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MARTIN SULLIVAN
202-663-9062
Martin.Sullivan@ShawPittman.com

May 2, 2003

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Mr. Geoffrey Griffis, Chairman
D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: Appeal No. 16935; Father Flanagan's Boys Home

Dear Chairman Griffis:

Enclosed are one original and 20 copies of a set of *two* Proposed Findings of Fact and Conclusions of Law that we are filing on behalf of the subject property owner, Father Flanagan's Boys Home. The first Proposed Findings is a draft Dismissal Order, should the Board decide to dismiss the Appeal. The second Proposed Findings is a draft Order on the merits of the Appeal.

Please call us with any questions or comments.

Sincerely,

Martin Sullivan

BZA
Case No. 16935
Exhibit No. 47

Board of Zoning Adjustment
District of Columbia
CASE NO.16935
EXHIBIT NO.47

PROPERTY OWNER'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Appeal No. 16935 of Southeast Citizens for Smart Development, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decisions of the Zoning Administrator, allowing the construction of four (4) single-family dwellings allegedly in violation of the side yard requirements under subsections 405.9 and 775.2, location parking space provisions under subsection 2116.1, and parking space accessibility provisions under subsection 2117.4, in a C-2-B District at premises 1308, 1310, 1312 and 1314 Potomac Avenue, S.E. (Square 1045, Lots 134-137).

D.C. OFFICE OF ZONING
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HEARING DATES: **January 21, 2003, April 1, 2003, and April 15, 2003**

DECISION DATES: **January 28, 2003, and May 6, 2003**

DISMISSAL ORDER

FINDINGS OF FACT

1. On September 6, 2001, DCRA issued the following building permits (collectively, "**Building Permits**"): (1) Permit No. B438336, for 1314 Potomac Avenue, S.E., Lot 134; (2) Permit No. B438337, for 1312 Potomac Avenue, S.E., Lot 135; (3) Permit No. B438338, for 1310 Potomac Avenue, S.E., Lot 136; and (4) Permit No. B438335, for 1308 Potomac Avenue, S.E., Lot 137. The Building Permits authorized the construction of four residences ("**Homes**"), each with a proposed use as a youth residential care home for up to six children and two adults.

2. On September 12, 2001, the Appellant filed an appeal of the Building Permits, challenging the *proposed use* of the Homes ("**First Appeal**"). The subject of the

First Appeal was related entirely to the proposed use of the Homes. No violation of area zoning requirements, including those related to side yard setbacks, parking or parking access, was alleged in the First Appeal.

3. On June 21, 2002, the Board issued BZA Order No. 16791, approving the First Appeal, basing its ruling entirely on *the proposed use* of the Homes as youth residential care homes.

4. In accordance with the Board's direction, Girls and Boys Town filed revised permit applications changing the proposed use of the Homes to single family dwellings. The change in proposed use was the only alteration to the revised applications for the Building Permits.

5. DCRA issued revised permits ("**Revised Permits**"), with the one and only change from the Building Permits being a change in proposed use from youth residential care homes to single family dwellings.

6. On August 1, 2002, the appellant filed its second appeal ("**Second Appeal**"). The Second Appeal alleges that the Revised Permits were issued in error because they do not meet certain parking, parking access, and side yard requirements of the Zoning Regulations.

7. The Board reviewed two sets of architectural and civil plans; the first set of plans being part of the applications for the original building permits, issued on September 6, 2001, and the second set of plans being part of the applications for the revised building permits, issued on July 8, 2002. The two sets of plans were identical; there were no changes to any aspect of the proposed structures between the original permit applications and the revised permit applications.

8. In issuing the Building Permits, the Zoning Administrator reviewed and approved the proposed structures as 3 one-family semi-detached dwellings and 1 one-family detached dwelling. The definitions of the proposed structures are wholly separate and apart from the proposed uses for the Homes. The Zoning Regulations that provide the area requirements for the proposed structures are the same for the original permit applications and the revised permit applications, regardless of the proposed use for these structures.

9. The Appellant has alleged that the Zoning Administrator lacks credibility and has urged the Board to give no weight to his expert opinions or his testimony regarding the facts or the established law surrounding this appeal. The Appellant, however, presented no relevant evidence to refute the testimony of the Zoning Administrator regarding decisions of his Office, made as of September 6, 2001, defining the proposed structures as one-family semi-detached dwellings regardless of the proposed use. Further, the Appellant presented no relevant evidence that the Zoning Administrator lacked credibility in his testimony before this Board. The Board refuses to make such an accusation against the integrity of the Zoning Administrator when no convincing evidence has been presented in favor of such a conclusion. Furthermore, it is the Appellant that holds the burden of proof in this appeal and as such the Appellant must present evidence to overcome the testimony presented by the Zoning Administrator, rather than simply condemning, without basis, his credibility.

