

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY,
SEPTEMBER 17, 2002

The public meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS Chairperson
ANNE MOHNKERN RENSHAW Vice Chairperson
DAVID ZAIDAIN Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

JAMES HANNAHAM Commissioner

COMMISSION STAFF PRESENT:

Sheri M. Pruitt, Secretary, BZA
Beverly Bailey, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Stephen Cochran, Office of Planning
John Moore, Office of Planning
David McGettigan, Office of Planning
Joel Lawson, Office of Planning
Karen Thomas, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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P-R-O-C-E-E-D-I-N-G-S

(9:34 a.m.)

CHAIRPERSON GRIFFIS: Ladies and gentlemen, let me call to order the special public meeting of September 17, 2002. We'll jump right into this. We had a little technical difficulty. So we are starting a little late today, but I think we'll make up the time.

Board members have been instructed to speak in double time. So we will proceed with the first case in the special meeting, and then we will go directly into the public hearing.

SECRETARY PRUITT: Good morning, Mr. Chair.

CHAIRPERSON GRIFFIS: Good morning.

SECRETARY PRUITT: Appeal Number 16239 of USA Waste of D.C., Incorporated, formerly known as L.G. Industries, pursuant to 11 DCMR 3100 to 3101, from the administrative decision of the Zoning Administrator to withhold the issuance of a certificate of occupancy for trash transfer station in a previously zoned M district, -- the subject property has since been rezoned to C-M-1 and C-M-3 -- located at 1140 3rd Street, Northeast, Square 748, Lots 8, 9, 10, 11, 42, 43, and 809 through 812. The hearing

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1 dates for this case were March 5, May 7, May 14, and
2 July 30th, with this being a decision date.

3 There's a lot of things that happened, but
4 basically the biggest issue's right now you've got a
5 request for a continuance and a possible withdrawal
6 because they are waiting to weed out some of their --
7 to hammer out and fine-tune the agreement.

8 CHAIRPERSON GRIFFIS: Very well. We had
9 actually set a date. I believe it was November 17th
10 --

11 SECRETARY PRUITT: November 17th.

12 CHAIRPERSON GRIFFIS: -- to have a
13 hearing. I think the documentation that was submitted
14 at this time give us an indication that things are
15 progressing. And what we need to establish -- well,
16 here's what I would suggest that we deliberate quickly
17 on at this point.

18 It would be that we do not hold the
19 specific 17th date but we hold in pending the
20 availability of a hearing of the appeal and anticipate
21 the work will progress, that we will, in fact, get
22 resolution to this. And that resolution clearly would
23 be their withdrawal of the appeal or the appeal moving
24 ahead.

25 It would free up our schedule to November,

1 but it would keep this issue pending before us or we
2 can, in fact, dismiss it today, but I would hear from
3 others on that. I think those are the directions we
4 should discuss.

5 VICE CHAIRPERSON RENSHAW: Mr. Chairman?

6 CHAIRPERSON GRIFFIS: Yes?

7 VICE CHAIRPERSON RENSHAW: I would
8 recommend that we hold the date and deliberate at that
9 point, November 17th, but keep this record open so
10 that we can receive the document that is being
11 reviewed for legal sufficiency by the Office of
12 Corporation Counsel, as it states in the letter to the
13 board from Holland and Knight dated September 16.

14 CHAIRPERSON GRIFFIS: Okay. And so if I
15 take you correctly, you are moving that we grant the
16 continuance but free up the November 17th date?

17 VICE CHAIRPERSON RENSHAW: Yes.

18 CHAIRPERSON GRIFFIS: For no specific date
19 of the hearing, keeping the record open for submission
20 of finality?

21 VICE CHAIRPERSON RENSHAW: Yes.

22 CHAIRPERSON GRIFFIS: I would second that
23 motion. Any other comments on the motion to continue?

24 COMMISSIONER HANNAHAM: Mr. Chairman, I
25 would concur with that.

1 CHAIRPERSON GRIFFIS: Just leaving ample
2 time to think this one over, in which case I would ask
3 for all of those in favor, signify by saying "Aye."

4 (Whereupon, there was a chorus of "ayes.")

5 CHAIRPERSON GRIFFIS: And opposed?

6 (No response.)

7 SECRETARY PRUITT: Staff would record the
8 vote as 4:0:1 to approve the continuance, motion made
9 by Ms. Renshaw and seconded by Mr. Griffis.

