

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18404 of Chaney Enterprises LP, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a concrete manufacturing facility under § 802.17, in the C-M-1 District at premises 3 D.C. Village Lane, S.W. (Square 6264, part of Lot 801).

HEARING DATE: September 18, 2012
DECISION DATE: September 18, 2012

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 8D and to owners of property within 200 feet of the site as well as to the Office of Planning ("OP"). The site of this application is located within the jurisdiction of ANC 8D, which is automatically a party to this application. ANC 8D submitted a timely written report of support. The ANC's report indicated that at a duly noticed and regularly scheduled meeting held June 28, 2012, at which a quorum was present, the ANC voted 6:1:0, to support the application. (Exhibit 33.) The Office of Planning ("OP") submitted a timely report dated September 11, 2012 recommending approval of the application with conditions. (Exhibit 35.) The District Department of Transportation ("DDOT") submitted a report of "no objection." (Exhibit 34.)¹

¹ A letter of opposition was submitted by Reggie Green, president of Concrete Mixes, Inc., a competitor of the Applicant's. Mr. Green expressed concern because the Applicant had opened the concrete manufacturing plant before obtaining special exception approval from the Board. (Exhibit 36.) The OP report indicated that the Applicant had been selected for a ground lease for the subject property by the District of Columbia Department of General Services ("DGS") after DGS issued a Request for Offers in early 2011. The ground lease was signed in September 2011 and Building Permit No. B111984 was issued in November 2011 for erection of the prefabricated plant and to locate an office trailer on the leased property. The facility became operational after the Certificate of Occupancy ("C of O") was issued in December 2011. The C of O was revoked in March 2012 because special exception relief for

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18404

EXHIBIT NO. 41

Board of Zoning Adjustment
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EXHIBIT NO.41

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As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 802.17 of the Zoning Regulations. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 802.17, that the requested relief can be granted, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED**, **SUBJECT** to the Plans at Exhibits 11 and 38 and the following conditions:

1. Approval shall be for SEVEN (7) YEARS from the effective date of this order. This approval automatically shall be extended for an additional THREE (3) YEARS, contingent upon the Applicant extending its ground lease for the property.
2. The Applicant shall develop and implement a landscaping plan acceptable to the Office of Planning.
3. The Applicant shall install fencing around the concrete plant consistent with the plan submitted on September 18, 2012 (Exhibit 38), provided that the Applicant demolishes the boiler building.
4. All fencing around the concrete plant shall have opaque fabric screening.
5. The dumpster presently located near the entrance to the property shall be relocated to the interior of the property so that it is behind fencing and/or landscaping to remove it from public view.

VOTE: 4-0-1 (Lloyd J. Jordan, Marcie I. Cohen, Nicole C. Sorg, and Jeffrey L. Hinkle to **Approve**; Rashida Y.V. MacMurray, not present, not voting.)

this use in accordance with § 802.17 had not been approved by the Board. (Exhibit 35.) The Applicant testified that the Zoning Administrator had held further enforcement action against the Applicant in abeyance until this case could be heard by the Board.

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

A majority of the Board members approved the issuance of this summary order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 2, 2012

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT

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DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.