10. The decisions of the Zoning Administrator being challenged in this appeal were made as of the issuance of the Building Permits, on September 6, 2001. There was

no need for the Zoning Administrator to revisit these decisions in connection with the issuance of the Revised Permits, on July 8, 2002.

11. The Appellant was chargeable with notice of the Zoning Administrator's decisions as to side yards, parking and parking access as of September 6, 2001.

12. The Appellant chose not to appeal these decisions until August 1, 2002.

13. The Appellant was fully capable of challenging the decisions of the Zoning Administrator regarding side yards, parking and parking access, beginning on September 6, 2001. The Appellant was extremely involved with DCRA in monitoring, and questioning, the issuance of the Building Permits. In evaluating the issuance of the Building Permits, the Appellant employed experienced legal zoning counsel and a zoning expert recognized as such by this Board. The Appellant only appealed the proposed use underlying the Building Permits, and never expressed any dissatisfaction with any physical characteristics of the proposed structures. The Appellant has had, since September 6, 2001, constructive and actual knowledge sufficient to file this appeal, with professional assistance from zoning counsel and experts, and an open opportunity to address these issues before this Board during the First Appeal. In light of these facts, there were no extenuating circumstances that prevented the appellant from filing this appeal in a timely manner.

CONCLUSIONS OF LAW

Pursuant to 11 DCMR 3200.2, appeals to the Board may be taken by any person aggrieved by any decision of an administrative officer granting a building permit or any other decision based in whole or part upon any Zoning Regulations. Pursuant to 11

DCMR 3112.2, such appeal must be timely filed. "The timely filing of an appeal with the BZA is mandatory and jurisdictional." *Mendelson v. District of Columbia Board of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994). If an appeal is not timely filed, the BZA is without power to consider it. Sisson v. District of Columbia Bd. Of Zoning Adjustment, 805 A.2d 964,969 (D.C. 2002); Mendelson v. District of Columbia Bd. Of Zoning Adjustment, 645 A.2d 1090, 1093 (D.C. 1994);; Woodley Park Comty. Ass'n v. District of Columbia Bd. Of Zoning Adjustment, 490 A.2d 628,635 (D.C. 1985). Goto v. District of Columbia Board of Zoning Adjustment, 423 A.2d 917,923 (D.C. 1980) "Because the rules of the BZA (as of the date of the filing of this appeal) adopt no specific time limit on appeals, a standard of reasonableness is applied in determining whether an appeal is timely." *Waste Management of Maryland v. District of Columbia Board of Zoning Adjustment*, 775 A.2d 1117, 1122 (D.C. 2001). The District of Columbia Court of Appeals has held that two months between notice of a decision and appeal therefrom is the limit of timeliness. *Id.* "[I]n the absence of exceptional circumstances substantially impairing the *ability* of an aggrieved party to appeal – circumstances outside the party's control – we conceive of two months between notice of a decision and appeal therefrom as the limit of timeliness." *Id* (emphasis in original). The Court also stated in *Waste Management, supra*, that a reasonable time to appeal is measured by the time that fairness dictates to enable an aggrieved party to evaluate the appropriateness of seeking review, *to obtain the assistance of counsel*, and to take the other steps necessary to proceed.

For the purposes of calculating timeliness, "the time for filing an appeal commences when the party appealing is chargeable with notice or knowledge of the

decision complained of." *Mendelson*, 645 A.2d at 1093. In the context of this appeal, the Appellant was chargeable with notice on September 6, 2001, the date DCRA approved and issued the Building Permits.

In *Woodley Park, supra*, the Court of Appeals, in ruling on the issue of timeliness, was presented with a set of facts nearly identical to those in this appeal. The Court of appeals ruled in *Woodley Park* that the time for filing an appeal commences when the party appealing is chargeable with notice or knowledge of the actual decision complained of, regardless of any subsequent partial permit revision unrelated to the challenged decision. In this appeal, the decisions complained of were made in connection with the original permit applications only, and the Appellant was chargeable with notice of such decisions on September 6, 2001. The appellant did not file this appeal until August 1, 2001. The Court of Appeals has determined that two months or less is a reasonable time for filing an appeal, absent extenuating circumstances. The appellant failed to file this appeal within two months of September 6, 2001, and no extenuating circumstances existed that would prevent the appellant from filing this appeal in a timely manner. As such, the appeal was not timely filed.