10 CHAIRPERSON GRIFFIS: Good. Is that
11 clear?

12 MR. PARKER: Just for clarification, what
13 do you want us to do on November 17th? Assuming we
14 have the settlement in place, we will advise the
15 Board, obviously, on that.

16 CHAIRPERSON GRIFFIS: Yes. November 17th
17 at this point has no meaning to us.

18 MR. PARKER: Okay. That's what I wanted
19 to know.

20 CHAIRPERSON GRIFFIS: So we want to see
21 this as quickly as possible when the resolution comes.

22 I think we will revisit that with our own schedule
23 probably mid October, and we'll do that in executive
24 session and assess where we are and possibly pick a
25 date at that point. But, again, that will be a little

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1 bit flexible.

2 MR. PARKER: At this point you will either
3 await from us the announcement of the settlement or
4 some information that the negotiations have failed,
5 one way or the other? You're not looking for another
6 status report at this point?

7 CHAIRPERSON GRIFFIS: No.

8 MR. PARKER: Right.

9 CHAIRPERSON GRIFFIS: I think we're
10 looking for finality in this, --

11 MR. PARKER: All right. Thank you.

12 CHAIRPERSON GRIFFIS: -- in which case,
13 for our clarification, Board members, maybe we do pick
14 a date that we would then set a date of the hearing if
15 we have not heard a resolution. But I'm open to
16 suggestions.

17 VICE CHAIRPERSON RENSHAW: You mean on or
18 before November 17th?

19 CHAIRPERSON GRIFFIS: Right, or we could
20 put it up to the 17th as our benchmark or not.

21 VICE CHAIRPERSON RENSHAW: Or could we
22 discuss it the first meeting in November since you say
23 it's going to be signed by the first week in October?

24 CHAIRPERSON GRIFFIS: That's an excellent
25 point. We'll bring it up as a first issue of our

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1 public meeting on the first week in November.

2 VICE CHAIRPERSON RENSHAW: But to make it
3 clear, Mr. Chairman, that we are looking for some
4 written documentation as to the resolution of this
5 case.

6 MR. PARKER: We understand. Thank you.

7 CHAIRPERSON GRIFFIS: Okay. Good.

8 MR. PARKER: Good day.

9 CHAIRPERSON GRIFFIS: Thank you very much.

10 SECRETARY PRUITT: The last case on your
11 morning agenda, Mr. Chair, for the meeting is
12 Application Number 16854 of Mr. and Mrs. Charles
13 Holliday, pursuant to 11 DCMR and 3103.2, for a
14 variance from the lot occupancy requirements under
15 section 403 and a variance from the minimum lot width
16 requirements under section 401, for the construction
17 of a flat in the CAP/R-4 district at 315 East Capitol
18 Street, Southeast, Square 787, Lot 35. The hearing on
19 this case was April 9th with decisions on May 7th and
20 then today.

21 I would like to note that the applicant
22 has amended your submission by withdrawing your need
23 for lot occupancy. Correct?

24 MR. HOLLIDAY: Good morning. Yes. We
25 have withdrawn our request.

1 CHAIRPERSON GRIFFIS: Please give me your
2 name and address.

3 MR. HOLLIDAY: My name is Chuck Holliday.
4 I live at 251 10th Street Northeast. And the
5 property we're requesting a variance on is 315 East
6 Capitol Street, a vacant lot.

7 CHAIRPERSON GRIFFIS: Okay.

8 SECRETARY PRUITT: Mr. Chair, there is a
9 lot --

10 CHAIRPERSON GRIFFIS: You have amended
11 your application. Is that correct?

12 MR. HOLLIDAY: Yes.

13 CHAIRPERSON GRIFFIS: Okay.

14 SECRETARY PRUITT: Would you like for me
15 to go through all of this -- they do have one big
16 question they're requesting a continuance to -- and
17 deal with it later?

18 CHAIRPERSON GRIFFIS: Let me first just
19 state in public meetings, we don't have new testimony.

20 This is unique in its situation. I'm going to allow
21 a few of the questions from the Board if we have it.
22 While you're up here, why don't I have you just
23 introduce yourself and your address? You're just
24 going to need to turn on your microphone to do that.

25 And have you both filled out witness

1 cards, which will also go to the recorder? All of
2 that I will lay out specifically when we open the
3 public hearing.

