

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18911 of Potomac Electric Power Company, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception from the utilities requirements under § 608.1 and area variances from the public space requirements of § 633 and the off-street parking requirements of § 2101.1, to construct a new electric substation in the CG/CR District at Square 603, Lots 19 and 809.¹

HEARING DATE: March 10, 2015

DECISION DATE: March 10, 2015

DECISION AND ORDER

SELF-CERTIFIED

Potomac Electric Power Company (“PEPCO” or the “Applicant”) submitted a self-certified application on October 24, 2014, for the property located at Square 603, Lots 19 and 809 (the “Site”). The Applicant requested special exception relief for utility use in the CR District pursuant to § 608.1, and area variances from the public space at ground level requirements of § 633 and the off-street parking requirements of § 2101.1, to construct a new PEPCO distribution substation in the CG/CR District at the Site. Following a public hearing on March 10, 2015, the Board of Zoning Adjustment (“Board” or “BZA”) voted to approve the application.

Preliminary Matters

Notice of Application and Notice of Hearing. By memoranda dated October 31, 2014, the Office of Zoning sent notice of the filing of the application to the D.C. Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the Site is located, Single Member District 6D06, and the Councilmember for Ward 6 (Exhibits 14-18). A public hearing was scheduled for February 3, 2015. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing on the application in the *D.C. Register*, and on November 12, 2014, sent such notice to the Applicant, ANC 6D, and all owners of property within 200 feet of the Site (Exhibits 19-21).

On December 22, 2014, the Applicant submitted a letter to the Board requesting a postponement of the scheduled public hearing date to March 10, 2015. At the Board’s February 3, 2015, public hearing, the Board’s secretary announced that the case was postponed and rescheduled to the Board’s March 10, 2015, hearing.

¹ By subdivision dated March 2, 2015, Lots 19 and 809 were subdivided into new Record Lot 20.

Applicant's Case. Christine Shiker of Holland & Knight LLP represented the Applicant. The Applicant presented six witnesses in support of its application at the public hearing: Robert Andrukaitis, Manager for Special Projects, PEPCO; Christopher Taylor, Public Affairs Manager, PEPCO; Basil Allison, II, Chief Engineer, PEPCO; Dale Stewart, project architect, CORE; Harry Ross, project architect, CORE; and William Bailey, Principal Scientist, Exponent.

Government Reports. OP filed a report with the Board on March 3, 2015 (Exhibit 33). The OP report set forth the special exception standards of § 608.1 and 3104.1 and found that each was met. The OP report also set forth the variance standards of § 3103.2 and concluded that the Applicant met those requirements as they apply to the public space at ground level requirements (§ 633) and the off-street parking requirements (§ 2101.1). DDOT also filed a report with the Board on March 3, 2015, stating that it had no objection to the requested parking variance (Exhibit 34).

ANC Report. ANC 6D submitted a letter to the Board dated March 1, 2015 (Exhibit 32), requesting that the Board postpone its hearing until after the completion of the Public Service Commission ("PSC") investigation into the reasonableness, health, and safety of the proposed substation in Formal Case # 1123. The ANC did not submit a report in support of or in opposition to the application, and the ANC did not participate at the hearing. On March 5, 2015, the Applicant submitted a response to ANC 6D's request for postponement, stating that (i) there is no requirement for a PSC determination in order for the Board to consider an application for zoning relief; (ii) delaying the BZA hearing would be detrimental to PEPCO, the proposed project, and the neighborhood surrounding the Site; and (iii) the Applicant already requested that the BZA postpone the hearing once giving additional time to the ANC (Exhibit 35).

Persons and Organizations in Support. The Board received two letters in support of the application. D.C. United submitted a letter in support (Exhibit 36), stating that its new soccer stadium is planned to be located directly across R Street from the Site, and that the stadium is anticipated to spur further development in the area, which will result in significantly increased demand for electrical power. D.C. United described its participation in design charrettes hosted by PEPCO, and stated that the final proposed design incorporates an active façade and public space that will significantly improve the block on which the substation and stadium will be located. The Capitol Riverfront Business Improvement District ("BID") also submitted a letter in support of the application (Exhibit 40), stating that the substation is necessary to handle increased electric demand and future capacity issues in the Capitol Riverfront area and that the design for the substation reflects collaborative input from numerous stakeholders.