For the reasons stated above, the Board hereby orders that the appeal be **DISMISSED**.

VOTE:

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
JERRILY KRESS

Document #: 1321613 v.1

PROPERTY OWNER'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Appeal No. 16935 of Southeast Citizens for Smart Development, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decisions of the Zoning Administrator, allowing the construction of four (4) single-family dwellings allegedly in violation of the side yard requirements under subsections 405.9 and 775.2, location parking space provisions under subsection 2116.1, parking space accessibility provisions under subsection 2117.4, in a C-2-B District at premises 1308, 1310, 1312 and 1314 Potomac Avenue, S.E. (Square 1045, Lots 134-137).

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HEARING DATES: **January 21, 2003, April 1, 2003, and April 15, 2003**

DECISION DATES: **January 28, 2003, and May 6, 2003**

FINDINGS OF FACT

1. On September 6, 2001, DCRA issued the following building permits (collectively, "**Building Permits**"): (1) Permit No. B438336, for 1314 Potomac Avenue, S.E., Lot 134; (2) Permit No. B438337, for 1312 Potomac Avenue, S.E., Lot 135; (3) Permit No. B438338, for 1310 Potomac Avenue, S.E., Lot 136; and (4) Permit No. B438335, for 1308 Potomac Avenue, S.E., Lot 137. The Building Permits authorized the construction of four residences ("**Homes**"), each with a proposed use as a youth residential care home for up to six children and two adults.

2. On September 12, 2001, the Appellant filed an appeal of the Building Permits, challenging the *proposed use* of the Homes ("**First Appeal**"). The subject of the First Appeal was related entirely to the proposed use of the Homes. No violation of area

zoning requirements, including those related to side yard setbacks, parking or parking access, was alleged in the First Appeal.

3. On June 21, 2002, the Board issued BZA Order No. 16791, approving the First Appeal, basing its ruling entirely on *the proposed use* of the Homes as youth residential care homes.

4. In accordance with the Board's direction, Girls and Boys Town filed revised permit applications changing the proposed use of the Homes to single family dwellings. The change in proposed use was the only alteration to the revised applications for the Building Permits.

5. DCRA issued revised permits ("**Revised Permits**"), with the one and only change from the Building Permits being a change in proposed use from youth residential care homes to single family dwellings.

6. On August 1, 2002, the appellant filed its second appeal ("**Second Appeal**"). The Second Appeal alleges that the Revised Permits were issued in error because they do not meet certain parking, parking access, and side yard requirements of the Zoning Regulations.

7. The Board reviewed two sets of architectural and civil plans; the first set of plans being part of the applications for the original building permits, issued on September 6, 2001, and the second set of plans being part of the applications for the revised building permits, issued on July 8, 2002. The two sets of plans were identical; there were no changes to any aspect of the proposed structures between the original permit applications and the revised permit applications.

8. In issuing the Building Permits, the Zoning Administrator reviewed and approved the proposed structures as 3 one-family semi-detached dwellings and 1 one-family detached dwelling. The definitions of the proposed structures are wholly separate and apart from the proposed uses for the Homes. The Zoning Regulations that provide the area requirements for the proposed structures are the same for the original permit applications and the revised permit applications, regardless of the proposed use for these structures.

9. The Appellant has alleged that the Zoning Administrator lacks credibility and has urged the Board to give no weight to his expert opinions or his testimony regarding the facts or the established law surrounding this appeal. The Appellant, however, presented no relevant evidence to refute the testimony of the Zoning Administrator regarding decisions of his Office, made as of September 6, 2001, defining the proposed structures as one-family semi-detached dwellings regardless of the proposed use. Further, the Appellant presented no relevant evidence that the Zoning Administrator lacked credibility in his testimony before this Board. The Board refuses to make such an accusation against the integrity of the Zoning Administrator when no convincing evidence has been presented in favor of such a conclusion. Furthermore, it is the Appellant that holds the burden of proof in this appeal and as such the Appellant must present evidence to overcome the testimony presented by the Zoning Administrator, rather than simply condemning, without basis, his credibility.