4 But, please, sir, your name?

5 MR. SCHMITT: Good morning. My name is
6 Richard Schmitt. I'm an attorney with the firm of
7 Kass, Mitek and Kass. I'm appearing here on behalf of
8 Rebecca Grant and Rick Lewis.

9 On behalf of them, we have filed a motion
10 to reopen the record and to permit them to substitute
11 as party, the basis being that they purchased the
12 property at 313 East Capitol Street, Southeast. And
13 they went to closing on that property on September
14 12th.

15 We are asking only to reopen just for the
16 substitution so that they can participate if there are
17 any further proceedings in this case. And at this
18 time, we don't have anything to add to the record.

19 CHAIRPERSON GRIFFIS: Okay. They are of
20 the understanding that we are actually posed for a
21 decision on this case, that there is no public
22 hearing?

23 MR. SCHMITT: Yes, they are. They are.
24 And, as I said, the application to substitute is only
25 so that if anything would happen in the future, they

1 would be able to participate, not to make any comments
2 today.

3 CHAIRPERSON GRIFFIS: Excellent. Thank
4 you, Mr. Schmitt.

5 Board members, I think we have two issues
6 before us. One is the motion to continue. And I
7 think we ought to pick that up first because that
8 clearly will decide whether we go to the second, which
9 is to entertain party status on a case that has been
10 primarily heard.

11 Ms. Renshaw?

12 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I
13 wonder if we shouldn't reverse them and consider the
14 party status to substitute Grant and Lewis as parties
15 for Warwick?

16 CHAIRPERSON GRIFFIS: I disagree because
17 conceivably we don't grant a continuance and then we
18 have decision and then we would go to -- I don't know.

19 VICE CHAIRPERSON RENSHAW: Either way Mr.
20 --

21 CHAIRPERSON GRIFFIS: There's a longer
22 discussion. I'd rather get through the first one
23 first.

24 VICE CHAIRPERSON RENSHAW: All right.
25 Then let's get through the continuance first.

1 CHAIRPERSON GRIFFIS: Okay. For
2 clarification, reiteration, we have a situation in
3 terms of the development of this lot, which may
4 actually go to -- and I'll distill it all -- a matter
5 of right, construction, and development, in which case
6 this application would be withdrawn.

7 I believe that I am leaning towards
8 accepting and granting a continuance on this so that,
9 frankly, it just doesn't jumble up our schedule in
10 having to reschedule it if it becomes a new
11 application.

12 So I would move that we grant the
13 continuance of this case and ask for a second.

14 VICE CHAIRPERSON RENSHAW: Second.

15 CHAIRPERSON GRIFFIS: Thank you. Any
16 other further discussion or clarification needed on
17 the motion?

18 (No response.)

19 CHAIRPERSON GRIFFIS: In which case I
20 would ask for all of those in favor, signify in saying
21 "Aye."

22 (Whereupon, there was a chorus of "ayes.")

23 CHAIRPERSON GRIFFIS: And opposed?

24 (No response.)

25 SECRETARY PRUITT: Staff would record a

1 vote as 4:0:1, Mr. Griffis making the motion, Ms.
2 Renshaw seconding.

3 CHAIRPERSON GRIFFIS: Okay. Going to
4 party status, then, we have heard from Mr. Schmitt
5 this morning. We also have the submissions. I have
6 one problem.

7 MEMBER ZAIDAIN: Just to clarify, --

8 CHAIRPERSON GRIFFIS: Yes?

9 MEMBER ZAIDAIN: -- I'm not moving.

10 CHAIRPERSON GRIFFIS: Oh. Mr. Zaidain was
11 not voting on that and is not participating in this
12 case.

13 VICE CHAIRPERSON RENSHAW: So the record
14 should reflect 3:0:2?

15 CHAIRPERSON GRIFFIS: Actually, let's get
16 clarification. Do we have a proxy?

17 SECRETARY PRUITT: For the first one. Mr.
18 Zaidain didn't vote on this one.

19 VICE CHAIRPERSON RENSHAW: So it's 4:0:1.

20 CHAIRPERSON GRIFFIS: Okay. I think we do
21 need to clarify. We have three voting members on
22 this. So we do have a proxy. We have a proxy from
23 Mr. Hood, who is not here with us today. Is that
24 correct?

25 SECRETARY PRUITT: Correct.

1 CHAIRPERSON GRIFFIS: So the record will
2 reflect the vote, in which case we will proceed with
3 the party status. Do we have a proxy from Mr. Hood on
4 that? Do we have a proxy from Mr. Hood not indicating
5 which way he might have voted but is there a proxy
6 with this issue of party status?

