

September 11, 2020

Via Hand Delivery and Email

Board of Zoning Adjustments
1340 Poydras Street
Suite 900
New Orleans, Louisiana 70112

RE : Application for Appeal from the Zoning Verification dated August 3, 2020
Regarding the Property Located at Children's Hospital, 200 Henry Clay Ave, New
Orleans, LA 70118

Dear Board Members:

Please let this letter, as well as the documentation which is attached hereto, serve as the Application for Appeal on behalf of those identified in the attached **Exhibit A** (the "Applicants") from the Zoning Verification dated August 3, 2020 (the "Zoning Verification") and attached hereto as **Exhibit B**. The Zoning Verification erroneously classifies the new helicopter landing structure located at Children's Hospital as a "helistop" rather than as a "heliport" as those terms are defined in the New Orleans Comprehensive Zoning Ordinance (the "CZO"). This Application for Appeal is submitted to the Board pursuant to its authority under La. R.S. §33:4721, et seq. and Sections 2.6, 4.8, and 4.9 of the CZO.

I. Introduction

a. New Helicopter Landing Structure at Children's Hospital

The undersigned represents the interests of the Audubon Riverside Neighborhood Association and 98 individual neighbors residing adjacent to Children's Hospital ("CH"). This Application for Appeal arises out of CH's operation of a heliport in violation of the CZO. Operation of a heliport at CH requires the granting of conditional use – a process which has never been undertaken.

At the outset, Applicants make clear that they fully support CH's use of a helicopter for pediatric critical care transport, and value the essential service it provides to our region. In fact, since 2011 CH has utilized a dedicated helicopter for transport of its patients in amicable coexistence with its surrounding neighbors. This is because from 2011 to April 2020, the helicopter accessed CH via a landing structure located in the back of CH's property, appropriately distanced from surrounding neighbors. See **Exhibit C** attached hereto showing the original landing structure location.

However, in May 2020, with absolutely no warning from the City, no warning from CH, and notably, **no permitting from the City**, CH began operating its helicopter from its newly constructed landing structure located at the front of CH's property, immediately adjacent to Tchoupitoulas Street. See diagram attached hereto as **Exhibit D** showing the new landing structure location and its proximity to neighborhood homes. See also various correspondences between employees of the Department of Safety & Permits wherein the employees acknowledge that the structure was constructed without a building permit attached hereto as **Exhibit E**.

The helicopter's activities in the new location are incredibly disruptive and detrimental to the health, wellbeing, and property of CH's surrounding neighbors. Applicants have recorded decibel readings in the 90-104 dB range at their homes. See the video attached hereto as **Exhibit F**. Their homes shake as the helicopter comes and goes. See the video attached hereto as **Exhibit G**. Their families are awoken by the pervasive noise throughout the night, sometimes multiples times, when a flight takes off, arrives, or hovers at the new location. The noise is absolutely unbearable and inescapable as long as the helicopter continues to operate at the new location.

b. Ashley Becnel's August 3, 2020 Zoning Verification

On July 13, 2020, *two months after* CH began helicopter operations at the new location in May, CH, through its counsel Sharonda Williams, requested a zoning verification from the Department of Safety and Permits regarding classification of the new helicopter landing area. In the following days Ms. Williams, at Ms. Becnel's request, provided additional information to Ms. Becnel. None of the information requested, or actually provided, offered Ms. Becnel a complete picture of the facts relevant to the zoning verification determination. See Exhibit B, which includes all documents available via One Stop regarding the Zoning Verification.

In the resulting Zoning Verification, dated August 3, 2020, Ms. Becnel erroneously determined that the new helicopter landing structure at CH is classified as a "helistop" as the term is defined in the CZO. Applicants are seriously concerned that in rendering her decision Ms. Becnel failed to adequately question or verify the information provided to her by CH and completely ignored the obvious helicopter service facilities located at the site. She apparently made no effort to review (1) the plans submitted to the Department of Safety and Permits regarding the new helicopter landing structure, or (2) the actual structure itself which had been completely constructed and put into use **without a building permit**. Instead, it appears that Ms. Becnel's decision was based solely on the incomplete and inaccurate information provided to her by CH through Ms. Williams regarding the home base for the helicopter.

The erroneous conclusion reached in the Zoning Verification aside, Applicants are also concerned that the Zoning Verification is invalid because, in direct contravention to Section 4.9 of the CZO which requires Zoning Verifications to be issued by the Director of Safety and Permits, the subject Zoning Verification was issued by Ashley Becnel in her capacity as "Chief Zoning Official."

II. Interest of the Applicants

This Application for Appeal is filed on behalf of the Applicants listed in the attached Exhibit A. Exhibit A also includes an authorization by each Applicant for the filing of this Appeal.

