GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION

Z.C. Case No. 03-21

MOTION OF ST. COLETTA OF GREATER WASHINGTON, INC. TO STRIKE CERTAIN ISSUES AND CONCERNS OF ANC 6-B OR, IN THE ALTERNATIVE, TO DENY "GREAT WEIGHT" TO SUCH ISSUES AND CONCERNS

Applicant, St. Coletta of Greater Washington, Inc. ("St. Coletta" or "Applicant"), by its counsel, hereby moves to strike certain issues and concerns of Advisory Neighborhood Commission 6-B ("ANC 6-B") set forth in a Resolution adopted on October 14, 2003 ("ANC Resolution") or, in the alternative, to deny "great weight" to such issues and concerns.

The grounds for this Motion are set forth in the Memorandum of Points and Authorities below.

Memorandum of Points and Authorities

D.C. Code Section 1-309.10 (d)(3)(A) provides that "[t]he issues and concerns raised in the recommendations of the [ANC] shall be given great weight during the deliberations by the government entity." Furthermore, "[i]n doing so, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the [ANC]".

Pursuant to this statute, the Zoning Commission is required to consider and address the issues and concerns raised in the recommendations presented by an Advisory Neighborhood Commission. The term "'great weight' implies explicit reference to each ANC issue and concern as such, as well as specific findings and conclusions with respect to each." Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1384 (D.C. 1977).

ANC 6-B has set forth the following issues and concerns in its recommendations:

1. That the Applicant build Burke Street, S.E. adjacent to its property as a city street to city specifications.

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2. That the Applicant place funds an escrow to pay for fifty percent (50%) or more of the estimated costs of the construction of Burke Street through the balance of Reservation 13 (i.e., to the Anacostia River).

3. That the Applicant undertake the "ground preparation cost" for land that is located south of Burke Street, S.E. and north of C Street, S.E. for "development by others" and make a commitment that it will not seek to expand its facility on such site.

4. That the Applicant obtain review and approval of the design of the facility by the Historic Preservation Review Board.

5. That bus traffic be prohibited on existing portions of Burke Street, S.E. and that Applicant provide signs so signifying.

6. That the Applicant place funds in escrow for the planting of trees on the existing portion of Burke Street.

A review of these issues and concerns indicates that, on their face,

(i) Items 1, 2 and 3 pertain to property that is not owned or controlled by the Applicant and not subject to the PUD application,

(ii) Item 4 refers to a matter (i.e., historic preservation design review) that is subject to the jurisdiction of a non-zoning, independent governmental authority (i.e., HPRB); and

(iii) Item 6 refers to a matter (i.e., a tree escrow) unrelated to the subject PUD application and over which the Zoning Commission has no jurisdiction.

A more detailed discussion of the legal deficiencies of the ANC Resolution and the legal irrelevancy of its "issues and concerns" to this case are set forth below.

A. The Issues and Concerns of the ANC are Not Relevant to the Subject Matter of the PUD Application.

The Zoning Commission is obliged by statute to review and address issues and concerns submitted by ANC 6-B. However, unless an issue or concern relates to the criteria for granting a specific application, the Zoning Commission is not required to consider or specifically address it. See Friendship Neighborhood Coalition v. District of Columbia Board of Zoning Adjustment, 403 A.2d 291, 295 (D.C. 1979). Thus, the Zoning Commission should only address those concerns of an Advisory Neighborhood Commission that are "legally relevant." See Wheeler v. District of Columbia Board of Zoning Adjustment, 395 A.2d 85, 91 n. 10 (D.C. 1978); Foggy Bottom Association v. District of Columbia Zoning Commission, 639 A.2d 578, 589 (D.C. 1994). "The factors that the [governmental entity] may consider in ruling on an issue are restricted by regulations. ... The Council did not intend to empower the [ANCs] to expand the factors that a board or agency may otherwise lawfully consider in reaching its decision. Thus, we interpret "issues and concerns," ... to encompass only legally relevant issues and concerns." (Emphasis added)" Wheeler, 395 A.2d at 91 n. 10.

Of ANC 6-B's issues and concerns listed above, Items 1 through 4 and 6 are irrelevant to the subject matter of the applications, namely the zoning of the subject site and the grant of a planned unit development (collectively "PUD Application").[1] The Applicant has applied to build a school for students with cognitive disabilities on a site leased from the District of Columbia. The subject matter of the Applicant's PUD Application is the development and use of the site, the design of the school, the plans for landscaping and, most importantly, the specific zoning

[1] Applicant acknowledges that Item number 5 of the ANC Resolution is arguably relevant to the subject matter of the PUD Application.

matters, requirements and restrictions set forth in Chapter 24 of the Zoning Regulations such as those items that pertain to building height, FAR, yards, courts, parking and loading.[2] Items 1 through 4 and 6 consist of matters which are not related to the subject matter of the PUD Application. Such items pertain, instead, to matters that concern property that is not the subject of the PUD Application, such as the future Burke Street, S.E. and an undefined site south of the subject property (i.e., south of future Burke Street, S.E.) and a tree escrow.

B. The Issues and Concerns of the ANC Pertain to Matters Over Which the Zoning Commission Has No Jurisdiction.

Items 1 through 4 and 6 are not issues which are within the jurisdiction of the Zoning Commission. Thus, the Zoning Commission has no authority to consider them. Where the connection between the approval of an application and an issue or concern of an ANC is "tenuous" and is "not being offered as a public benefit in support of [the application]", the Zoning Commission can "properly decline to address the issue ... ." Foggy Bottom Association, 639 A.2d at 589 (holding that the Zoning Commission properly declined to address ANC's concern regarding the relocation of a church's feeding program, when *the relocation was not being offered by the applicant as a public benefit in support of the application*) (emphasis added). Because the issues and concerns of ANC 6-B relate to activities at locations other than the subject site, are not germane to the Application, and pertain to matters not offered by the Applicant in support of the PUD Application as amenities or public benefits, the Zoning Commission has no jurisdiction to address such issues and concerns. See id.

In view of the fact that ANC 6-B's issues and concerns are not relevant to the subject matter of the PUD Application and the Zoning Commission does not possess the jurisdiction or

[2] It should be noted that the ANC Resolution does not specifically oppose the proposed use of the site as a private school, the FAR or building height of the proposed school building, the zoning of the subject site as SP-1, the landscaping or any other zoning matter referenced in the PUD Application.

authority to consider them, St. Coletta requests that the Zoning Commission strike Items 1 through 4 and 6 of the ANC Resolution of ANC 6-B or, in the alternative, deny "great weight" to such issues and concerns.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

Dated: October 30, 2003

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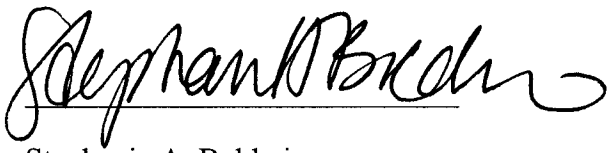
cc: Ms. Sharon B. Raimo

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION OF ST. COLETTA OF GREATER WASHINGTON, INC. TO STRIKE CERTAIN ISSUES AND CONCERNS OF ANC 6-B OR, IN THE ALTERNATIVE, TO DENY "GREAT WEIGHT" TO SUCH ISSUES AND CONCERNS was served by first class mail, on this 30th day of October, 2003, to:

Ms. Julie Olson
Advisory Neighborhood Commission 6-B
921 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Mr. Andrew Altman, Director
Ms. Maxine Brown-Roberts
Office of Planning
Government of the District of Columbia
801 North Capitol Street, N.E.
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Stephanie A. Baldwin

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