LGI INDUSTRIES, INC. STATEMENT OF BASES FOR ACTION SOUGHT IN THIS APPEAL TO THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

This action involves an appeal by LG Industries, Inc. (LGI) from a decision by the Zoning Review Branch denying LGI's application for a certificate of occupancy (CO) for a "solid waste handling facility," as well as related uses, for its operations at 1140 Third Street, N.E. The facts surrounding LGI's CO application are set forth in detail in LGI's September 3, 1996 application cover letter to the Building and Land Regulation Administration (BLRA)(attached). LGI currently operates a solid waste transfer station at 1140 Third St., N.W. under an existing CO issued in 1994, and authorizing, among other related uses, operation of a "transfer station." The regulations applicable to solid waste transfer stations issued by the D.C. Department of Consumer and Regulatory Affairs (DCRA) on an emergency basis in April 1996, and since finalized on December 20, 1996, 43 D.C. Reg. 6816, as well as a "Solid Waste Handling Facility Interim Operating Permit" (copy attached), dated August 2, 1996, and issued to LGI by DCRA pursuant to those regulations, required that LGI, as a condition to maintaining its interim solid waste permit, file an application with BLRA for a new CO, and that that new application use the words "solid waste handling facility" in its description of the uses to be authorized by a new CO. See 21 DCMR § 731.15 (c). That interim permit also authorizes LGI to apply to the Board of Zoning Adjustment should the BLRA deny LGI's newly required CO application. Pursuant to these provisions, and under protest and compulsion, LGI applied for the new CO in September 1996, and BLRA has recently denied it. As required, and under protest and compulsion, LGI hereby appeals that denial.

The bases for LGI's appeal are as follows: (i) BLRA's stated basis for denying LGI's CO application is invalid and unlawful because CO applicants are not subject to a pending proceeding by the Zoning Commission to establish a special exception for the proposed use, and even if LGI is subject to such a pending proceeding, LGI is grandfathered from those requirements as an existing use; (ii) BLRA has no other lawful basis to deny LGI's application; (iii) the requirements and procedures established by DCRA to compel LGI to seek a new CO are without basis in law or regulation and are therefore invalid and unlawful; (iv) LGI is operating lawfully by right under a valid CO at its existing facility and that CO has never been found invalid; and (v) all members of the Executive Branch of the District of Columbia government, including DCRA and BLRA, are precluded from asserting in any forum that a solid waste transfer use is prohibited in all districts under the District's zoning regulations.

Wherefore, LGI requests this Board to grant the following relief: (i) declare that DCRA may not, de facto or de jure, annul LGI's exiting CO through its solid waste regulations or permits issued thereunder; (ii) declare that DCRA's requirement that LGI obtain a new CO as a condition of maintaining its solid waste transfer station permit is invalid and unlawful; (iii) declare that this Board has no jurisdiction to hear these issues; (iv) declare that LGI's existing solid waste transfer station is grandfathered from any and all requirements that the Zoning Commission might adopt pursuant to its pending special exception case; (iv) declare that the existence of any pending Zoning Commission special use case is an unlawful and invalid basis for denying a certificate of occupancy application; (v) declare that the Executive Branch agencies of the District of Columbia may not take the position in any forum, including this one, that solid waste transfer stations are not an authorized use as a matter of right in applicable districts under the District's zoning code; (vi) issue LGI the certificate of occupancy requested; and (vii) grant all such other relief as is just, fair and equitable.

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