

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

DECEMBER 12TH, 2018

+ + + + +

The Regular Public Meeting convened in the
Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441
4th Street, N.W., Washington, D.C., 20001, pursuant to notice
at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LESYLLEE M. WHITE, Board Member
CARLTON HART, Vice-Chair
LORNA JOHN, Board Member

ZONING COMMISSION MEMBER[S] PRESENT:

PETER SHAPIRO, District Resident

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILIAN TONDRO, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
KAREN THOMAS
BRANDICE ELLIOTT
CRYSTAL MYERS
JONATHAN KIRSCHENBAUM

The transcript constitutes the minutes from the
Public Meeting held on December 12, 2018.

C-O-N-T-E-N-T-S

Application Number 19884
Jason Bricker 8

Application Number 19845
Potomac Electric Power Company 9

Adjourn 23

P-R-O-C-E-E-D-I-N-G-S

(9:38 a.m.)

CHAIRPERSON HILL: All right, everyone. Good morning. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street N.W. This is the December 12th public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Vice-Chairperson; Lorna John and Lesyllee White, Board Members and representing the Zoning Commission is Peter Shapiro.

Copies of today's hearing agenda are available to you and located in the wall bin near the door. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live.

Accordingly we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting information to the Board, please turn on and speak into the microphone first stating your name and home address.

When you're finished speaking please turn your microphone off so that your microphone is no longer picking up sound or background noise. All persons planning to testify either in favor or in opposition must have raised their hand and been sworn in by the Secretary.

Also each witness must fill out two witness cards.

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1 These cards are located on the table near the door and on the
2 witness table. Upon coming forward to speak to the Board
3 please give both cards to the reporter sitting to the table
4 at my right.

5 If you wish to file written testimony today or
6 additional supporting documents today, please submit one
7 original and 12 copies to the Secretary for distribution.
8 If you do not have the requisite number of copies, you can
9 reproduce copies on an office printer in the Office of Zoning
10 located across the hall. Please remember to collate your set
11 of copies.

12 The order of procedures for special exceptions,
13 variances and appeals are also located as you come walking
14 into the room. The record shall be closed at the conclusion
15 of each case except for any material specifically requested
16 by the Board.

17 The Board and the staff will specify at the end
18 of the hearing exactly what is expected and the date when the
19 persons must submit the evidence to the Office of Zoning.
20 After the record is closed, no other information shall be
21 accepted by the Board.

22 The Board's agenda including cases set for
23 decision after the Board adjourns, the Office of Zoning in
24 consultation with myself will determine whether a full or
25 summary order may be issued. A full order is required when

1 the decision it contains is adverse to a party including an
2 affected ANC.

3 A full order may also be needed if the Board's
4 decision differs from the Office of Planning's
5 recommendation. Although the Board favors the use of summary
6 orders whenever possible, an applicant may not request the
7 Board to issue such an order.

8 The District of Columbia Administrative Procedures
9 Act requires that the public hearing on each case be held in
10 the open before the public pursuant to Section 405(b) and 406
11 of that Act.

12 The Board may, consistent with its rules of
13 procedures and the Act, enter into a closed meeting on a case
14 for purposes of seeking legal counsel on a case pursuant to
15 D.C. Official Code Section 2-575(b)(4) and/or deliberating
16 on a case pursuant to D.C. Official Code Section 2-575(b)13,
17 but only after providing the necessary public notice and, in
18 the case of an emergency closed meeting, after taking a roll
19 call vote.

20 The decision of the Board in cases must be based
21 exclusively on the public record. To avoid any appearance
22 to the contrary the Board requests that persons present not
23 engage the Members of the Board in conversation.

24 Please turn off all beepers and cell phones at
25 this time so as to not disrupt the proceedings. Preliminary

1 matters are those which relate to whether a case will or
2 should be heard today such as requests for postponement,
3 continuance or withdrawal or whether proper and adequate
4 notice of the hearing has been given.