10. The decisions of the Zoning Administrator being challenged in this appeal were made as of the issuance of the Building Permits, on September 6, 2001. There was

no need for the Zoning Administrator to revisit these decisions in connection with the issuance of the Revised Permits, on July 8, 2002.

11. The Appellant was chargeable with notice of the Zoning Administrator's decisions as to side yards, parking and parking access as of September 6, 2001.

12. The Appellant chose not to appeal these decisions until August 1, 2002.

13. The Appellant was fully capable of challenging the decisions of the Zoning Administrator regarding side yards, parking and parking access, beginning on September 6, 2001. The Appellant was extremely involved with DCRA in monitoring, and questioning, the issuance of the Building Permits. In evaluating the issuance of the Building Permits, the Appellant employed experienced legal zoning counsel and a zoning expert recognized as such by this Board. The Appellant only appealed the proposed use underlying the Building Permits, and never expressed any dissatisfaction with any physical characteristics of the proposed structures. The Appellant has had, since September 6, 2001, constructive and actual knowledge sufficient to file this appeal, with professional assistance from zoning counsel and experts, and an open opportunity to address these issues before this Board during the First Appeal. In light of these facts, there were no extenuating circumstances that prevented the appellant from filing this appeal in a timely manner.

14. A one-family semi-detached dwelling is defined as "*a one-family dwelling, the wall on one (1) side of which is either a party wall, or lot line wall, having one (1) side yard.*" (11 DCMR §199.1.)

15. A lot line wall is defined as "*an enclosing wall constructed immediately adjacent to a side lot line, but not a party wall.*" (11 DCMR 199.1.)

16. The homes located at 1310, 1312 and 1314 Potomac Avenue, S.E., are all correctly defined as semi-detached dwellings, as they fit such definition without ambiguity, one wall being a lot line wall (as such term is defined above), and the other wall having the one required side yard.

17. A *one-family semi-detached dwelling* is explicitly permitted as a matter of right beginning in the R-2 Zone District, continuing through and including the Zone District in which the subject homes are located, C-2-B (11 DCMR § 300.3(c)).

18. Section 405 of the Zoning Regulations provides that a one-family semi-detached dwelling must have one side yard, with a minimum required width of eight (8) feet.

19. The building plat and plans underlying the Building Permits show that each of the 3 one-family semi-detached dwellings have one eight foot side yard, the opposite side wall being the lot line wall.

20. The Appellant has conceded that the fourth home, 1308 Potomac Avenue, S.E., is a detached single family dwelling with two eight-foot side yard setbacks and is not in violation of the Zoning Regulations.

CONCLUSIONS OF LAW

Dismissal of the Allegations Regarding Parking and Parking Access.

Pursuant to 11 DCMR 3200.2, appeals to the Board may be taken by any person aggrieved by any decision of an administrative officer granting a building permit or any other decision based in whole or part upon any Zoning Regulations. Pursuant to 11 DCMR 3112.2, such appeal must be timely filed. "The timely filing of an appeal with the

BZA is mandatory and jurisdictional." *Mendelson v. District of Columbia Board of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994). If an appeal is not timely filed, the BZA is without power to consider it. Sisson v. District of Columbia Bd. Of Zoning Adjustment, 805 A.2d 964,969 (D.C. 2002); Mendelson v. District of Columbia Bd. Of Zoning Adjustment, 645 A.2d 1090, 1093 (D.C. 1994);; Woodley Park Comty. Ass'n v. District of Columbia Bd. Of Zoning Adjustment, 490 A.2d 628,635 (D.C. 1985). Goto v. District of Columbia Board of Zoning Adjustment, 423 A.2d 917,923 (D.C. 1980) "Because the rules of the BZA (as of the date of the filing of this appeal) adopt no specific time limit on appeals, a standard of reasonableness is applied in determining whether an appeal is timely." *Waste Management of Maryland v. District of Columbia Board of Zoning Adjustment*, 775 A.2d 1117, 1122 (D.C. 2001). The District of Columbia Court of Appeals has held that two months between notice of a decision and appeal therefrom is the limit of timeliness. *Id.* "[I]n the absence of exceptional circumstances substantially impairing the *ability* of an aggrieved party to appeal – circumstances outside the party's control – we conceive of two months between notice of a decision and appeal therefrom as the limit of timeliness." *Id* (emphasis in original). The Court also stated in *Waste Management, supra*, that a reasonable time to appeal is measured by the time that fairness dictates to enable an aggrieved party to evaluate the appropriateness of seeking review, *to obtain the assistance of counsel*, and to take the other steps necessary to proceed.

