D.C.-44
APRIL 1980

Memorandum ● Government of the District of Columbia

TO: Ellen McCarthy, Associate Director
Office of Planning
Development Review & Coordination

Department, Agency, Office: Office of Zoning

FROM: Jerrily R. Kress, FAIA RSK
Director

Date: OCT 0 2 2002

SUBJECT: Appeal No. 16935

Attached hereto is a copy of the above-numbered appeal with related memorandum or a Notice of Certification from the Zoning Administrator's Office. This appeal was filed on August 1, 2002.

APPROXIMATE HEARING DATE: Dec / Jan 03

opappealrefLJP

BZA
Case No. 16935
Exhibit No. 7

Board of Zoning Adjustment
District of Columbia
CASE NO.16935
EXHIBIT NO.7

BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal of Decision by DCRA to issue buildings permits to Father Flanagan's Boy's Home construct single family dwellings at 1308, 1310, 1312 and 1314 Potomac Ave., S.E. (Square 1045, Lots 134, 136, 137, 138)	) No. 16935

CERTIFICATE OF SERVICE

I hereby certify that, on September 30, 2002, a copy of the Appeal in the above-referenced action was served by mail on:

Denzil Noble, Acting Zoning Administrator
941 North Capitol Street, N.E. 2nd Floor
Washington, D.C. 20002

Andrea C. Ferster

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



Building and Land Regulation Administration
Office of the Administrator

August 19, 2002

Andrea Ferster, Esq.
1100 17th Street NW, 10th Floor
Washington DC 20036

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

Dear Ms. Ferster:

This is in response to your letter dated August 2, 2002, in which you appeal, on behalf of the Southeast Citizens for Smart Development (SCSD), DCRA's issuance of Building Permits Nos. B446916, B446917, B446918, and B446919 to Father Flanagan's Boys Home.

We are informed that on August 1, 2002 you filed an appeal with the Board of Zoning Adjustment, also on behalf of SCSD, challenging DCRA's issuance of those very building permits. You based your appeal to the BZA on the same grounds you raised in your August 2, 2002, letter to me.

As you have already appealed to the BZA our issuance of these permits, I am unable to respond to your appeal to me.

Sincerely,

J. Gregory Love
Administrator

cc: David Clark
Theresa Lewis
Denzil Noble
Bob Kelly
Phil Feola, Esq.

LAW OFFICES OF
ANDREA C. FERSTER
1100 SEVENTEENTH STREET, N.W., 10TH FLOOR
WASHINGTON, D.C. 20036
(202) 974-5142
(202) 331-9680 (fax)

August 26, 2002

Mr. David Clark, Director
D.C. Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E. 9th Floor
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. Clark:

Southeast Citizens for Smart Development, Inc. (SCSD) is in receipt of the attached letter from Mr. J. Gregory Love, Administrator of the Building and Land Administration, refusing to respond to SCSD's request, submitted on August 2, 2002, for a stop work order relating to the above-referenced building permits. According to Mr. Love, he is "unable to respond" to this request due to the fact that SCSD has already filed an appeal of the building permits with the Board of Zoning Adjustment (BZA), also asserting that the single family houses to be constructed pursuant to these permits do not conform to applicable zoning requirements.

There is no authority for refusing to act on a request for a stop work order simply because a zoning appeal has been filed. To the contrary, the construction codes explicitly provide for the issuance of stop work orders where a building has been constructed in violation of Zoning Regulations. See 12 DCMR §§ 108.9, 116.7. Indeed, the BZA takes the position that it has no authority to compel DCRA to issue a stop work order. See BZA Decision and Order in Appeal No. 16791, at 3 (June 21, 2002) ("DCRA issues stop work orders pursuant to the Construction Codes Supplement, Title 12 DCMR, not the Zoning Regulations, Title 11 DCMR. Therefore, the Board may not compel DCRA to issue a stop work order."). Therefore, issuance of a stop work order by DCRA could not intrude on the BZA's jurisdiction, since the BZA has expressly stated its belief that it has no authority to take such an action.

Clearly, the above-referenced building permits permitting the construction of four single family dwellings were issued in error. As SCSD pointed out in its letter to Mr. Love dated August 2, 2002, copy attached, the BZA specifically ruled in Appeal No. 16791 that the residences that

are now under construction at 1308, 1310, 1312, and 1314 Potomac Avenue, S.E. do not comply with zoning requirements applicable to community based residential facilities ("CBRFs"), nor do they comply with the zoning requirements applicable to single family detached dwellings. As a result, your agency was clearly required to revoke the previously-issued building permits authorizing construction of four CBRFs as a matter of right, and was also placed on notice that no new building permits could be issued for the same buildings as single family dwellings. Your agency should therefore revoke *all* of the building permits pertaining to these properties, or, at the very least, issue a stop work order. SCSD's August 2, 2002 letter to Mr. Love requests both actions.

The implicit suggestion in Mr. Love's letter that SCSD should defer the filing of a BZA appeal if it wishes to seek a stop work order from DCRA is simply untenable. The difficulty, from SCSD's perspective, of solely pursuing a remedy from the DCRA is that the BZA will not entertain an appeal of the building permits that is not "timely" filed. 11 DCMR § 3112.2.11. To be timely, an appeal must be filed within 60 days of the challenged action. Waste Management of Maryland, Inc. v. D.C. Board of Zoning Adjustment, 775 A.2d 1117, 1122 (D.C. 2001). Thus, the prudent course of action was for SCSD to simultaneously pursue both an appeal to the BZA, as well as an appeal and request for a stop work order to DCRA under the construction codes because the BZA has, in effect, already ruled on this issue. This is precisely what SCSD did in this case.

There is no legal authority for your agency to abdicate its legal responsibility to enforce the zoning regulations and a final order of the BZA simply because SCSD has exercised its right to file a BZA appeal. Mr. Love's refusal to entertain SCSD's request is contrary to both public policy and the public interest in meaningful and effective enforcement of zoning requirements. Such a course of action would force SCSD to choose between exercising its appellate rights and securing immediate relief needed to preserve the *status quo* pending the outcome of its appeal. SCSD hereby requests that you take prompt action to rectify this situation.

Indeed, review of the building permits by DCRA at this point would conserve the resources of all parties concerned, including the government. The permits at issue here were issued without any written explanation or decision by the zoning administrator. This request provides your agency with an opportunity to explain for the benefit of the parties and the BZA why your agency believes that the issuance of these permits can be reconciled with the findings in BZA Decision and Order in Appeal No. 16791 (page 24), that three of the four buildings lacked the 8-foot side yard required by the zoning regulations for single family dwellings by zoning regulations, and 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. See 11 DCMR § 405.9 and 775.2. Moreover, if the permits were indeed issued in error, as SCSD believes is the case, this appeal provides DCRA with an

opportunity to revoke the permits, thereby saving all concerned the time and expense of proceeding before the BZA. In short, there are no valid reasons for refusing to even entertain this request, and there are strong reasons why a response by your agency would serve the public interest.

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: Hon. Anthony Williams, Mayor
Hon. Sharon Ambrose, City Council
Eric Price, Deputy Mayor for Planning and Economic Development
John Koskinen, City Administrator
Kelvin Robinson, Chief of Staff, Office of Mayor
Charlotte Parker, Deputy Corporation Counsel
Kenan Jarboe, Chair, ANC 6B