Persons and Organizations in Opposition. The Board did not receive any letters or testimony in opposition to the application.

Procedural Matters. As a preliminary matter to the hearing, the Board considered the ANC's letter requesting a postponement and the Applicant's response. The Board decided to move forward with the hearing based on the findings that (i) there is no requirement for a PSC determination in order for the Board to consider an application for zoning relief, (ii) the project will need approval by both the Board and the PSC before the Applicant can receive a building permit to construct the substation, (iii) the BZA and PSC approval processes are separate with different standards of review, (iv) the BZA already postponed the hearing once which gave

additional time to the ANC, (v) the construction time frame for the substation is on a critical path and any delay will cause detriment to the Applicant and surrounding community, and (vi) the Applicant attended six public meetings with the ANC and hosted numerous other community meetings, such that the ANC had ample time to vote on and submit a letter in support of or in opposition to the project. The ANC did not attend or participate in the public hearing.

FINDINGS OF FACT

The Site and the Surrounding Neighborhood

1. The Site consists of Lots 19 and 809 in Square 603. Square 603 is located in the southwest quadrant of the District and is bounded by Q Street to the north, 1st Street to the east, R Street to the south, and 2nd Street to the west. The entire square is zoned CR and is located within the Capitol Gateway (“CG”) Overlay District.
2. The Site contains a land area of approximately 123,050 square feet and comprises almost the entire land area of Square 603. Lot 19 was most recently used as a towing yard with a vacant one-story building in the center of the lot and a two-story building on the west side of the lot that was used as an office for the towing company. Lot 809 is improved with a large two-story building that previously housed a flooring warehouse, a souvenir warehouse, and a bakery. The Applicant proposes to raze the existing buildings on the Site in connection with this application. The only other remaining lot in Square 603 is Lot 807, which is also owned by PEPCO and is improved with a historic landmark known as the James Dent house.
3. The Site is located in the Buzzard Point area of the District and within the Capitol Riverfront BID. The area immediately surrounding the Site also includes a variety of other uses, including industrial, residential, and commercial uses. The new DC United soccer stadium is proposed to be constructed directly south of and across R Street from the Site.

Need for the Project

4. The Applicant proposes to develop the Site with a new PEPCO distribution substation. The substation is necessary to support existing customers and future development in the surrounding area, which has experienced steady growth in residential and commercial electric demand over the past several years, with growth expected to continue.
5. The proposed substation is also necessary to replace aging PEPCO infrastructure. The nearest electrical distribution facility in the immediate vicinity of the Site is at PEPCO’s Buzzard Point Substation (“Buzzard Point Substation”), located between 1st and Half Streets, S.E. and south of S Street, S.E. PEPCO predicts that the East LVAC Distribution Network Group originating from the Buzzard Point Substation will exceed its capacity by three percent in 2017. Expansion of the Buzzard Point Substation is impractical because it would require temporarily transferring load and rebuilding antiquated equipment that cannot be upgraded with necessary new distribution feeders. Moreover, the Buzzard Point Substation load area is isolated and has minimal outside emergency ties to other

substations or feeders or to alternate supply. This lack of adequate distribution facilities in southwest DC creates substantial risk of long-term outages and failed equipment, generating the need for a new substation in this area.

