

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of Chaney Enterprises LP
ANC 8D

BZA Appeal No.
Hearing Date:

APPELLANT'S STATEMENT

This is the appeal of Chaney Enterprises LP ("Appellant") of a decision of Rabbiah Sabbakhan, Chief Building Official, Department of Consumer and Regulatory Affairs ("DCRA"), to revoke Building Permit No. B1111984 (the "BP") and Certificate of Occupancy No. CO1200713 (the "CO"). The notice to revoke is attached as Exhibit C. The property that is the subject of this appeal is 3 DC Village Lane, SW (Square 6264, part of Lot 801) (the "Property").

I. NATURE OF RELIEF SOUGHT

The Appellant requests that the Board of Zoning Adjustment ("Board" or "BZA") reverse the decision to revoke the BP and the CO and allow the BP and the CO to remain valid.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant appeals of decisions of administrative officers in the administration of the Zoning Regulations pursuant to Section 3100.2 of the Zoning Regulations (11 DCMR § 3100.2).

III. DESCRIPTION OF THE PROPERTY

The Property is an irregularly shaped parcel containing approximately three (3) acres of land area. The Property is located in Ward 8 and the DC Village neighborhood of Southwest Washington and is zoned C-M-1. The Property is roughly bounded by DC Village Lane to the north; the Maryland border to the south; industrial land to the east; and an automobile impound lot to the west. The Property contains an operating portable concrete batch plant.

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IV. DESCRIPTION OF THE FACILITY AND HISTORY

The D.C. Department of Real Estate Services issued a Request for Offers in April 2011 to ground lease the Property. The Appellant was selected to lease the Property as a “state of the art” portable concrete batch plant.¹ The purpose of the plant is to manufacture and provide concrete for the DC Water Blue Plains facility just northwest of the Property so that DC Water can construct mandated facilities pursuant to a consent decree.

On November 28, 2011, the Appellant received the BP to construct a portable concrete manufacturing facility and office trailer. Pursuant to the BP, the Appellant constructed the facility. Subsequently, on December 22, 2011, the Appellant received the CO for the portable concrete manufacturing facility. The concrete manufacturing facility has been in operation since that date. On March 26, 2011, DCRA issued a letter to the Appellant revoking the BP and CO, effective 60 days after the notice, because the Appellant did not receive special exception approval from the Board pursuant to Section 802.17.

V. THE APPELLANT IS AGGRIEVED

The Appellant is the recipient and holder of both the BP and the CO. The Appellant operates the concrete manufacturing plant pursuant to the CO. The decision to revoke the BP and the CO directly and uniquely harms the Appellant. Accordingly, the Appellant is aggrieved under Section 3112.2 of the Zoning Regulations (11 DCMR § 3112.2).

¹ Chaney is the tenant under a lease with DC and is a member of Monumental Concrete, LLC. Monumental operates the plant and is a subtenant to Chaney.

VI. THE REVOCATION DECISION WAS MADE IN ERROR

The Appellant relied on the BP and the CO to construct and operate the concrete plant, and the BP and CO represent *prima facie* evidence of compliance with the requirements of Section 802.17 of the Zoning Regulations (standards for a concrete manufacturing facility).

First, the Appellant relied in good faith on the validly-issued BP and CO well before the decision was made to revoke them. The Appellant expended considerable time and money constructing the concrete manufacturing facility. The Appellant received the CO to operate the plant more than three months before DCRA made the revocation decision. Since the Appellant constructed and began operation of the facility pursuant to the BP and CO months before the revocation decision, DCRA's decision was in error and should be barred by laches. Such a delay in DCRA's revocation decision results in significant monetary harm to the Appellant because of the substantial investment that the Appellant made in constructing the facility, hiring employees, and operating the facility. Furthermore, DC Water (and ultimately the millions of consumers that rely on DC Water's wastewater treatment services at the Blue Plains) would be harmed by the revocation decision because the concrete plant provides concrete for necessary facilities and improvements at Blue Plains. Without the concrete plant, DC Water cannot construct such facilities.

Second, the BP is *prima facie* evidence that the plans for the concrete plant were in compliance with the Zoning Regulations, and the CO is *prima facie* evidence that that the plant complies with the BP. At the time of the BP application review, the Appellant submitted a written explanation of the plant's compliance with Section 802.17 to DCRA. The written explanation is attached as Exhibit D. Following receipt of this explanation, DCRA issued the BP. The BP reflects a determination by DCRA that the concrete plant complies with the standards in Section 802.17,

and, indeed, the concrete plant has been operating in accordance with Section 802.17 since receiving the CO. Therefore, the BP and CO represent compliance with the substance of the Zoning Regulations.

VII. EXHIBITS

EXHIBIT A	Application Form, Authorization Letter, and Fee Calculator
EXHIBIT B	Appellant's Statement
EXHIBIT C	Notice to Revoke
EXHIBIT D	Explanation of Compliance with Section 802.17

VIII. CONCLUSION

For the reasons stated above, the Appellant respectfully requests that the Board reverse the decision of Rabbiah Sabbakhan to revoke the BP and the CO.

Respectfully submitted,
GOULSTON & STORRS, P.C.


Phil Feola


Cary Kadlecak