5 If you're not prepared to go forward with the case
6 today or if you believe that the Board should not proceed now
7 is the time to raise such a matter. Mr. Secretary, do we
8 have any preliminary matters?

9 MR. MOY: Good morning, Mr. Chairman and Members
10 of the Board. I have a couple of announcements. First, and
11 this is for the transcript as well of course as to today's
12 docket, there are two applications that have been withdrawn
13 by the applicant.

14 These two cases are Application Numbers 19874 of
15 New Columbia Solar. The second is Appeal Number 19861 of
16 Station Townhouses LLC.

17 Additionally, Case Application Number 19886 of
18 Giuseppe is postponed to January 9, 2018. And Application
19 Number 19872 of Rupsha, R-U-P-S-H-A 2011 LLC has been
20 postponed, rescheduled to January 16, 2019.

21 Let's see, finally, Mr. Chairman, we do have a
22 preliminary matter. This is to the expedited review case of
23 19884 of Jason Bricker. The applicant submitted yesterday
24 afternoon a request for postponement. And so that is an
25 action before the Board.

1 CHAIRPERSON HILL: All right, Mr. Moy, thank you.
2 So unless the Board has any issues in terms of the
3 postponement of the expedited review, I've read what has been
4 put into the record and also think that the whole point is
5 that they're not necessarily sure whether or not they're
6 going to need the relief.

7 And so they're trying to work that out with the
8 Zoning Administrator. And so I would be in favor of
9 postponing unless the Board has any other thoughts. All
10 right, so, Mr. Moy, on consensus we're going to go ahead and
11 do that. Do you know when?

12 MR. MOY: Given the circumstances of that request,
13 the staff would suggest that we maintain this placeholder for
14 the applicant and set it for February 6th.

15 CHAIRPERSON HILL: Okay, thank you. Okay, good
16 morning, everybody. So we are going to, as the -- the
17 agendas that you pulled out of the bin when you came in we're
18 going to follow them today. And so there will be no
19 surprises or changes.

20 If anyone is here wishing to testify, if you
21 wouldn't mind standing and taking the oath which is going to
22 be administered by the Secretary to my left.

23 (Witnesses sworn.)

24 MR. MOY: Ladies and gentlemen, you may consider
25 yourselves under oath.

1 CHAIRPERSON HILL: All right, Mr. Moy. If you
2 could call our first decision case or meeting case.

3 MR. MOY: Thank you, Mr. Chairman. That would be
4 Case Application Number 19845 of Potomac Electric Power
5 Company as amended for special exceptions under Subtitle C,
6 Section 703.2 from the Vehicle Parking Requirements of
7 Subtitle C, Section 701.5 under Subtitle C, Section 807.1
8 from the Bicycle Parking Requirements of Subtitle C, Section
9 802.1 and under Subtitle U, Section 320.1(a) from the Utility
10 Use Requirements of Subtitle U, Section 203.1(p) which would
11 construct an electrical substation in the RF-1 zone.

12 This is at 1000 1st Street Northwest, Square 559,
13 portion of Lot 82.

14 CHAIRPERSON HILL: Okay, great. Is the Board
15 ready to deliberate? Who would like to go first? Okay.

16 MEMBER WHITE: I'll give you some comments. So
17 this is an application to construct an electrical substation
18 in the RF-1 zone at 1000 1st Street Northwest. This was a
19 very involved case with a lot of testimony on both sides.

20 So I'm definitely sensitive to the opinions and
21 the concerns of the community. But I'm also looking at the
22 full record and the criteria for the specific request that's
23 being requested by the applicant who is requesting a special
24 exception under Subtitle C-703.2 from the Vehicle Parking
25 Requirements of C-701.5 and from the Bicycle Parking

1 Requirements under C-807.1 and C-802.1 and relief which is
2 kind of like the major issue here under the Utility Use
3 Requirements of U-203.1(p) to construct an electrical
4 substation.