Project Description

6. The project is a two-story plus cellar substation building with approximately 57,304 square feet of gross floor area and approximately 33,022 square feet of cellar floor area. The building will have a maximum height of 58 feet and a density of approximately 0.47 floor area ratio (“FAR”). The substation’s footprint will occupy approximately 80% of the Site; however, because much of the substation is not under roof, the lot occupancy is only approximately 33% of the Site.
7. Façade materials will include brick veneer and traditional brick detailing, masonry walls, precast panels, metal panels, and large opaque windows. Through variation in massing, materials, and articulation, the façades will respond to a variety of streetscapes and offer opportunities for public art and active and passive enjoyment of public space. Roof heights are exaggerated to reinforce the changes in massing and impart a complete expression of the substation as a series of separate facades knitted together to make one building.
8. The south façade has a tan brick warehouse motif with educational or artistic components at the ground level and large opaque windows above. At the corner of 1st and R Streets, the massing shifts to a taller, red brick structure with a granite base. This portion of the building is set back from the property line to provide a public space that fronts the future DC United stadium and responds to a future planned plaza across R Street.
9. The east façade incorporates the red brick warehouse motif at the corner of 1st and R Streets and a mix of tan and red brick, metal panels, and opaque windows at the corner of 1st and Q Streets. The northern portion of the façade is set back from the property line, creating a break in massing and establishing a second open space that includes a mix of pervious paving and plantings.
10. Along the north façade, the streetscape transitions to a more residential character with a continuous planting strip on both sides of the sidewalk and an active façade that incorporates the tan and red brick and metal panels at various heights and setbacks. Opaque windows are located in inset bays and an open court is located in the center of the north elevation where the façade breaks to allow access to a maintenance yard. A side yard is provided along the entire north façade, enclosed with an approximately six-foot high fence.
11. The west elevation has brick veneer and opaque windows, with a maintenance yard and adjacent green space at the ground level. The maintenance yard is inaccessible to the public due to the operational needs of the substation, but the fence runs on the east side of the green space to provide a third, visually open space on the Site. Halfway along the west façade, the building’s massing breaks and transitions back to a traditional warehouse façade design.

12. Five surface parking spaces are located on the west side of the Site, accessed from 2nd Street. Loading is provided from Q Street and will be used by passenger vehicles or light/medium trucks during substation maintenance and for trash collection, each of which will occur approximately once per month. The loading area will also serve as a maintenance corridor used for heavy equipment installation and removal, which will occur approximately every five to ten years.

The Special Exception Relief

13. Pursuant to § 608.1, use as an electrical substation is permitted in a CR District when authorized by the Board under § 3104.1 if the Board determines that the use is appropriate in furthering the objectives of the CR District. The purpose of the CR District is to encourage a diversity of compatible land uses that may include a mixture of residential, office, retail, recreational, light industrial, and other miscellaneous uses. 11 DCMR § 600.1. The CR District is also intended to help create major new residential and mixed use areas in planned locations at appropriate densities, heights, and mixtures of uses (11 DCMR § 600.3(a)); encourage flexibility in architectural design and building bulk; provided, that the designs and building bulk shall be compatible and harmonious with adjoining development over the CR District as a whole (11 DCMR § 600.3(d)); and create environments conducive to a higher quality of life and environment for residents, businesses, employees, and institutions in the District of Columbia as specified in District plans and policies (11 DCMR § 600.3(f)). In addition, the CG Overlay District includes the purpose of allowing for the continuation of existing industrial uses, which are important economic assets to the city, during the extended period projected for redevelopment. 11 DCMR § 1600.2.
14. The substation will provide necessary electrical supply to serve the expanding neighborhood. The Buzzard Point Substation that currently serves this area is operating near capacity and cannot be renovated to satisfy future electric demand. New large development projects are planned or are in construction in the area and will generate significant additional demand in the near future. The proposed new substation will be able to fill this gap, provide reliable electrical services, and reduce the likelihood of future outages.
15. The substation design was developed with significant input from the community. The Applicant engaged in a detailed design charrette process with OP and stakeholders to ensure that the design of the substation fits within the context of the area, and that setbacks, screening, and other safeguards are incorporated for protection of the neighborhood and its residents. The building's architectural features and public space were designed to improve the physical aesthetic of the block such that there will be no appreciable impacts on the neighborhood.

