zoning Adjustments (Case No. 16791) in connection with the construction work being performed at the above captioned address. In that decision, the BZA stated:

> It is [thus] not unduly burdensome for the Zoning Administrator to request a building permit applicant to provide information concerning the nature of the proposed use of any given lot and any adjacent lots. The Zoning Administrator is authorized to request from applicants 'information necessary to determine compliance' with the Zoning Regulations 11 DCMR 3202.2, and should have done so in this case to obtain a complete understanding of the proposed use. BZA Order, at 22.

We understand that the developer of the property has just recently applied for construction of four single family homes on this same property, in order to continue the construction of four buildings, which the BZA order halted due to zoning noncompliance.

Pursuant to the principles of the BZA order, we request a full and proper review by the Zoning Administrator of the latest set of applications for construction permits at this site. The Zoning Administrator should inquire into the developer's planned use of the buildings at this location, given that the prior proposed use was for a youth residential care facility. Further, since the BZA decision determined that the developer's proposed construction constituted one facility, and not four separate facilities, the Zoning Administrator must ensure that the applications are viewed together when the applicability of all regulatory requirements, such as such as an environmental review, are applied. Such an inquiry is consistent with and mandated by the principles established in the BZA's recent decision.

Will Hill, Chair
701 14th St., SE
Washington, DC 20003
202 544-3785 * (Email) willonthehill@starpower.net

Please feel free to call me if you have any questions (202) 547-7131.

Sincerely,

Ellen Oppler Weiner
Vice Chair

Cc: David Clark
Theresa Lewis
Eric Price
Andrew Altman
Jerrily Kress
Antigua Love

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Zoning Administrator

July 15, 2002

Ellen Opper-Weiner
Vice Chair
Southeast Citizens for Smart Development
701 14th Street SE
Washington DC 20003

Ref: 1308, 1310, 1312 and 1314 Potomac Avenue SE

Dear Ms. Opper-Weiner:

This is in response to your letter dated July 8, 2002 regarding the referenced properties.

On July 8, 2002 the Department of Consumer and Regulatory Affairs (DCRA) issued four permits for the construction of one single-family home at each of the listed addresses. The application for each permit indicates "one family" as the proposed use.

The Board of Zoning Adjustment (BZA), at page 26 of its Order (Appeal No. 16791), stated that "to the extent that there are property or contract interests at stake in this case, Girls and Boys Town may protect those interests by applying for special exception approval to use the property as a youth residential care home or by dedicating the property to a matter-of-right use."

As recommended by the BZA, Girls and Boys Town elected to file revised permit applications to reflect a matter-of-right use for each of the four properties as a single-family dwelling, rather than apply for special exception approval to use the four buildings as a combined youth residential care home. As part of our examination of these revised permit applications, the Environmental Impact Screening Form previously submitted by Girls and Boys Town was also reviewed and a determination made that no new EISF would be required.

After full review of the revised applications, the Building and Land Regulation Administration (BLRA) determined that they satisfied all construction code and zoning requirements for single-family dwellings. Consequently, on July 8, 2002, BLRA approved the applications and issued permits for the construction of one

single-family home at each of the listed addresses. This was fully consistent with the principles established in the BZA's decision, as discussed above.

Do not hesitate to contact me at 442-4455 if you have further questions.

Sincerely,

Daniel Noble
Acting Zoning Administrator

cc: [redacted] Chair, Southeast Citizens for Smart Development
David Clark
Theresa Lewis
Eric Price
Andrew Altman
Jerrily Kress
J. Gregory Love

LAW OFFICES OF
ANDREA C. FERSTER
1100 SEVENTEENTH STREET, N.W., 10TH FLOOR
WASHINGTON, D.C. 20036
(202) 974-5142
(202) 331-8660 (fax)

August 5, 2002 (corrected)

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

Re: Building Permits ## B446916, B446917, B446918, and B446919, for one-family dwellings at 1308, 1310, 1312, and 1314 Potomac Ave., S.E.

Dear Mr. Love:

The purpose of this letter, submitted on behalf of Southeast Citizens for Smart Development, Inc. (SCSD), is to appeal, pursuant to 12 DCMR § 122.1, the above-referenced building permits issued on July 8, 2002 to Father Flanagan's Boy's Home (the owner) to construct four one-family dwellings at 1308, 1310, 1312, and 1314 Potomac Ave., S.E.. (Square 1045, Lots 13, 146, 137 and 138). SCSD also requests that a stop work order be issued directing that the owner immediately halt all work being carried out under these permits as well as under previously-issued Building Permits ## B438335, B438336, B438337, and B43833, pertaining to the same properties.

SCSD is a nonprofit corporation organized to facilitate community involvement and education in planning of neighborhood development in Ward 6. SCSD is composed of and represents numerous persons who reside and/or own property within the immediate area of the subject properties.