5 With regards to the relief sought for the parking,
6 the regs require 11 minimum spaces and they are proposing,
7 I believe in this particular case, four spaces. There is
8 also a minimum bike regulation with this particular case for
9 parking of bikes which require a minimum of two long-term
10 parking spaces.

11 And now, at the November 7th hearing which is
12 where we took the bulk of the testimony, we heard testimony
13 from the applicant and several witnesses including William
14 Bailey, and I may be mispronouncing this name, but last name
15 Hajazi who were expert witnesses that testified.

16 They provided updated site plans which can be
17 found at Exhibit 48(c) and architectural plans at Exhibit 10.
18 There are a number of letters in opposition asserting adverse
19 environmental impacts for the application.

20 One of the things that I looked at very carefully
21 was the letter that was submitted by the Department of, DOEE,
22 Department of Energy and Environment. They submitted a
23 letter that can be found in Exhibit 71.

24 I found this report, I was very critical of the
25 whole issue. But I found the report to be credible with the

1 citing of scientific research that was provided. The letter
2 was submitted by the chief science advisor in risk
3 assessment/technology chief.

4 And so the chief science advisor concluded that
5 the low levels of EMTs anticipated from the Mount Vernon
6 substation were comparable to the levels to which you are
7 exposed to on a daily basis from typical household
8 appliances.

9 He went on to indicate that the typical field
10 measurement levels tend to be far lower than the public
11 exposure levels set by the international recognized expert
12 organizations such as the International Commission on Non-
13 Ionizing Radiation Protection and the International Committee
14 for Electromagnetic Safety are in the range experienced in
15 everyday home and work environments.

16 DOEE concluded that the public health and safety
17 are likely to be compromised as a result, not compromised as
18 a result of the Mount Vernon substation. There are also
19 several letters and I'll just give my points and I'll let my
20 fellow Board Members give their points as well.

21 But there were several letters in opposition
22 asserting an adverse environmental impact of the application
23 citing health concerns. There were some citations regarding
24 issues of even racial equity.

25 And there were arguments that were made that

1 talked about the fact that perhaps they needed to look at
2 other available sustainable, renewable energy options as
3 opposed to the construction of a substation.

4 And at a minimum, there was also a lot of very
5 good testimony that was stated about the replacement of the
6 community garden which was definitely heartfelt because this
7 was a community garden that was used a lot by the community
8 in the area, by the kids and it was a very valuable entity
9 in the community as well as the fact that the station that
10 they were proposing was also going to be near a school.

11 So for me it was very important to have some clear
12 scientific feedback with respect to potential impacts that
13 the substation could cause. These issues were addressed
14 during the hearing.

15 There were a number of conditions that were set
16 between the applicant and the ANC. The ANC supported this
17 application. And there were some conditions that were
18 incorporated into the discussion.

19 With respect to the bike parking and the vehicle
20 parking, because this was not going to be a location that was
21 going to be actively used by individuals -- there were going
22 to be like no visitors, no on site employees, only periodic
23 visits -- because of that there was also support for granting
24 relief from the bike and the vehicle parking requirements
25 which I also agree with.

1 The Office of Planning supported this as well as
2 DDOT. So I think with all of the conditions that were in the
3 discussions and agreements that went on between the ANC and
4 the parties and OP I, right now I'm leaning towards
5 supporting the application especially based on the expert
6 testimony that was submitted.

7 CHAIRPERSON HILL: Great, thank you.

8 VICE CHAIRPERSON HART: Mr. Chairman, just to add
9 a couple of points to Ms. White's, Board Member White's
10 comments which were very thorough and I very much appreciate
11 them. One, I think it was, they were looking for seven
12 spaces, parking spaces.

13 Four parking spaces are what they are deficient
14 in. They need to have 11 parking spaces and they're
15 providing seven. I think you said it wrong before.