The Variance Relief

16. The Applicant seeks area variances from the public space requirements of § 633 and the parking requirements of § 2101.1. Pursuant to § 633, the Applicant is required to devote

approximately 12,305 square feet of land area (ten percent of the Site) to public space. Pursuant to § 2101.1, the Applicant is required to provide 151 on-site parking spaces. In this case, the Applicant is providing approximately 9,811 square feet of public space (approximately eight percent of the Site) and five on-site parking spaces.

Exceptional and Extraordinary Conditions

17. The Site has several extraordinary conditions that give rise to an exceptional situation. The Site is very large, containing a 123,050 square feet of land area. The Site has street frontage on all four sides and is surrounded by other industrial uses, residential row dwellings, and site of the proposed DC United soccer stadium. Moreover, the substation use requires a large amount of space to house, operate, and maintain the electrical equipment.
18. Properties surrounding the Site in the Capitol Riverfront and Southwest communities currently receive electric supply from the East LVAC Distribution Network Group originating from the Buzzard Point Substation, which is predicted to exceed its capacity by three percent in 2017 due to the electrical needs of current and future development in the area.

Practical Difficulties – Public Space Requirements (§ 633)

19. Section 633 of the Zoning Regulations provides the following:
 - a. § 633.1 - An area equivalent to ten percent (10%) of the total lot area shall be provided for all new development.
 - b. § 633.2 - The area for new development shall be located immediately adjacent to the main entrance to the principal building or structure on the lot, and shall serve as a transitional space between the street or pedestrian right-of-way and the building or structure.
 - c. § 633.3 - The area for new development shall be open to the sky or have a minimum vertical clearance of one (1) story or ten feet (10 ft.).
 - d. § 633.4 - The area shall be suitably lighted and landscaped for public use, and may be utilized for temporary commercial displays.
 - e. § 633.5 - The space shall be open and available to the general public on a continuous basis.
 - f. § 633.6 - The area shall not be charged against the gross floor area of the building.
20. Strict interpretation of these public space requirements would result in a practical difficulty to the Applicant for the following reasons:

- a. The substation facility requires a significant amount of physical space to house the necessary equipment, maintain and operate the equipment, and still meet building and safety codes. As a result, the Applicant cannot enlarge or create additional public spaces on the Site;
- b. Operational and safety considerations require the substation to be closed to the public;
- c. A significant amount of exterior space must be reserved for staging of equipment in case of an emergency; and
- d. The public space required by § 633 is intended to be a transitional area between the sidewalk and the entrance to the building (§ 633.2); however, there is no traditional “entrance” to the building, given its use as a substation and the restricted public access.

Practical Difficulties – On-Site Parking Space Requirements (§ 2101.1)

- 21. Strict interpretation of the on-site parking space requirements would result in a practical difficulty to the Applicant. Section 2101.1 requires one parking space for each 600 square feet of gross and cellar floor area, or in this case 151 parking spaces. The Applicant proposes to provide five parking spaces on the west side of the Site.
- 22. Given the proposed substation use of the Site, there is no space to provide the required 151 parking spaces, which would take up a significant amount of surface area or would require construction of a parking structure. Providing either facility would result in a major loss of space for the substation use, which directly conflicts with the purpose of redevelopment of the Site. The Applicant also cannot locate the parking spaces within the substation building or below grade, since the entire structure, including below-grade areas, will be fully occupied with substation equipment.

No Harm to Public Good or Zone Plan

- 23. The Applicant is providing the most amount of public space possible given the Site’s constraints and the need to dedicate a substantial amount of the Site to housing, operating, and maintaining substation equipment.
- 24. Permitting the public to enter the Site creates safety and security risks associated with the electrical equipment and transmission/distribution lines. However, in order to provide the type of transitional area envisioned by § 633 and comply with the intent of the public space requirements, the Applicant provided public open space in three locations: (i) 3,839.15 square feet along 1st Street; (ii) 1,829.71 square feet at the corner of 1st and R Streets, and (iii) 4,141.92 square feet along 2nd Street. These spaces allow the building to be set back from the property line and provide a transition between the pedestrian right-of-way and the building’s façade.

