**BEFORE THE BOARD OF ZONING ADJUSTMENT**
**OF THE DISTRICT OF COLUMBIA**

Southeast Citizens for Smart Development, Inc., ANC6B, Appellants

Appeal No. 16935

## Appellant's Opening Statement

Good afternoon, my name is Mary Withum and I represent the appellant in this appeal, the Southeast Citizens for Smart Development, Inc. Advisory Neighborhood Commission 6B has joined in this appeal.

This appeal involves four re-issued building permits by the Department of Consumer and Regulatory Affairs to Father Flanagan's Boys Home, owner and developer of the properties at 1308, 1310, 1312, and 1314 Potomac Avenue. The permits were reissued by DCRA on July 8, 2002 for the construction of four two story and cellar residences.

These properties constitute phase I of a proposed two phase development at the corners of Pennsylvania and Potomac Avenues, Southeast. As plainly noted on the building plans on file with DCRA for the re-issued permits, these four structures are intended to constitute four group homes forming part of Girls and Boys Town, USA, owned and operated by the developer.

By decision dated June 21, 2002, this Board determined that the Zoning Administrator erred in approving the four building permits, first issued for this property on September 6, 2001, as a matter of right use, since the use of the property constitutes a single community-based residential facility, a youth residential care home for 24 children, that requires special exception review and approval.

On July 2, 2002, three days before the BZA's first decision on this property was to take effect, the developer reapplied for four building permits to continue construction of the four structures as single-family homes. The DCRA reissued four permits, nos. B446916, B446917, B446918, and B446919, on Monday, July 8, 2002. The permits enabled the developer to continue construction on the four properties.

SCSD immediately upon notice of the reissued permits contacted DCRA officials to determine the basis of the decision by DCRA to reissue the permits, and to seek a stop work order. As testimony today will demonstrate, SCSD members and counsel attempted repeatedly to obtain both a stop work order on the construction, and to obtain a written decision from the Zoning Administrator explaining the zoning compliance, particularly with side yard set backs and parking, which the BZA specifically discussed in its decision in case no. 16791, issued only weeks earlier. SCSD wanted to understand what efforts the Zoning Administrator made to address the side yard and parking issues discussed in

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the first appeal decision, which seemed to indicate that these structures did not conform to the requirements for single-family dwellings.

After repeated, unavailing efforts to get an answer from DCRA as to the basis of its zoning approval for the reissued permits, and mindful of the 60 day appeal window to BZA, SCSD filed a formal appeal of the four re-issued permits on August 1, 2002. SCSD specifically raised the side yard setback and parking nonconformance as the basis of its appeal. (The parking issue was dismissed by BZA on January 28, 2002). In brief, SCSD's position is as follows:

First, these four structures appear to constitute four detached dwellings. Such dwellings require two side yards pursuant to 11 DCMR 199.1, 405.1 and 775.2. Two side yards were provided only for the structure at 1308 Potomac Avenue. The other three therefore fail to comply with the zoning regulations, and should not have been issued building permits by DCRA.

Second, even if we assume, *arguendo*, as the DCRA claimed more than three months after re-issuing permits, that the three other structures are semi-detached units, the side yard zoning regulations still were not followed. Zoning regulation 11 DCMR 405.3 plainly indicates that an 8' side yard is required on each of the resulting freestanding sides of the structures at 1310 – 1314 Potomac Avenue. None was provided.

Neither did the Zoning Administrator follow BZA's decisional guidance that further clarifies the side yard zoning regulations at issue. Specifically, the June 4, 2002 decision of David and Janet Pritchard, BZA No. 16811, was readily available to the Zoning Administrator, who had testified at length on side yard regulations at that hearing.

The plain meaning of the zoning regulations and the recent decisional guidance from BZA should have been considered and applied by DCRA and the Zoning Administrator before the permits were re-issued for this project. This is especially true given the guidance of BZA No. 16791, the first appeal on this project, which discussed, at pp. 24 & 25 of the written decision, why these four structures appeared not to have the characteristics of four single family dwellings.

That is the legal basis of this case. We believe that our testimony and evidence presented today will meet our burden of proof to show that the Zoning Administrator was wrong to reissue the four permits. But in addition to the legal concerns, the Southeast Citizens ask this Board to consider carefully the timing, context, and process involved in the re-issuance of these permits, as those factors show how remiss the Zoning Administrator and DCRA have been in interpreting, applying and enforcing the zoning regulations. Equally egregious is how non-responsive and slow DCRA has been to communicate with the citizens of this community when inquiring about this project and the permitting process.

I will note that in its Responsive brief, the developer has alleged that Southeast Citizens have one goal, "to keep youth residential care homes . . . out of their

neighborhood, by any means possible." This demonization of the residents is unfair, unwarranted, and just plain wrong. Southeast Citizens are the residents who pay the property taxes, the income taxes, the sales taxes and other fees which pay for City services, including police, schools, snow removal, and even the operations of DCRA. Southeast Citizens are composed of families relatively new to the neighborhood as well as elderly residents who have lived there since before World War II. They are the people who make the community what it is; they plant the tree boxes, pick up the litter, and walk safety patrols on the streets. Southeast Citizens have a right to demand that City officials charged with administering the zoning and building permitting process do the job according to the rules and regulations. In this case, DCRA has not. And it is once again the unenviable task of this Board to sort out this mess, and ensure that the developer and DCRA follow the rules, regulations, and decisional guidance before – rather than after – construction activities take place.

Accordingly, we ask that this Board grant the appeal and deem the re-issued building permits as issued in error. Thank you.

Respectfully Submitted,

Mary F. Withum
Counsel for Appellant

April 1, 2003