

Case No.: ROSP S.E. 245/06

Applicant: Washington Gas
Light Company

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL

ORDER OF DENIAL

IT IS HEREBY ORDERED, after review of the administrative record, and after hearing oral argument from the applicant and other parties, that Revision of Site Plan for Special Exception No. 245/06, to modify and enlarge a natural gas facility, to allow storage of liquefied natural gas, or LNG, on property described as approximately 21.02 acres of land in the O-S Zone, on the north side of Chillum Road, between 19th Avenue and Queens Chapel Road, identified as 2130 Chillum Road, West Hyattsville, be and the same hereby is:

DENIED, upon consideration of the entire record, for the reasons stated by the Zoning Hearing Examiner, whose decision, with the following additions, is hereby adopted as the basis for denial:

A. The District Council fully agrees with the Examiner that the present special exception case, an application for a major revision of the special exception site plan for a utility, is moot, and may no longer be processed. On May 23, 2006, the Council adopted Council Resolution 24-2006, approving the Transit District Development Plan and TDOZ for the West Hyattsville area. The Council's action comprehensively rezoned the West Hyattsville Transit District, the area near the West Hyattsville Metrorail Station. The Transit District includes the subject property, and CR-24-2006 placed all TDDP properties in West Hyattsville in the TDO Zone and made

them subject to regulations in the text of the TDDP and the TDOZ requirements in the Zoning Ordinance.

The West Hyattsville zoning plan, the TDDP, does not permit new public utility uses on the subject property. The special exception for the property, approved many years ago, is now superseded, by operation of law: the new Transit District, with newly adopted TDOZ regulations, does not permit the special exception use. To the extent that any public utility use remains at this time, after the cessation of operations and decommissioning of the natural gas storage tanks and other facilities on the property, that use may be certified as nonconforming, if the property owner chooses to take that step. But the property may not be put to a new and different use as a public utility, unless the applicant follows the TDOZ requirements and regulations in the TDDP and in Part 10A of the Zoning Ordinance. Those regulations, in Division 1 of Part 10A, allow a property owner to request amendment of TDDP regulations, to permit a use the plan disallows.

The applicant misreads the TDDP text when it argues that the standards and guidelines apply only to development “submitted for approval on or after the TDDP’s effective date of enactment.” The text means that the “TDDP standards and guidelines” will be applied to every site plan submitted for approval, under Zoning Ordinance procedures in Division 1 of Part 10A. It does not say, and was never meant to say, that the TDDP itself – and the rules governing the applicability of zoning and use regulation changes – would not take effect on the date of TDDP adoption. Where a site plan “approval” occurs after the date of TDDP adoption, that site plan must show compliance with TDDP “standards and guidelines.”

B. On the merits of the special exception site plan revision application, the Examiner is correct that the applicant did not prove, by substantial evidence, that a public safety problem would not be created by the proposed liquefied natural gas storage facilities. The new LNG tanks

would store natural gas in liquid form, and would allow the storage tanks to be smaller, for a given volume of gas. But the storage tanks would be subject to leakage, and possible gas ignition, potentially destroying residential properties and injuring residents or workers in the area. As the Examiner points out, the margin of error of the applicant's projections, for an event like a fire or explosion, is large enough that the applicant did not -- and could not, given the size of the proposed storage facilities -- eliminate the reasonable possibility of harm to residents, workers, or property.

C. The applicant's arguments about the so-called mandatory referral process provided for in the Regional District Act, Art. 28, Md. Code Ann., and the claim that the proposed use is a "public utility" are well answered by the Examiner and by the attorney for the City of Hyattsville. The mandatory referral process is not a substitute for Zoning Ordinance procedures in this case. Section 7-112 of Art. 28 requires application, under the mandatory referral procedure, by a federal, state, or local "agency," not by a "public utility" like the applicant. By the text of the statute and the decision in *Pan Am. Health Org. v. Montgomery County*, 338 Md. 214, 657 A.2d 1163 (1995), it is clear that the "public utility," Washington Gas Light Company, may be a *zoning* applicant -- as it is in this case, before the District Council -- but may not be a mandatory referral applicant, under § 7-112. Washington Gas, before May 2006, was subject to special exception requirements in the Zoning Ordinance; today it is subject to "standards and guidelines" in the West Hyattsville TDDP. Where a special exception site plan revision used to be called for, the TDDP site plan review process in Part 10A of the Zoning Ordinance is now required.

Ordered this 30th day of October, 2006, by the following vote.

In Favor: Council Members Dernoga, Bland, Campos, Exum, Harrington, Knotts and Peters

Opposed:

Abstained:

Absent: Council Members Dean and Hendershot

Vote: 7-0

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, SITTING AS THE
DISTRICT COUNCIL FOR THE
MARYLAND-WASHINGTON
REGIONAL DISTRICT IN PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Thomas E. Dernoga, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council