16 MEMBER WHITE: Thank you. You're right, thank
17 you.

18 VICE CHAIRPERSON HART: And I would concur with
19 your analysis and I would be also supportive of this. One
20 of the things that I'll also point to is that the
21 applicant's, I think it's a pre-hearing submission in Exhibit
22 48 it describes where, and this is Page 5, it talks about the
23 substations by ward.

24 So what it does is it describes where all of the
25 substations are located within the city, within D.C. And

1 showing there literally it's a map that shows where each of
2 the, kind of the substations are as indicated by a dot and
3 the distribution throughout the city.

4 I mean there are some, there's a concentration
5 downtown of course because there are more people downtown
6 needing of course more power. But it is a distribution
7 throughout the entire city.

8 Each ward has substations in them. Some wards
9 have fewer. Some wards have more. But there isn't, it
10 doesn't seem to be a curious concentration of them in certain
11 areas.

12 It seems as though the concentrations are in the
13 places where there are, you know, where we know there are
14 higher concentrations of population. And so, and I only
15 bring that up because there was some discussion about whether
16 or not this was, you know, being put here because it was the
17 area in which it was located and that there were some other
18 concerns, there were some other criteria that were being
19 used.

20 But it seems as though the power company is really
21 looking at putting this here because there is a need, given
22 the amount of concentration of population and the amount of
23 need for this substation in this part of the city. And that
24 was the only other point that I'd like to bring up for the
25 Board.

1 CHAIRPERSON HILL: Thank you.

2 MEMBER JOHN: Mr. Chairman, I would just add a few
3 more comments to what my fellow Board Members have already
4 said. I would like to mention also that the DOEE did some
5 research with respect to the impact of exposure to, the
6 health impacts of exposure to electromagnetic fields.

7 And their conclusion was quite specific that there
8 really is no likelihood that health and safety will be
9 compromised as a result of the Mount Vernon substation. And
10 so because of that statement which I will credit as they are
11 the experts, I do not believe that the community has carried,
12 you know, has shown that there would be any adverse health
13 impacts.

14 And I can't therefore conclude that it would have
15 an adverse impact on the community because of where it's
16 located. Some of the community's concerns also affect the
17 need for the substation and other objections that are not,
18 that are unrelated to the zoning issues.

19 And I think those concerns should be, you know,
20 better served at the discussion of whether or not there, you
21 know, I believe it's the people's Council that would make
22 that sort of decision. So while we appreciate the neighbors'
23 concerns we don't think that's, I don't think those concerns
24 should be addressed by this Board. And otherwise I agree
25 with everything that's been said so far.

1 CHAIRPERSON HILL: Okay. Let's see, Commissioner.
2 So I'm in agreement with everything pretty much that has been
3 said. I mean I'm going to kind of review some of the things
4 in terms of my notes.

5 The, you know, the ANC was in support of this
6 unanimously. And so as far as what the, technically, you
7 know, the community is putting forward in terms of what we
8 are to give great weight towards, the ANC was in support.

9 I mean the conditions that they had listed I have,
10 I don't really have any issues with the conditions. I think
11 that those conditions do actually serve to the adverse impact
12 of the proposed project.

13 I don't think that I would be in agreement with,
14 able to specify dollar amounts of contributions in terms of
15 the conditions. And so I'm going to read through the
16 conditions as I understand them and you guys can let me know
17 what you think just because it's kind of, it's something
18 that's kind of out of our purview I feel in terms setting
19 specific dollar amounts.

20 However, the applicant has agreed to that and
21 therefore I would hope that the applicant will honor the
22 agreement that they put forward. And if not I'm sure we'll
23 hear about that the next time they may be before us.

24 We did take a lot of testimony and there was a lot
25 of testimony primarily in, well there's testimony in the

1 record both in support and in opposition. With regard to the
2 parking I agree with what's been said by my fellow members
3 that the parking again it was more along the lines of a
4 substation.

