FILE
JUL 15 2003
DISTRICT OF COLUMBIA
COURT OF APPEALS

Rec'd 8/7/03 KW

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 01-AA-1343

CAPITOL HILL RESTORATION SOCIETY, INC., PETITIONER,

v. BZA16404

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, RESPONDENT,
AND
JACK MILTON FIELDS, JR., INTERVENOR.

Petition for Review
of a Decision of the District of Columbia
Board of Zoning Adjustment

(Argued June 18, 2003 Decided July 15, 2003)

Before: WAGNER, *Chief Judge*, FARRELL, *Associate Judge*, and NEBEKER, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

We are here asked to decide whether the Board of Zoning Adjustment (BZA) erred in affirming a home occupancy permit (permit) for the property at 434 New Jersey Avenue, S.E. (property). Petitioner, Capitol Hill Restoration Society (CHRS), alleges that the property was not the principal residence of the applicant, Jack Milton Fields, Jr., who is the intervenor in this matter, as required for the Zoning Administrator to grant a permit. The BZA held that CHRS should pursue its allegation that the property is not Fields' principal residence as an enforcement matter. Based on the record, we defer to the BZA's decision. Accordingly, we affirm.

I.

Fields applied to the Zoning Division of the Building and Land Administration of the District of Columbia for a home occupancy permit[1] for the property, which he was planning to purchase. The application was made in November 1997. On February 5, 1998 the Zoning Administrator approved Fields' application for the permit, which would only be valid upon his moving into the property. In July 1998, Fields purchased the property and proceeded to restore the house for residential and limited office use.

Shortly after receiving the permit, Fields applied to the BZA for a special exception to allow him to employ one more person at the property than allowed under zoning regulations. On July 23, 1998, the BZA held a hearing at which it granted Fields' application for special exception.

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[1] Home occupation permits are issued for primary residences in the District of Columbia, thus allowing the property to have a secondary business use while limiting the number of employees to one person other than the resident. D.C. MUN. REGS. tit. 11, §203.4 (2003).

BZA
Case No. 16404
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO.16404
EXHIBIT NO.31

On September 14, 1998, CHRS appealed the February 1998 issuance of the permit to the BZA, arguing that the permit was improperly issued on several grounds. In its December 2, 1998, statement to the BZA, CHRS argued that its September 14th appeal was timely because it had no factual basis to challenge the Zoning Administrator's decision until the July 23rd hearing concerning Fields' application for special exception, at which time Fields testified that he was a Texas resident. CHRS thus contended that it first learned on July 23rd that the Zoning Administrator issued Fields the permit although, it asserts, the property was not his primary residence.

At the December 16, 1998, hearing, the BZA denied Fields' motion to dismiss CHRS's appeal as untimely. Finding that CHRS was "not chargeable with notice or knowledge of the facts it believed were necessary to challenge the Zoning Administrator's determination until the July 22, 1998 special exception proceedings," the BZA concluded that CHRS filed a timely appeal.

At the June 2, 1999 decision meeting, the BZA concluded that whether the property was Fields' principal residence was an enforcement issue and affirmed the Zoning Administrator's decision. On March 8, 2000, the BZA issued its Decision and Order, which reflected its June 1999 decision, stating that CHRS had not met its burden of demonstrating that the Zoning Administrator erred in granting the permit. Following the BZA's September 21, 2001 denial of CHRS's March 16, 2000 Motion for Reconsideration, CHRS petitioned for review in this court.

II.

We do not find the BZA's conclusion that CHRS should pursue the issue of whether the property is Fields' principal residence as an enforcement matter rather than through revocation proceedings, to be arbitrary, capricious, or an abuse of discretion. *Sisson v. District of Columbia Bd. of Zoning Adjustment*, 805 A.2d 964, 969 (D.C. 2002) (quoting D.C. Code § 2-510 (a)(3)(A), (C) (2001)). Moreover, the BZA's procedural ruling – as this one surely is – "is entitled to additional deference." *Id.* at 968 (citation omitted). By alleging that the property is not Fields' primary residence, CHRS was, in effect, challenging the validity of the post-permit occupancy.[2] Therefore, we defer to the BZA's conclusion that determining whether Fields' occupancy is currently valid – *i.e.*, whether Fields maintains the property as his primary residence – must be raised as an enforcement matter rather than a permit issuance/revocation issue. We reach the same conclusion with respect to CHRS's assertion that Fields is using the property primarily for business rather than residential purposes, contrary to 11 DCMR § 203.1 (2002).[3] Accordingly, it is

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[2] CHRS, at oral argument, conceded that a non-resident, contract purchaser of property located in the District could apply for and receive a home occupation permit even though to obtain the permit the property must be the applicant's principal residence.

[3] We reject CHRS's argument that the Board improperly limited the scope of evidence it would consider at the hearing. *See generally Cathedral Park Condo Community v. District of Columbia Zoning Comm'n*, 743 A.2d 1231, 1250 (D.C. 2000).

ORDERED and ADJUDGED that the decision on review be, and hereby is, affirmed.

FOR THE COURT:

GARLAND PINKSTON, JR.
Clerk of the Court

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Clerk of the District of Columbia Court
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BY
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