Building permits were initially issued for the four two-story residences with cellars for use by Father Flanagan's Boys Home as Community Based Residential Facilities (CBRFs) in September 2001, based on determination by then-Zoning Administrator Michael Johnson that the four residences each constituted a separate CBRF for six youths, which were each entitled to matter-of-right zoning approval. However, on June 21, 2002, the Board of Zoning Adjustment (BZA) issued a decision and order in Appeal No. 16791 of Southeast Citizens for Smart Development, Inc. and ANC 6B, dated June 21, 2002, which found that the four two-story residences being constructed by Father Flanagan's Boys Home at 1308, 1310, 1312, and 1314

Potomac Ave., S.E. constituted a single CBRF for more than sixteen youths, and therefore must be specifically approved as a special exception by the BZA pursuant to 11 DCMR § 732.1. Notwithstanding the clear determination by this order that the permits could not be issued as a matter-of-right, these building permits were never revoked by your agency, nor was a "stop work" order issued

On July 2, 2002, Father Flanagan's Boys Home applied for revisions to the previously-issued building permits. The revised permit applications claim that the proposed use of the property is a "one-family dwelling." On July 8, 2002, the four above-referenced permits were issued. Three of the permits were for a two story residences with cellar, and a fourth permit, pertaining to the property at 1310 Potomac Ave. S.E. (Building Permit # B446949) was for a two-story residence, cellar, with a driveway.

The issuance of these permits did not conform to the zoning requirements applicable to one family dwellings. Specifically, the BZA Decision and Order in Appeal No. 16791 determined that the two-story residences, which were then (as now) under construction, did not comply with zoning requirements applicable to single family detached dwellings in the C-2 district in a number of respects. First, the BZA order noted that three of the four buildings lacked the 8-foot side yard required by zoning regulations 11 DCMR § 405.9 and 775.2. Second, the BZA Order noted that none of the lots have access to their required parking spaces from a public street or alley, and only one of the houses had access to a private driveway under the ownership or control of the particular lot, as required by 11 DCMR § 2117.4. In addition, some of the parking spaces are not on the same lot with the residences that they are intended to serve, as required by 11 DCMR § 2116.1.

Because the residences to be constructed at 1308, 1310, 1312, and 1314 Potomac Ave., S.E. do not comply with the side yard and/or parking requirements applicable to one-family dwellings, the Director of DCRA and the BLRA erred in issuing building permits to Father Flanagan's Boys Home. Accordingly, SCSD hereby requests that these permits (as well as the previously-issued permits for four CBRFs) be revoked forthwith, pursuant to 12 DCMR § 108.9, because the construction does not comply with the construction codes, which in turn, requires compliance with zoning. Id. § 116.7 (Code official is authorized to take action where building has been constructed in violation of Zoning Regulations). SCSD also requests, pursuant to 12 DCMR § 117.1, that a stop work order be immediately issued, pending review of this appeal and/or the outcome of an appeal filed by SCSD in BZA Case No. 16935 on August 1, 2002.

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

Sincerely,



Andrea Ferster
Attorney for Southeast Citizens for Smart Development, Inc.

cc: David Clarke, Director, DCRA
Phil Feola, Esq.
Charlotte Parker, Deputy Corporation Counsel
Kenan Jarboe, Chair, ANC 6B

CAPITOL HILL RESTORATION SOCIETY
PO BOX 15264 • WASHINGTON, DC 20003-0264 • 202-543-0425

BZA No. 16935
1308-1314 Potomac Avenue, SE
Square 1045, Lots 134-137
Zone: C-2-B
Hearing Date: 01/21/03

RECEIVED
D.C. OFFICE OF ZONING
2003 JAN 15 PM 4:04

January 15, 2003

Board of Zoning Adjustment,
Room 210
441 4th Street, NW
Washington, DC 20001

The Capitol Hill Restoration Society SUPPORTS the above referenced appeal.

The Capitol Hill Restoration Society is a civic association representing 1,000 members. The Zoning Committee of the Capitol Hill Restoration Society considered the appeal on January 9, 2003. A quorum was present. The Committee unanimously voted to support the appeal. Under standing rules of the Board of Directors, this committee action becomes the position of the Society.

Background

This is an appeal by Southeast Citizens for Smart Development (SCSD) from the decision of the Zoning Administrator to issue four revised building permits on July 8, 2002 for buildings designated 1308, 1310, 1312, and 1314 Potomac Avenue, S.E.

The permits were issued to Father Flanagan's Boys Home and each is indicated as a revision to permits issued in September 2001. These revisions came about because the original permits were issued for construction of four community based residential facilities, each housing six youths and two staff. The Board of Zoning Adjustment in its order in BZA No. 16791, dated June 21, 2002, held that the four homes constituted a single residential facility for 24 youths and would require a special exception. Faced with revocation of its building permits, Boys Home sought revised permits for single-family residences. It is those permits that are the subject of this appeal.

