

William Simpkins
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Washington, DC 20002

BZA
441 4th St, NW #220
Washington, DC 20001

Dear BZA,

Please accept this late filing of a short but materially unique plaintiff's statement that should be a part of the record.

I have been ill with the flu and though am still not yet "out of the woods" have been unable until yesterday to draft a pre hearing statement for the BZA hearing case # 18705, scheduled for the 11 of February.

Thank you for any and all consideration.

Sincerely,

Bill Simpkins Feb.3rd 2014

Plaintiff Appellant's Pre Hearing Statement

This appeal arises out of the issuance of a permit to construct a maintenance pit for the proposed streetcar repair garage, offices and car wash in a residential zone at 2500 Benning Road, NE.

Defendant wrongly relies upon a misguided interpretation of the "Mass Transit Facilities" exception 11 DCMR Sec 201.1 (j) as a means toward authorizing construction of defendant's admitted non-conforming \$6M trolley car repair, training and maintenance facility HQ.

Defendant cites Gohlson v U.S. A2nd 532, p 118-120 (1987) to support their overly broad reading of the statute; however, a complete reading of Gohlson shows the opposite of what defendant reports and instead bolsters plaintiff's argument.

Gohlson is routinely cited for the proposition that statutes are to be read broadly and beyond specific language ONLY when history and the drafters intent clearly supports the broad interpretation, beyond the actual language of the statute.

Since the trolley repair facility is necessary but not necessarily required to be located at 2500 Benning Road (and there is an appropriate zone just a few hundred meters east or at Union Station), Gohlson requires the statute known as the "Mass Transit Facility" exception to be read as not supporting defendant's argument but rather supporting plaintiff's contention that the trolley repair garage is a non-conforming use and may not be built as a matter of right in an R-5 zone.

Facts

The District intends to introduce streetcars but due to mismanagement are years behind schedule and millions of dollars over budget.

DDOT owned DC Trolley was originally planned to be located at Union Station.

Union Station is appropriately zoned to house the DC Trolley's repair, maintenance and instruction office HQs.

Due to budget constraints, DDOT has chosen a non conforming address to relocate their repair, maintenance and instruction offices HQ upon discovering that AMTRAK will introduce to Union Station a high speed rail in 2025.

AMTRAK has repeatedly stated that there is space for the DC Trolley maintenance and repair HQs and they have no intention of extinguishing the District's easement to Union Station, under H Street.

Argument

Defendant and Plaintiff Appellants agree that 11 DCMR Sec 330, 350 prohibit non residential uses in R-5 zones.

Defendant and Plaintiff disagree as to whether the "Mass Transit Facility" exception allows DC Trolley to build its main and only repair, maintenance and training office HQ in an R-5 zone when other conforming build sites are available.

Defendant admits that their trolley repair garage, train car wash and training office HQs is a non conforming structure and also admits that the Mass Transit Facility exception blatantly does not enumerate repair garages or operational offices or maintenance bays. Defendant also wrongly cites *Gohlson v U.S.* A2nd 532, p118-122 (1987) as the authority that allows their broad interpretation of the statute's language and therefore permits "any structure that facilitates public transportation to be built as a non conforming use in a residential zone."

On the contrary, *Gohlson v U.S.* is cited typically for the proposition that supports Plaintiff's argument that a statute's interpretation may be a broad one and interpreted to include language beyond that which is specifically enumerated ONLY IF the drafters' intent is clear and supported by the historical context.

In *Gohlson v U.S.*, Rex Gohlson appealed his wire fraud conviction on the basis that his crime was a time card manipulation and accordingly "time cards" were not specifically enumerated within the Wire Fraud Statute.

The appellate court affirmed Gohlson's conviction holding that despite the wire fraud statute not specifically enumerating time card fraud..."The intent of the drafters was clear from the statute language that...any 'written fraud' could constitute a violation.."

Moreover, the court looked at the history of wire fraud convictions and found that "any written fraud" had been a "catch-all" phrase that had worked for courts in the past....as the drafters' intent was to not require an enumeration of every instance of written fraud to make the statute applicable many different written frauds.

Therefore, the *Gohlson* holding specifically rejects Defendant's belief that the Mass Transit exception may be read in a way that authorizes any transit facilitating structure to be built in a residential zone. Indeed, while *Gohlson* may be correctly cited to allow a broad reading of statutes generally, *Gohlson* requires the broad reading to conform to the clear intent of the drafters and have the reading supported in a historical context.

The history of the Mass Transit exception's interpretation and the drafters' intention is clear: not all non conforming construction exceptions must be articulated to be covered by the mass transit exception; however, for an exception to be valid/ included they must 1) facilitate ridership and public access as enumerated by for example the language "public parking garages...subway egress/ ingress..and multi bus platforms.." and must be necessary for facility operation as enumerated by for example, "...utility and ventilation shafts, etc...".

Contextually, there is no history of a transportation authority using the Mass Transit Facility exception as an end run around basic zoning law. Eg., there is no instance where Metro has piggy-backed a non conforming repair and maintenance garage onto a R-5 located multi bus stop platform or built non conforming offices above a R-5 located subway entrance.

To be sure, offices and repair garages are "necessary" for the operation and facility of any public transportation authority but Defendant misses the meaning of *Gohlson* as surely as they misread the

intent of the Mass Transit Facility exception because while these structures may be a "necessity" for the trolley authority, the R-5 location of these non conforming uses is NOT a "necessity." Indeed, the repair garage, car wash, maintenance and training office HQ can be built as conforming uses and structures in nearby appropriate zones.

Conclusion

Because the \$6M repair, maintenance and training office HQs facility may be "necessary" but not "necessarily located" in the residential zone of 2500 Benning Road, Defendant is plainly wrong when arguing that the above referenced non conforming facility is permitted as a matter of right in a R-5 zone.

Respectfully submitted,

William Simpkins