5 There's not full-time employees there. They're
6 going to be using it primarily just for coming to check on
7 the substation. I thought that the, with regards to the
8 setback that the art installation I thought, in my opinion,
9 you know, helped relieve also any adverse impact from that
10 setback there.

11 As far as the environmental justice that was also
12 brought forward I thought that the testimony that Marc Battle
13 gave from Pepco was kind of, you know, convincing to me.
14 Like he also brought up that he, you know, specifically would
15 or was taking a look at that discussion and that I was
16 convinced from his testimony that, you know, the substations
17 are all over as you pointed out, Vice-Chair Hart.

18 The city, in fact, you know, I was, during the
19 testimony I realized there are a couple next to my house that
20 I wasn't aware of. And so I thought that was, again just to
21 the adverse impact discussion.

22 As far as the electrical magnetic fields I did
23 also, I was convinced by the testimony that was provided as
24 well as cited the letter from the Department of Energy and
25 the Environment which was, as you stated in Exhibit 71 which

1 quoted all of the scientific evidence in terms of how this
2 was not something that would be of a detriment to the
3 community in that area.

4 So I would again agree with the analysis that was
5 provided by the Office of Planning. I would also agree with
6 the, you know, the testimony or the great weight I should say
7 that was given by the ANC.

8 The conditions that I would be in favor of,
9 depending upon how my fellow Board Members see it, would be,
10 before the construction of the substation begins, Pepco will
11 relocate the community garden, the farm at Walker-Jones
12 currently in place at New Jersey Avenue and K Street
13 Northwest.

14 Pepco will provide the creation of a Mount Vernon
15 Triangle Community Advisory Group for ongoing engagement and
16 to provide guidance and issue recommendations on topics
17 including but not limited to future land use, in particular
18 the parcel of land located at K Street and New Jersey Avenue
19 Northwest which has no designated use at this time Pepco
20 presented at the ANC 6E's September 4th and October 2nd
21 meeting and things of art.

22 So basically again the future land use is what
23 there would, the ANC is interested in having one of the
24 topics for the Community Advisory Group. Another one is that
25 the installation of an artistic construction fence. Support

1 for the relocation again of the farm at Walker-Jones which
2 has already been mentioned.

3 And then as part of discussion Pepco's future
4 support for non-profits serving in the community focusing on
5 students, children and seniors for, up until 2021 and
6 subsequent years. So again --

7 VICE CHAIRPERSON HART: Mr. Chairman.

8 CHAIRPERSON HILL: Yes.

9 VICE CHAIRPERSON HART: The only, I think I would
10 be in support of that, of those. And I think that the, well
11 I was wondering whether or not we needed to be a little bit
12 more specific on the Community Advisory Group like that it
13 should at least include these folks.

14 I mean we had quite a number of people that were
15 coming to it and I would, that were stating that the parents
16 of the school, of Walker-Jones Elementary School were not as
17 supportive of this as the administration might be.

18 So I just didn't know if there was a way that we
19 could maybe break down and say that, break the group down and
20 say that Pepco would support the creation of the Mount Vernon
21 Triangle Community Advisory Group that will, that should be
22 comprised of, you know, parents and administration of the
23 school, the ANC and the adjacent neighbors at the, you know,
24 that those groups should be included in that as opposed to
25 people that are only supportive of the application.

1 You know, have people that are both in support and
2 --

3 CHAIRPERSON HILL: No, I understand. I guess and
4 I'm not, we can put that up for discussion. I don't know how
5 to specify who should be in that group.

6 I mean I supposed that, you know, if you want, I
7 don't want to start figuring out who, you know, I just don't
8 know how to create the make up of that on the fly at this
9 moment. I think that the ANC, they're the ones who asked for
10 the conditions.

11 So I would assume that they, being the ANC would
12 pick then who should be on that Community Advisory Group.
13 And I would hope that the ANC also wouldn't just front-load
14 it, you know, they would have someone from the school or
15 someone there within their community that would represent all
16 sides.