For the purposes of calculating timeliness, "the time for filing an appeal commences when the party appealing is chargeable with notice or knowledge of the decision complained of." *Mendelson*, 645 A.2d at 1093. In the context of this appeal, the

Appellant was chargeable with notice on September 6, 2001, the date DCRA approved and issues the Building Permits.

In *Woodley Park, supra*, the Court of Appeals, in ruling on the issue of timeliness, was presented with a set of facts nearly identical to those in this appeal. The Court of appeals ruled in *Woodley Park* that the time for filing an appeal commences when the party appealing is chargeable with notice or knowledge of the actual decision complained of, regardless of an subsequent, unrelated permit revision. In this appeal, the decisions complained of were made in connection with the original permit applications only, and the Appellant was chargeable with notice of such decisions on September 6, 2001. The Appellant did not file this appeal until August 1, 2001. The Court of Appeals has determined that two months or less is a reasonable time for filing an appeal, absent extenuating circumstances. The Appellant failed to file this appeal within two months of September 6, 2001, and no extenuating circumstances existed that would prevent the Appellant from filing this appeal in a timely manner. As such, the appeal, as it relates to the parking and parking access issues, was not timely filed and the Board does not have the jurisdiction to entertain it. As to the issue of side yards, the appeal is also untimely, as the circumstances surrounding the side yards, for purposes of determining timeliness, are no different from those involving the parking and parking access issues. The Board, however, believes it should give the Appellant the benefit of the doubt and agrees to reach the merits of the side yard issue.

Merits of the Appeal Regarding Side Yard Setback Requirement

Burden of Proof

In an appeal of a decision of the Zoning Administrator before the BZA, the Appellant bears the burden of proving by a "preponderance of the evidence" (BZA Order No. 16604) that the Zoning Administrator erred in his challenged decision. The *burden of proof* is defined as "*the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause*". Black's Law Dictionary 196 (6th ed. 1990). Preponderance of the evidence is defined as "*evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.*" *Id.* at 1182. The Appellant has not met this burden of proof.

The permit applicant, in defense of the decision of the Zoning Administrator, presented the testimony and expert opinion of the Zoning Administrator, a professional in the zoning field for over thirty years. In rebuttal, the Appellant presented only the expert testimony of a community member, with no professional education or experience in zoning, to refute the expert opinion of the Zoning Administrator. The expert testimony of the Appellant's expert, Mr. Shauer, could not overcome the testimony and opinion of the Zoning Administrator that the subject homes were in accordance with the side yard provisions.

Furthermore in regard to the burden of proof, the Appellant relies solely on Section 405.3 of the Zoning Regulations in claiming that a semi-detached home is required to have <u>two</u> side yards. Such an interpretation, however would render meaningless the definition of one-family semi-detached dwelling in §199.1 (requiring

only one side yard, and permitted to rest on a lot line). Also rendered meaningless would be the definition of *lot line wall*, as well as Section 300.3(c) (permitting semi-detached dwellings as a matter-of-right beginning in the R-2 Zone District).

The definition of *one-family semi-detached dwelling* in Section 199.1 is unambiguous, as is the definition of *lot line wall*, and Section 300.3(c) permitting semi-detached dwellings as a matter of right. While Section 405.3 may be open to different interpretations if viewed in isolation, it does not overcome the unambiguous language of Sections 199.1 and 300.3(c).

Statutory Construction

As mentioned above, Section 405.3, when viewed in isolation, seemingly engenders two opposing interpretations; both reasonable. Rules of statutory construction, however, as espoused by the D.C. Court of Appeals, provide perfect clarity in this case. These rules provide that Section 405.3 must not be viewed in a vacuum, but instead must be interpreted as a whole, in harmony with other sections of the Zoning Regulations.

In *The Matter of T.L.J*, 413 A.2d 154 (D.C. 1980), the D.C. Court of Appeals relied on long-followed rules of statutory construction when it stated that "whenever possible, a statute should be interpreted as a harmonious whole." *Id.* at 158. (quoting *United States v. Firestone Tire and Rubber Co.*, 455 F. Supp. 1072, 1079 (D.D.C.1978)). The Court further stated: "Similarly, one part of a statute must not be construed so as to render another part meaningless." *Id.* (quoting *Helvering v. Morgan's, Inc.*, 293 U.S. 121, 126-127, 55 S. Ct. 60, 79 L.Ed. 232 (1934)).

