BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Southeast Citizens for Smart Development, Inc., ANC6B, Appellants

Appeal No. 16935

Appellant's Response to Amended Motion to Dismiss

Appellant, Southeast Citizen's for Smart Development ("SCSD") opposes the Amended Motion of the Intervenor/Property Owner ("Developer") and requests that it be dismissed with prejudice.

The Amended Motion relies largely on legal authorities and arguments considered and dismissed by this Board on January 21 & 28, 2003.[1] The only new argument is based on the Zoning Administrator's statement that ". . . the [Zoning Administrator's office] . . . *did* define the structures [as] semi-detached dwellings, and did apply the side yard restrictions under Section 775.3 in the original permit on September 6, 2001." See Amended Motion, at 3. The Zoning Administrator's statement is not supported by the record.

1. Rebuttal testimony by SCSD will demonstrate that numerous Freedom of Information Act and other verbal requests for information revealed absolutely no evidence in DCRA files of any determination by DCRA pertaining to "semi-detached dwellings" prior to the October 17 & 21, 2002 letters to ANC6B and SCSD. See SCSD Exhibit Nos. 12 -15.

2. Nothing in original or re-issued Permits, Plans or Applications indicates "semi-detached dwellings". See BZA Exhibit No. 33.

3. On cross-examination, the Zoning Administrator could point to nothing – other than his testimony based on hearsay - to support his statement that a "semi-detached dwelling" determination was made by DCRA as early as September 6, 2001.

4. The July 15, 2002 letter of then Acting Zoning Administrator, Denzil Noble, asserting full zoning compliance for re-issued permits, states nowhere that the structures were deemed "semi-detached dwellings". See SCSD Exhibit No 7b.

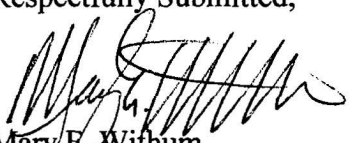
[1] On two of the three grounds of the Amended Motion, the Developer simply reasserts prior arguments rejected last January, and again on April 1, 2003, when the Developer re-asserted its Motion to Dismiss. Those rejected arguments are: first, that "the Board is mistaken in claiming that the applicable side yard restrictions changed when the proposed use changed"; and third, that to allow the appeal to proceed to a hearing on the merits, the Board needed to find extenuating circumstances preventing the ability of SCSD to appeal the side yard issue by November 6, 2001. The Board found previously that the proposed change in use did indeed change the side yard, but not the parking, requirements. Further, based upon that initial proposed use as a youth residential group home, and change in side yard requirement, SCSD had no basis to know and appeal the initial permits under the single family dwelling zoning requirements.

Case No. 16935
Exhibit No. 40

Board of Zoning Adjustment
District of Columbia
CASE NO.16935
EXHIBIT NO.40

Accordingly, SCSD asks that this Board deny the Amended Motion to Dismiss with prejudice, grant the appeal, deem the re-issued building permits as issued in error, and grant such other and further relief as it deems appropriate. Thank you.

Respectfully Submitted,



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April 15, 2003