17 But I just don't know how to specify other than
18 I guess you could say somebody from the school.

19 VICE CHAIRPERSON HART: I just thought that it may
20 be helpful to at least kind of acknowledge that the ANC, the
21 school and the local, you know, I don't know who, I don't
22 think there was ever a group that kind of came out of, that
23 was in opposition that came out of it.

24 It was, there were individuals but they were not
25 kind of a solid block that could say well, you know, people

1 in this building or whatever. I don't know.

2 CHAIRPERSON HILL: I love it when we do this right
3 in public in front of everybody, right. Can't we do this in
4 the back and then come back and figure it out?

5 VICE CHAIRPERSON HART: I started thinking about
6 it.

7 CHAIRPERSON HILL: So my vote is currently letting
8 the ANC figure out who should be on the whatever it's called,
9 you know, the CAG or, you know, now I've got to look what the
10 acronym, is, yes, Community Advisory Group just because I
11 don't know how to specify.

12 VICE CHAIRPERSON HART: Well, how about we do
13 that? Just say that Pepco's support of the creation of a,
14 you know, this group, you know, created by the ANC, I don't
15 know. That might be --

16 MEMBER SHAPIRO: Mr. Chair, I think that we would,
17 as Vice-Chair Hart suggested some of the stakeholders that
18 could be involved. I don't think that we are dictating who
19 would be involved.

20 I think that's more of a recommendation. And I
21 don't have a problem with that additional level of
22 recommendation.

23 CHAIRPERSON HILL: Okay, all right. So we're
24 tweaking it, right. So I'll start again. So the first
25 condition remains the same. And I don't know, I forget, OAG,

1 do I have to reread the whole thing?

2 Can you follow, figure out later when you're
3 writing it all up? So number one is staying the same. The
4 second thing that I started to read was, Pepco will support
5 the creation of a Mount Vernon Triangle Community Advisory
6 Group under the, with the participation of the ANC for
7 ongoing engagement to provide guidance and issues,
8 recommendations on topics including but not limited to, and
9 I won't reread the topics. The topics I've read already.
10 So those what I would be thinking are the conditions.

11 As I reiterated before during the testimony, the
12 applicant did agree to, that Pepco will contribute \$25,000
13 each year for three consecutive years to multiple
14 neighborhood non-profits serving the community focusing on
15 students, children and seniors.

16 Donations subsequent to the three years will be
17 determined in consultation with the Mount Vernon Triangle
18 Advisory Group. So what I had difficulty with again was the
19 specific dollar mounts.

20 And actually, you know, Pepco has now agreed to
21 or the applicant I should say has agreed to what they've
22 agreed to do. But I don't think it is within the Board's
23 purview to put money in as a condition.

24 And so that's why I was not comfortable with that.
25 So outside of that those are the conditions. Is there any

1 further discussion concerning the conditions? Okay.

2 MEMBER JOHN: I'm comfortable with this, Mr.
3 Chair.

4 CHAIRPERSON HILL: Okay. Then I go ahead and make
5 a motion to approve Application Number 19854 as captioned and
6 read by the Secretary with the conditions that we have now
7 agreed to and ask for a second.

8 VICE CHAIRPERSON HART: Second.

9 CHAIRPERSON HILL: The motion has been made and
10 seconded. All those in favor say aye.

11 (Chorus of aye.)

12 CHAIRPERSON HILL: The motion passes, Mr. Moy.
13 All those opposed say, nay. The motion passes, Mr. Moy.

14 MR. MOY: Staff would record the vote as five to
15 zero to zero. This is on the motion of Chairman Hill to
16 approve the application for the relief requested along with
17 the conditions as have been discussed and cited as part of
18 the motion.

19 Seconding the motion Vice-Chair Hart. Also in
20 support Ms. White, Ms. John and Mr. Peter Shapiro. Motion
21 carries.

22 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.

23 (Whereupon, the above-entitled matter went off the
24 record at 10:09 a.m.)

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCBZA

Date: 12-12-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

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