If this Board were to follow the Appellant's interpretation of Section 405.3, not just one, but two, perhaps three sections of the Zoning Regulations would be rendered

meaningless: (i) the definition of semi-detached dwelling in Section 199.1 (because it would now need two side yards and could no longer rest on a bare lot line); (ii) the definition of lot line wall in Section 199.1 (for a semi-detached dwelling, there could be no such thing); and (iii) Section 300.3(c) (because semi-detached dwellings, as defined in Section 199.1, would no longer be permitted as a matter-of-right).

If on the other hand the Board follows the Zoning Administrator's interpretation of Sections 199.1 and 300.3(c) (such interpretation being that semi-detached dwellings have only one side yard, may rest on a bare lot line, and are permitted as a matter-of-right), such interpretation does not render Section 405.3 meaningless. Rather, it brings clarity to what once was ambiguous. When these sections of the Zoning Regulations are interpreted "as a harmonious whole," (as they must be), it becomes clear that the phrase "each resulting free-standing side," when applied to semi-detached dwellings, can have only one meaning, that meaning being the side of a semi-detached dwelling that is neither attached to a common division wall nor resting on a lot line, *i.e.*, the only possible "resulting free standing side" for a semi-detached dwelling is the side with the one side yard required by Section 199.1. This interpretation corresponds exactly with the expert opinion of the Zoning Administrator. The Appellant has offered nothing so compelling as to approach its burden of proof.

Conclusion

A one-family semi-detached dwelling is defined as "*a one-family dwelling, the wall on one (1) side of which is either a party wall, or lot line wall, having one (1) side yard.*" (11 DCMR §199.1). The homes located at 1310, 1312 and 1314 Potomac Avenue, S.E., meet this definition, and are therefore correctly defined as *one-family semi-detached*

dwellings. One-family semi-detached dwellings are explicitly permitted as a matter-of-right (11 DCMR § 300.3(c)). While Section 405.3 may, in isolation, appear ambiguous, when viewed in concert with other sections of the Zoning Regulations (as it must be), it is quite clear that Section 405.3 does not work to require <u>two</u> side yards for solitary semi-detached dwellings. Therefore, only one side yard is required for each of the three subject structures, and, pursuant to Section 405.9, such side yards must be a minimum of eight feet in width. The permit applicant has provided the required eight-foot side yards for the three subject homes, and the Zoning Administrator did not err in issuing the Building Permits or the Revised Building Permits.

The conclusion urged by the Appellant would work to effect certain ridiculous outcomes: Row houses and semi-detached dwellings, once permitted as a matter-of-right beginning in Zone District R-3 and R-2, respectively, would not only not be permitted, but by the force of the new Section 405.3 would be changed into detached dwellings, which would then be the only legal one-family residential structure remaining in the District. Further, all currently undeveloped, legally conforming lots having the minimum required 18-foot lot width (R-4 District and beyond) could build a house only two feet in width (a taking, in effect).[1] In addition, many existing row houses and semi-detached dwellings would instantly become legally *non-conforming* structures. The certainty of such ridiculous consequences only confirms the above rationale that the subject structures are one-family semi-detached dwellings in full compliance with the applicable side yard setback restrictions of the Zoning Regulations.

[1] The Appellant's expert contends that these lots would simply need a variance to be constructed on. The Board does not have the authority to amend the Zoning Regulations, which it would be doing if it moved row houses and semi-detached dwellings from the "matter-of-right" category to the "variance" category.

For the reasons stated above, the Board hereby orders that the appeal regarding side yard setbacks be **DISMISSED**.

The Board hereby orders also, that the appeal regarding parking and parking access be **DISMISSED** as it was not timely filed.

The Board hereby orders that Appeal No. 16935, in its entirely, be **DISMISSED**.

VOTE:

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
JERRILY KRESS

Document #: 1322348 v.2

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2003, I served a copy of the foregoing Proposed Findings of Fact and Conclusions of Law via hand delivery, to:

Mary F. Withum, Esq.
Counsel
Southeast Citizens for Smart Development, Inc.
701 14th Street, S.E.
Washington, D.C. 20003

ANC 6B
c/o Kenan Jarboe
711 10th St., S.E.
Washington, D.C. 20003

Arthur Parker, Esq.
Office of the Corporation Counsel
441 Fourth Street, N.W.
Room 600 South
Washington, D.C. 20001



Martin P. Sullivan, Esq.
Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037

Document #: 1299866 v.2