25. On the Site's north side, PEPCO provided an additional recessed area of 1,846.2 square feet that will be paved with hardscape and provide entry into the maintenance yard. If this space was included in the calculation of public space, the project would provide a total of approximately 11,657 square feet of open public space (95 percent of the required amount).
26. Overall, the location of the proposed public spaces relate to the Site's context and provide usable space that is consistent with the purposes of § 633. The building's aesthetics and architectural features integrate with the neighborhood context and were designed with input from the community, OP, and other stakeholders. The substation includes well-designed and appropriately-located public spaces, particularly as they relate to the proposed DC United soccer stadium to the south and to the residential neighborhood to the northeast. The building also incorporates setbacks, screening, and other safeguards to protect public safety.
27. Five parking spaces are sufficient to meet the parking needs of PEPCO employees working at the Site. The substation will be an unmanned facility with no on-site operational crew needed on a daily basis. Maintenance of the substation will be accomplished by two employees working on-site once a month. The 2nd Street access area will provide parking, if needed, during emergency situations. It will also provide spillover capacity for any other types of maintenance that may be necessary. Given the proposed use of the Site with few employees and no permitted public access, the project will not have an adverse impact on the transportation network or on parking availability in the area.

CONCLUSIONS OF LAW

Special Exception Relief

Pursuant to § 3104, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring property. Additionally, certain special exceptions must meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicant also had to meet the requirement of § 608.1 that use as an electrical substation is permitted in a CR District if the Board determines that the use is appropriate in furthering the objectives of the CR District.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

The Applicant is seeking a special exception from § 608.1 to establish an electrical substation in the CR District. Based on the case record, the Board concludes that substation use at the Site will further the purposes and objectives of the CR District to encourage a diversity of compatible land uses, including residential, office, retail, recreational, light industrial, and other miscellaneous uses (11 DCMR § 600.1). The substation structure will have a design and bulk that is compatible and harmonious with adjoining development (11 DCMR § 600.3(d)), and by providing essential electricity throughout the area, the substation will create an environment conducive to a high quality of life and environment for residents, businesses, employees, and institutions in the District. 11 DCMR § 600.3(f). Demand for energy is growing in the Southwest and Capitol Riverfront neighborhoods, and the substation use will allow the District's preferred uses to develop and flourish.

The Board also finds that the Applicant designed the substation with the community in mind and with significant input from OP, neighborhood residents, and other stakeholders. Through a detailed design charrette process, the Applicant ensured that the architecture fits within the existing neighborhood context and that setbacks, screening, and other safeguards are incorporated into the design for the protection of the community. No additional setbacks, screening or other safeguards are necessary for the protection of the neighborhood. Granting the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

Based on the above findings of fact and having given great weight to OP, the Board concludes that the Applicant meets the standards of sections 608.1 and 3104.1.

Variance Relief

Standard of Review

The Applicant seeks area variances from §§ 633 and 2101.1. Under section 8 of the Zoning Act (D.C. Code § 6-641.07(g)(3) (2012 Repl.)), the Board is authorized to grant an area variance where it finds that three conditions exist: “(1) the property is unique because, *inter alia*, of its size, shape or topography; (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.” *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), *quoting Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). *See, also, Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). Applicants for an area variance need to demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting that “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *See Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

As discussed below, the Board concludes that the Applicant has met its burden of proof for area variances from §§ 633 and 2101.1.

Exceptional and Extraordinary Conditions

The Board concludes that the Site is affected by a confluence of several exceptional and extraordinary conditions. The Site is very large at 123,050 square feet. The Site has street frontage on all four sides and is surrounded by other industrial uses, residential row dwellings, and the site of the proposed DC United soccer stadium. Moreover, the substation use requires a large amount of space to house, operate, and maintain the electrical equipment. Properties surrounding the Site currently receive electric supply from the East LVAC Distribution Network Group originating from the Buzzard Point Substation, which will exceed its capacity by three percent in 2017 due to the electrical needs of current and future development in the area. Based on the foregoing, the Board concludes that these "confluence of factors" create exceptional and extraordinary conditions affecting the Site.