7 SECRETARY PRUITT: Not on party status.

8 CHAIRPERSON GRIFFIS: Are we able to
9 decide this today, then? Mr. Hannaham, are you
10 prepared to vote on this case?

11 COMMISSIONER HANNAHAM: Yes, I am.

12 CHAIRPERSON GRIFFIS: Okay, in which case
13 let's proceed. First of all, I want to indicate that
14 I have great difficulty. And I think I don't even
15 want to discuss the fact of substituting one party for
16 another.

17 We, without going through all the lengthy
18 rehash of this, did have a motion to remove a
19 participant from party status. And that was done. To
20 entertain a motion to substitute, then, in for that
21 person that was removed I don't think is the proper
22 procedure, and I don't want to entertain that. I will
23 entertain the basis of its own merits the party
24 status.

25 Clearly we have an indication that it is a

1 new homeowner adjacent to the property. We have
2 granted a continuance on this. Conceivably plans will
3 change and maybe come back to us. And we would have
4 to reopen and continue the hearing.

5 I think on the base level, there is
6 adequate information to establish the justification
7 for party status. But I do also want to caution the
8 Board members as we think about this. I have some
9 problem in looking at accepting an application for
10 party status this late in any hearing.

11 Clearly this is incredibly unique and we
12 are doing all that we can to facilitate everyone's
13 interest in this. And so let me hear from others on
14 that, but I would pose it for a motion that we grant
15 party status to Grant and Lewis, which are the owners
16 of 313.

17 MR. SCHMITT: Right.

18 CHAIRPERSON GRIFFIS: Not having all of
19 these addresses right in front of me, I'll try and
20 recall. It is East Capitol Street, Southeast. Is
21 that correct?

22 MR. SCHMITT: Correct.

23 CHAIRPERSON GRIFFIS: Okay. And I'll look
24 for a second.

25 VICE CHAIRPERSON RENSHAW: I'll second

1 that, Mr. Chairman, and state that it is the right
2 course of action, I believe, to accord the new owners
3 of 315?

4 MR. SCHMITT: Three thirteen.

5 VICE CHAIRPERSON RENSHAW: Three thirteen.
6 We'll get this right.

7 -- 313 East Capitol Street the party
8 status request because of their new ownership of the
9 property that directly abuts the applicant property.

10 CHAIRPERSON GRIFFIS: Good. Thank you
11 very much. Others?

12 (No response.)

13 CHAIRPERSON GRIFFIS: All those in favor?
14 (Whereupon, there was a chorus of "ayes.")

15 CHAIRPERSON GRIFFIS: And opposed?

16 (No response.)

17 SECRETARY PRUITT: Staff would record the
18 vote -- did Mr. Zaidain vote on this one?

19 CHAIRPERSON GRIFFIS: No.

20 SECRETARY PRUITT: Then it would be 3:0:2.

21 CHAIRPERSON GRIFFIS: Good. Thank you
22 very much.

23 Now, the importance of the party status in
24 this is that they're served. I think that's, frankly,
25 one of the strong deliberating points in my mind,

1 which I think the other Board members clearly
2 understood, so that they will be noticed to any sort
3 of developments on this.

4 We certainly hope that it's an amenable
5 resolution to this and wish you both a great day
6 unless there are other questions, clarifications.
7 Yes?

8 MS. SANSONE: If I may, I think in the
9 first motion on the continuance, there may have been
10 some confusion in terms of possible absentee vote by
11 Mr. Hood. Mr. Hood did not hear this case. The
12 original Board that heard it was yourself, Ms.
13 Renshaw, Mr. Etherly, Mr. Levy, and Mr. Hannaham.

14 So, therefore, the vote really would be
15 3:0:2 with Mr. Etherly not present, not voting, and
16 Mr. Zaidain not voting, not having heard the case and
17 the three voting members being yourself, Ms. Renshaw,
18 and Mr. Hannaham.

19 CHAIRPERSON GRIFFIS: Okay. I will take
20 your word for it. I do have notes that indicate
21 otherwise, but I think that sounds correct. It
22 certainly doesn't change the substance of the motion
23 and the acceptance of it.

24 So, with that, I can again bid you a good
25 day. Thanks very much. This would then conclude our

1 public meeting of September 17, 2002.

2 (Whereupon, at 9:52 a.m., the foregoing
3 matter was adjourned.)
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