BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

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Appellant	)	
Southeast Citizens for Smart Development, Inc.	)	BZA No. 16935
ANC6B	)	

Appellant's Supplemental Response to Motion to Dismiss
And Response to Issues Raised by Board of Zoning Adjustment

In the hearing before the BZA in this appeal on January 21, 2002, the Board asked the appellant to comment upon the nature of the initial and revised permits, as well as how the original and newly issued building permits should be viewed, i.e., as four single group homes or as one facility. BZA found in No. 16791 that this project is one facility.

Appellant reviewed case law on this point and did not locate any District of Columbia cases on point. Appellant therefore focused its inquiry on what the permitting documents themselves appear to indicate on the issues raised. The following represents Appellant's observations of the original and revised permit applications and permits, as well as the plans for the revised permits.

ORIGINAL PERMITS MUST BE VIEWED AS ONE FACILITY FOR ZONING REVIEW

The nature of the original permits was for one facility consisting of four youth residential care homes and not as four single-family homes. A review of the information provided in the plans, permits and applications show that the character of this development was that of one facility which has now changed to four single-family homes. The best evidence of this fact can be gleaned from the developer's representations, on the documents it submitted for permitting, and its belief as to which regulations applied to its permit applications. See BZA No. 16791.

Revised Plans Are Inconsistent With Zoning Requirements of Single Family Dwellings (SFD)

Although this property is zoned C-2-B, the R-2 single-family dwelling requirements apply. When viewed from the perspective of what is required in an R-2 zone, then developer's position that these structures were always viewed as four separate units, is not supported by the documentation. See Single Family Dwelling Requirements (Assuming R-2 applies). The cover sheet for developer's revised plans show the following:

- Proposed Use described for all four units as "One Family Detached Dwelling"
  Not "one Detached" and "three Semi-detached" dwellings
  (Also, Drawing C1.1 describes structures as "Group Home[s] #1, #2, #3, #4")

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(Nor does Drawing A101 describe structures as "Single Family Homes", but rather as "Proposed House – 2 Story and Cellar")

- Percentage of Lot Occupancy Allowed: 80% (claimed by plans)
  But SFD (R-2) only allows 40% of Lot Occupancy

- Proposed Percentage of Lot Occupancy Increase: (shown on plans)
  1308 - 39% (Detached dwelling)
  1310 – 45% (Semi-detached dwelling)
  1312 – 45% (Semi-detached dwelling)
  1314 – 43% (Semi-detached dwelling)

  On their face, three of the four structures do not comply with allowable lot occupancy percentages for Single Family Dwellings in R-2 zone

- Rear Yard Requirement: 15 feet minimum (claimed by plans)
  37' actually provided
  SFH requirements for Rear Yard is 20' minimum

- Side Yard Requirements: None required (claimed by plans)
  One 8' side yard apparently provided for 1310, 1312 & 1314 (which is cut to a 2' side yard due to projection on east side of structure); 1308 provided with two side yards.

  But *All* Single Family Dwellings, except for row dwellings or apartment houses with multiple units, require *at least one side yard.* See 11 DCMR 405, et seq.

- Parking: 1 parking space for each house (claimed by plans)
  One space for each structure is actually provided in the plans; but plans submitted for permitting, initially and as revised, include drawing C1.1 which shows an intended modification of the parking to community parking (13 spaces) in a separate lot, as well as *elimination* of the 1 parking space per lot installed in Phase I construction, apparently to be replaced by parallel parking spaces for 8 cars (i.e., one space for each of two staff members per structure), in spaces that run across lot lines (as noted in BZA No. 16791, at 24 as "not comparable to that" provided for four one family dwellings or four independently operated group homes).

Based upon these representations made by the developer (noted on the plans' cover sheet) regarding what it believed was required to make this project compliant, the developer's representations do not comport with the requirements for four single-family dwellings constructed in an R-2 district. Therefore, the developer cannot now assert that the *nature* of this project from the original permit applications was four single-family dwellings. The R-2 regulations that would have been applicable then, as now, to single family homes, were not in all cases complied with, nor apparently believed by developer

to be applicable (i.e., lot occupancy, rear & side yard setbacks, parking requirements, etc., that developer's cover sheet indicate it *believed* were applicable). Therefore BZA can only conclude that the nature of this project has changed.

Inconsistencies as to Parking & Driveway Scope of Work on Permits and Applications Shows Nature of Initial Permits was for Single Facility

As noted in the hearing on Tuesday, January 21, 2002, the applications and permits show a variety of inconsistencies as to developer's intentions for meeting the parking and driveway requirements. For example, drawing A101 shows one parking space per lot, but is preceded by drawing C1.1 that shows rear curbside parallel parking for 8 spaces joined by 13 more spaces in a community parking area. Had developer viewed the nature of this project in the beginning as that of four separate single family structures, then it seems inconsistent to include, for permitting purposes, a drawing for Phase II showing the removal of the apparently compliant, on site four parking spaces, and replacement with other, apparently non compliant curbside parking with a connected community parking lot.

BZA Decision Found This to Be One Facility

After a public hearing and review of the facts, including drawings, permits, applications and expert testimony, BZA concluded that the Zoning Administrator had erred in approving the four building permits as a matter of right, "since the use of the facility constitutes a *single* community-based residential facility, a youth residential care home for 24 children, that requires special exception review and approval." BZA No. 16791, at 2. It was in this context, as a single facility for 24 youths, that the appellant reviewed the evidence, including the permits, applications, plans & drawings, for purposes of appealing the Zoning Administrator's approval of this project:

Applications identical, for identical use "Youth Residential Care Home (CRF)"
Applications Submitted Simultaneously with ONE set of plans
Applications reviewed and approved simultaneously by DCRA & all permitting authorities
Permits say occupancy as "CRF housing 6 youths/2 adults"
Permits issued on same date, simultaneously, within a 2 minute period (11:23 & 11:24)
Buildings have virtually identical layouts
BZA found commonalities in operations, i.e., staff, programs, administration, etc.

Drawing C1.1, which shows alleged Phase II plans supports this:

- Buildings described as Group Homes 1-4
- Parking changed to 8 parallel spaces to accommodate needs of 2 staffers/house with connected parking for 13 more spaces on adjoining lot presumably for visitors & other visiting staffers

Conclusion

Based upon the information set forth above, it is apparent that this project was one facility from the beginning and is now transformed into four single use facilities. Given this fundamental change in the nature of the development, it is appropriate to deem Appellant "chargeable with notice" for appeal purposes, as of July 8, 2002, when the new permits were issued. Such a conclusion is consistent with the decisional guidance found in Sisson v. District of Columbia Board of Zoning Adjustment, 805 A.2d 964 (D.C. 2002). In that case, the Court of Appeals recognized that there are instances where it is inappropriate to slavishly apply the 60 day time limit from the date of issuance of a permit, especially where unique, extenuating circumstances exists, such as those present here.

The Appellant therefore believes, based upon its previous submissions and the analysis noted above, that its appeal is timely given the change in the nature of the new permits which were issued by DCRA.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 2003, I served via facsimile (with receipt verified by telephone confirmation of recipient) a copy of the foregoing Appellant's Supplemental Response to Motion to Dismiss and Response to Issues Raised by Board of Zoning Adjustment, on the following:

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