Practical Difficulties

The Board further concludes that the exceptional and extraordinary conditions create practical difficulties for the Applicant in complying with §§ 633 and 2101.1. The substation use requires a significant amount of interior space to house, operate, and maintain the equipment. The use also requires large exterior spaces to provide staging areas for equipment in the case of an emergency. Moreover, due to the restricted public access, there is no traditional building "entrance" to provide a transitional area between the sidewalk and the building, as required by § 633.2. Therefore, the Board finds that it is practically difficult to comply with the strict requirements of § 633.

The Board also concludes that providing the required 151 parking spaces would result in a practical difficulty to the Applicant. Given the proposed substation use, there is no space to provide 151 parking spaces, which would take up a significant amount of surface area or would require construction of a parking structure. Providing either facility would result in a major loss of space for the substation use, which directly conflicts with the purpose of redevelopment of the Site. It is also practically difficult to locate parking spaces within the substation building or below grade, since the entire structure, including below-grade areas, will be fully occupied with substation equipment.

No Substantial Detriment to Public Good or Substantial Impairment of the Zone Plan

The Board concludes that requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. Permitting the public to enter the Site creates safety and security risks associated with the electrical equipment and transmission/distribution lines. However, the Applicant is providing the most amount of public space possible given the Site's constraints. The Site will incorporate well-designed open spaces that will be available to the general public in appropriate locations and will meet 80% of the public space requirement. The building's aesthetics and architectural features were designed with input from OP, neighborhood residents, and stakeholders, and include safeguards to protect

the community and reduce impact. Overall, the project will integrate well within its context, particularly as it relates to the DC United stadium to the south and the residential neighborhood to the northeast.

The Board also concludes that five parking spaces are sufficient to meet the parking needs of PEPCO employees working at the Site. The substation will be unmanned on a daily basis, with maintenance accomplished by two employees working on-site once a month. The 2nd Street access area will provide parking, if needed, during emergency situations, and will offer spillover capacity for any other types of maintenance that may be necessary. Given the proposed use of the Site with few employees and no permitted public access, the project as proposed will not have an adverse impact on the transportation network or on parking availability in the neighborhood surrounding the Site.

Great Weight to ANC and OP

Section 13(b)(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Code § 1-309.10(d)(A)), requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case, ANC 6D did not submit a report in support of or in opposition to the application, and did not participate in the public hearing. At the public hearing, the Board gave great weight to the ANC's request to postpone the hearing, but decided to move forward with the hearing based on the findings that (i) there is no requirement for a PSC determination in order for the Board to consider an application for zoning relief, (ii) the project will need approval by the Board and the PSC before the Applicant can receive a building permit to construct the substation, (iii) the BZA and PSC approval processes are separate with different standards of review, (iv) the BZA already postponed the hearing once which gave additional time to the ANC, (v) the construction time frame for the substation is on a critical path and any delay will cause detriment to the Applicant and surrounding community, and (vi) the Applicant attended six public meetings with the ANC and hosted numerous other community meetings, such that the ANC had ample time to vote on and submit a letter in support of or in opposition to the project.

The Board is required under section 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Code § 6-623.04) to give great weight to OP recommendations. In this case, the Board concurs with OP's recommendation that the zoning relief should be granted.

Based upon the record before the Board, and having given great weight to the OP report filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 608.1, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board, and having given great weight to the OP report filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for area variances from §§ 633 and 2101.1. that there exists an exceptional or

extraordinary situation or condition related to the Site that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

It is therefore **ORDERED** that the application is hereby **GRANTED**.

VOTE: **3-0-1** (Marnique Heath, Jeffrey Hinkle, Peter May to approve, Lloyd Jordan not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

ATTESTED BY: _____

Sara Bardin
Director, Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD. PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED

FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 18911

As Director of the Office of Zoning, I hereby certify and attest that on _____, 2015, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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ATTESTED BY:

Sara Benjamin Bardin
Director, Office of Zoning