Testimony of ANC 6B
Board of Zoning Adjustment
BZA Case # 16935 – Boys Town
January 21, 2003

At its regularly scheduled and properly noticed meeting of September 12, 2002, ANC 6B voted 7-0-0 (7 members constituting a quorum) to join in the appeal filed by the Southeast Citizens for Smart Development regarding the decision by DCRA to grant building permits to Father Flanagan's Boy's Home to construct single family dwellings at 1308, 1310, 1312 and 1314 Potomac Ave., SE (BZA Case # 16935). For the record, the date of this meeting is different from that of our normal monthly meeting, which would have been Tuesday September 10th. Because that date coincided with DC Primary Election Day, the Executive Committee of the ANC voted to move the date of the meeting to the 12th, with proper notice being given. The ANC's decision was forwarded to the Board in the form of two letters dated September 17 and December 31, 2002.

The ANC believes that these buildings do not conform to the zoning requirements for one-family dwellings in several respects. First, three of the four buildings do not meet side yard requirements of the zoning regulations. These buildings are in a C-2-B zone. According to 11 DCMR §775, one-family detached dwellings in a commercial zone must conform to the side yard requirements of an R-1 zone and one-family semi-detached dwelling must conform to the requirements of an R-2 zone. Those requirements are for a 8-foot side yard. In BZA Case # 16811 (the Pritchard case), this Board ruled that a semi-detached dwelling that does not have a common division wall with an adjacent building requires an 8-foot side yard on both sides. This requirement has clearly not been met for 1310, 1312 and 1314 Potomac Avenue. Note that the decision in the Pritchard case was made on June 4, 2002 – a month before the issuance of these building permits. DCRA seems completely oblivious to the Board's ruling in that case, as shown by the response to then-Chairperson Jarboe dated October 17, 2002 which makes no reference to the Board's finding in that case.

Second, the permit applications do not conform to parking requirements. The original plans for the construction appeared to show two sets of plans for parking. One set of plans shows the utilization of a common parking lot, as noted in the BZA decision in the earlier appeal. In these plans, the three of the buildings do not 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 . Other plans do call for the construction of a private driveway. However, the permit application clearly states that no driveway will be constructed. If there is to be no construction of a driveway, then the requirement for permanent access to the parking areas has not been met. In addition, it appears to be the case from their overall plans for the larger site that the developer will ultimately remove this private drive and rely on the central parking area. Once again, the requirement for permanent access to the parking areas has not been met since there is no guarantee of ownership or control of the private driveway.

The ANC has voted a number of different times on issues related to the proposed Boys Town site on Pennsylvania Avenue. In this case before us, the ANC looked carefully and explicitly at the decision by the Zoning Administrator – and did not engage in an analysis

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and discussion about the merits of the proposed project. That discussion is properly the subject of a hearing on a request for a zoning variance or special exception.

The issue before the Board is the decision by the Zoning Administrator to grant building permits for these buildings as single-family dwellings. It is the conclusion of ANC 6B, as represented in our unanimous vote of September 12, that the decision of the Zoning Administrator was in error and must be reversed to avoid setting a dangerous precedent. Once again, we are very concerned that the BZA uphold the principle that developers should not be allowed to circumvent the process.

There is one other very disturbing aspect of this case. Both points concerning side yards and parking were explicitly raised in the earlier BZA decision. As that decision clearly states "the four buildings shown on the site plans, however, do not have the characteristics of one-family dwellings." The Board went on to elaborate in greater detail specifically how the buildings do not meet the parking and side yard requirements for one-family dwellings. Yet, DCRA deliberately dismissed the BZA's comments, as evidenced in the letter from Gregory Love to then-Chairperson Jarboe dated October 17, 2002. That letter states that the plans were "thoroughly reviewed." That supposed thorough review missed the inconsistency about the construction of the driveway. It also indicated that there was "no change in proposed construction or activity" from the previously submitted plans. If there was no change, then the early comments of the Board are relevant and should have been followed by the Zoning Administrator. They were not, but were dismissed as irrelevant – compounding the Zoning Administrator's error.

Therefore, ANC 6B respectful asks the Board to overturn the Zoning Administrators decision and revoke the permits issued for these buildings.

Finally, the Board must also confront the issue of enforcement. Work on these buildings is essentiayl complete. Thus, simply revoking the building permits is not enough. Otherwise, developers will have an incentive to attempt any and all methods to circumvent the process knowing that there would be no penalties involved. This construction was carried out with the full knowledge that there was strong community opposition. Boytown assumed the risk of continuing construction knowing that there was a legal challenge to their permits. Therefore, should BZA find that the permits are not valid, BZA should also impose stiff sanctions on the developer for continuing this illegal work.