All Applicants have an interest in this matter pursuant to CZO Section 4.8.A which states, “appeals to the Board of Zoning Adjustments may be filed by **an aggrieved party or by any officer, department, commission, board, bureau, or any other agency of the City affected by any decision of the Director of the Department of Safety and Permits...**” Additionally, Section 4.9.E of the CZO states, “**an interested party** may appeal the zoning verification decision by the Director of Safety and Permits to the Board of Zoning Adjustments...” Each individual Applicant lives or owns property in close proximity to CH and to the structure being illegally operated as a heliport. As described above, each Applicant is significantly adversely affected or aggrieved by the proximity of the helicopter’s activities to their homes.

III. Law and Argument

a. The New Landing Structure at Children’s Hospital is a “Heliport”

i. Definitions

The CZO contains the following definitions:

Heliport – Land, water, or structures used for the landing and take-off of helicopters, and having service facilities for such aircraft or providing for permanent basing of such aircraft.

Helistop – Land, water, or structures used for the landing and take-off of helicopters with no facilities for service or permanent basing of such aircraft.

Pursuant to these definitions, a structure used for the landing and takeoff of helicopters which (1) has service facilities for such aircraft, OR (2) provides permanent basing of such aircraft, is a **heliport**. The presence of **any** service facilities on site places the structure outside the scope of the definition of a helistop.

The Louisiana Administrative Code, Title 70, Part IX, § 101(C) sets forth classifications of Louisiana airports, seaplane bases and heliports. Subsection (C)(8) sets forth the definition of “Heliport Service Facilities.” It provides, in relevant part, as follows:

8. Heliport Service Facilities. Those facilities such as major maintenance facilities, or fueling facilities which may be used in conjunction with a heliport. Such facilities must receive approval from the Aviation Section prior to their construction or use. Registration of a heliport is not to be understood as approval for heliport service facilities.

Additionally, pursuant to Section 15.2.A of the CZO, a heliport is a conditional use within MC Districts.

ii. The New Landing Structure at Children’s Hospital has Service Facilities for the Helicopter

Plans and specifications for the new helicopter landing structure at CH were submitted to the Department of Safety and Permits. *See* all materials relating to Ref Code: 10D1K4 attached hereto as **Exhibit H**, which were received by Applicants pursuant to a public records request to

the Department of Safety and Permits. These plans unequivocally show that the landing structure has service facilities for the helicopter. For example, the sheet labeled "Penthouse Roof Plan Zone C1" shows the following service facilities for the helicopter:

1. (2) Fuel Water Separators
2. (1) Fuel Containment Tank
3. Fuel pipe
4. Jet fuel line
5. (2) Foam storage tanks
6. Fuel Dispenser Cabinet
7. Emergency Fuel Shut Off

Furthermore, the sheet labeled "Fifth Floor Gravity Plan Zone C1" shows the following additional service facilities for the helicopter:

1. Pilot Sleep room
2. Flight Planning office
3. Second pilot sleeping room
4. Bathroom with shower
5. Second office
6. Transfer center
7. Support staff room
8. Data UPS
9. Essential gear room
10. Normal gear room
11. Mechanical room

In addition to the fueling capabilities and pilot accommodations, a 5,000 gallon underground storage tank for jet fuel was installed at CH to service the helicopter landing structure. *See* plans and specifications by "Heliport Systems, Inc." for the "New Underground Storage Tank (UST) Install" contained in the attached **Exhibit H**. *See also* photographs of the heliport and fuel service facilities located thereon, as well as documentation related to fuel storage tank installation attached hereto as **Exhibit I**. Applicants received **Exhibit I** pursuant to a public records request to the Louisiana Department of Environmental Quality.

The plans and specifications which are contained in the Department of Safety and Permit's file regarding CH's new helicopter landing structure make abundantly clear that the structure has service facilities for the helicopter, and was always intended to include service facilities for the helicopter, such as fueling capabilities, a 5,000 gallon storage tank for jet fuel, and an array of facilities for the helicopter's pilots. In addition to the evidence of service facilities contained in the plans for the structure, the actual structure (which has already been constructed and put into use without a building permit or certificate of occupancy) very clearly has service facilities which service the helicopter. *See* photos of refueling and pilots peering onto the property of Applicants attached hereto as **Exhibit J**.

None of the foregoing facts regarding the obvious service facilities in place at CH were mentioned in the Zoning Verification. Applicants believe that none of these highly relevant facts were even considered by Ms. Becnel.

iii. The Helicopter is Permanently Based at Children's Hospital

The existence of service facilities alone is enough to require classification of the helicopter landing facility at CH as a "heliport" pursuant to the CZO. However, the helicopter is also consistently stationed at CH overnight and during the day when it is not in use, such that it is "permanently based" there.