On August 1, 2002, Andrea C. Ferster, counsel for SCSD, filed Appeal No. 16935 to challenge issuance of the revised permits and to seek revocation of them. The SCSD raised two issues:

Side yards Three of the four buildings lack required eight-foot side yards.

Parking None of the lots have access to the required parking spaces from a public street or alley, and some of the spaces are not on the same lot with the residences they are intended to serve.

Nearly three months later, on October 21, 2002, the Director of the Department of Consumer and Regulatory Affairs (DCRA) issued a Notice that presents the Zoning Administrator's rationale for issuing the revised permits. The Notice rejects the position taken by SCSD:

> We are confident, however, that the BZA will affirm the Zoning Administrator's decision, as all four of the single-family dwellings proposed in the building permit applications meet all of the applicable zoning regulations. More specifically, the Zoning Administrator found that both the parking requirements of 11 DCMR §2117, and the side yard requirements for residences in a commercial district, 11 DCMR §775—the two areas that are the subject of your August 26, 2002 letter—were met. (Notice to Andrea C. Ferster, attorney for SCSD, October 21, 2002, p. 2)

Side Yard Requirements

Although the premises are zoned C-2-B, the Zoning Regulations require side yards to conform to requirements in residential districts. One-family detached and semi-detached dwellings are subject to the side-yard requirements of the R-1 and R-2 districts respectively. (11 DCMR §775)

The Zoning Administrator examined each of the four dwellings for conformity with the side-yard requirements for either detached or semi-detached dwellings.

> 1308 Potomac Avenue was found to meet the requirements for a detached dwelling since it has an 8-foot side yard on either side. The Committee agrees.
>
> 1310, 1312, and 1314 Potomac Avenue were found to meet the requirements for a semi-detached dwelling because they each have a lot-line wall on one side and an 8-foot side yard on the other. The Committee disagrees.

Why the semi-detached dwellings do not meet side yard requirements

We agree that the buildings at 1310-1314 Potomac Avenue meet the definition of semi-detached dwellings; each has a lot-line wall on one side and an 8-foot side yard on the other. (Definition of Dwelling, one-family semi-detached, 11 DCMR §199) Note, however, that the Zoning Administrator does not mention the side yard requirements of 11 DCMR §405.3:

> In R-2 ... Districts, when a one-family dwelling, ... is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.

It seemed to the Committee that the lot-line walls on 1310, 1312, and 1314 were free-standing walls that required a side yard. We doubt that the Zoning Administrator overlooked this provision; we think that he simply decided that it was not applicable. In testimony regarding the meaning of the term "free-standing wall" in §405.3 on March 5, 2002, Acting Zoning Administrator Toye Bello stated:

> What I'm arguing is that in the term that is used here, a free-standing wall must set back from the side property line or from the lot line...(T)he free standing, I don't think, speaks to the necessity for attachment, as it does to whether or not you set back from the side property line. (Transcript, Appeal No. 16811, Appeal of David and Janet Pritchard, March 5, 2002, p. 108)

The Board of Zoning Adjustment rejected the Zoning Administrator' interpretation:

> Finding of Fact 17. The lot line wall is a free-standing wall. (Order in Appeal No. 16811)

The Committee believes that 405.3 was intended to prevent the situation presented by 1310-1314 Potomac Avenue: semi-detached dwellings that are not attached to an adjacent structure. The result is a row of detached building with side yards on one side only. Surely, this was not the intention of the regulations.

We do not understand why revised building permits were issued on July 8, 2002, when nearly a month before on June 4, 2002 the Board voted to reverse the Zoning Administrator in his conclusion that a lot line wall is not a free-standing wall. Although the order in Appeal No. 16811 did not issue until October, the Zoning Administrator, as a party in that appeal should have been aware of the Board's conclusion, and informed Boys Town that they would have to seek zoning relief before revised permits could be issued.

Why No Side Yard for 1314?

The Committee notes that the side yard for 1314 Potomac Avenue is obstructed by a protruding structure, indicated as a "Mud Room," that reduces the side yard to about two feet. Without detailed measured drawings, we cannot be sure, but so it seems on the developer's plat. We do not understand why an eight-foot side yard does not appear here also. We are aware that a side yard is not required along a side street abutting a corner lot (§405.5), but this lot appears to abut a private driveway, and would seem to require a side yard.

Parking access is not guaranteed

The site plans at one time seem to have provided required parking for some of the residences at some other location than the lot with the residences they are intended to serve. This has been corrected and each residence now has a parking space on the lot it occupies.

None of the dwellings have access to their parking spaces from a public street or alley. The private driveway beside 1314 Potomac Avenue provides access to the parking spaces for the dwellings, but there is no indication on the plans of an easement that would guarantee access to their parking spaces.

Conclusion

For all of these reasons, the Capitol Hill Restoration Society believes that the Board should reverse the decision of the Zoning Administrator to approve revised Building Permits B446916, B446917, B446918, and B446919.

Lyle R. Schauer,
Chair, Zoning Committee