Applicants believe CH misled the Department of Safety & Permits in their representation that this helicopter is regularly housed at the Lakefront Airport on a permanent basis. Applicants have learned since the issuance of the Zoning Verification that CH provided a Space Permit as evidence of its aircraft's permanent basing at the Lakefront Airport, but they notably did not offer anything to substantiate that they actually regularly exercise that right to house the helicopter there on a day-to-day and permanent basis. Although Applicants requested flight logs and flight plans from CH, CH has declined to produce the same to corroborate their representation that the helicopter is, in fact, based out of the Lakefront Airport. Moreover, publicly available flight tracking data for the CH helicopter shows that it was only spotted near or had a flight originating from the Lakefront airport a handful of times over the last two years, and many times it was only in its vicinity for mere minutes. *See* FlightAware data for the CH helicopter from August 5, 2018 to August 5, 2020 attached hereto as **Exhibit K**. Furthermore, application materials submitted on behalf of CH to the Federal Aviation Administration ("FAA") plainly show CH's intention to base aircraft at CH's heliport. *See* FAA application materials received pursuant to a public records request attached hereto as **Exhibit L**.

This, along with the testimonials of the neighbors and photographs demonstrate that the helicopter's presence at the Lakefront Airport is transient at best, and that its permanent base is, as it has always been, at 200 Henry Clay Ave.

b. The Zoning Verification is Invalid Because it was not Issued by the Director of Safety and Permits

Applicants suggest that the Zoning Verification is invalid because, in direct contravention to Section 4.9 of the CZO which requires Zoning Verifications to be issued by the Director of Safety and Permits, the subject Zoning Verification was issued by Ashley Becnel in her capacity as "Chief Zoning Official." Nowhere in the four corners of the Zoning Verification is the Director of Safety and Permits mentioned. Therefore, not only is Ms. Becnel's decision incorrect based on the evidence presented herein, but it is also invalid as she had no authority for its issuance.

IV. Request for Stay

Pursuant to La. R.S. §33:4727(C)(2)(b), Applicants request a stay of all proceedings related to the determination contained in the Zoning Verification, including any further permitting actions. Applicants further request a stay of CH's illegal operation of the heliport.

Applicants believe that CH continues to operate the heliport pursuant to its understanding that the Zoning Verification alone is satisfactory for legal operation of the structure. However, explained herein, CH has no building permit, no certificate of occupancy, and no approval from the Federal Aviation Administration or the Louisiana Department of Transportation and Development, Aviation Section for operations at the new helicopter landing structure. Therefore, Applicants request that CH be required to cease all operations at the new location and resume operations at the original location – the location which CH has used and operated since 2011.

V. Subpoena Requests

Please let the following serve as Applicants' request for issuance of subpoenas by the chairman or acting chairman of the Board pursuant to the authority contained in La. R.S. §33:4727(C)(1) for the below listed individuals for attendance as witnesses at the hearing on this Application for Appeal. Applicants will supplement this submittal with contact information for the below listed individuals.

1. Ed Horan
2. Larry Chan
3. Zach Smith
4. Jay Dufour
5. Ashley Becnel
6. Tammie Jackson
7. Garrett Willis
8. Daniel Hrapmann
9. Wheeler Manouchehri
10. Nicholas Kindrel
11. Jennifer Kretschmann
12. Scott Landry
13. Warren Umbach
14. John Nickens, IV
15. Evan Bertucci
16. Suzie McShan, RN
17. Chad Ponson, RRT
18. Sherry Troquille, RN
19. Chuck Labella, RRT
20. Wills Hover
21. Tim Burdette
22. Tom Jones and/or representative of Jones Brothers Company, Inc.
23. Roy Blackburn Sears and/or representative of Stanly Beaman & Sears, Inc.
24. David Deis

25. Tom Danner
26. A representative of Eskew Dumez Ripple
27. N.D. Eryou, PhD
28. A representative of Heliport Systems, Inc.
29. A representative of Encore FBO LLC d/b/a Signature Flight New Orleans
30. Addie Fanguy
31. A representative of Air Med Services, LLC
32. Mike Sonnier

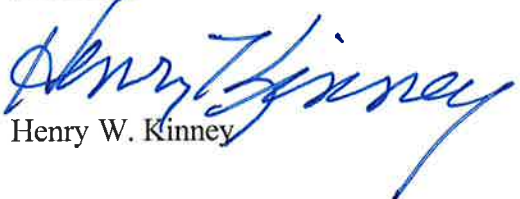
VI. Conclusion

The new helicopter landing facility located at CH is unquestionably a “heliport” as the term is defined in the CZO. The evidence presented herein shows that the helicopter landing structure has service facilities for the helicopter and is permanently based at CH. The Zoning Verification is not only incorrect, but it is also invalid because it was not issued by the Director of Safety and Permits. Therefore, Applicants request that the Board grant their Application and retract the conclusion reached in the August 3, 2020 Zoning Verification to correctly classify the helicopter landing structure as a “heliport” and to require issuance of the Zoning Verification by the appropriate authority.

Applicants further reserve the right (1) to supplement this Application for Appeal with any additional information that may become available within the Board’s timeline for submission, and (2) to appeal any decision by the Department of Safety and Permits which has been rendered but is not now known to Applicants.

Applicants request that the Board retain independent counsel regarding this matter since the City Attorney’s office has provided counsel directly in this matter and has advised Ms. Becnel and others. Therefore, the City Attorney’s office cannot render independent counsel and advice to this Board.

Sincerely,



Henry W. Kinney

Enclosures