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Application No. 16546 of Potomac Electric Power Company, pursuant to 11 DCMR 3103.2 for a variance from the height requirement and 11 DCMR 3104.1, for a special exception under Section 411 to allow relief from the roof structure setback requirements in a C-M-1 District at premises 3400 Benning Road, N.E., Parcel 169/114.

HEARING DATE: February 9, 2000
DECISION DATE: Bench Decision

BZA
Case No. 16546
Exhibit No. 25

SUMMARY ORDER

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7D and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 7D. ANC 7D, which is automatically a party to the application, filed a written statement, dated January 19, 2000, of issues and concerns in support of the application.

As directed by 11 DCMR 3119.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a variance pursuant to 11 DCMR 840.1 and for a special exception pursuant to 11 DCMR 411.11. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party to this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met its burden of proof, pursuant to 11 DCMR 3103.2 and 3104.1, and that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore ORDERED that the application is GRANTED subject to the following conditions:

1. Applicant will (a) advocate, along with the ANC 7D, for adequate and safe ingress and egress to and from the roadways near the PEPCO plant; (b) support and partner with ANC 7D before and during the upcoming DPW activities to repair the Kenilworth Avenue bridge at Burroughs Avenue; (c) support community needs related to the proposed roadway construction along the Kenilworth Avenue corridor – Benning Road, Kenilworth Avenue,

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Kenilworth Terrace and Foote Street.

2. Applicant will provide adequate notice to the community and directly to the ANC 7D about employment opportunities that may become available at the PEPCO Benning Road site and at its other facilities.

3. Applicant will sponsor, through the ANC 7D, a community-based learning project to help educate the children within the boundaries of ANC 7D on issues involving environmental concerns and problems.

4. Landscaping for the subject site will be as shown on the Landscaping Plans submitted concurrent with this order.

Pursuant to 11 DCMR 3101.6, the Board has determined to waive the requirement of 11 DCMR 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: **4-0** (Sheila Cross Reid, Robert N. Sockwell, Anthony J. Hood, Anne M. Renshaw to approve)

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

ATTESTED BY:_____
Jerrily R. Kress, FAIA
Director
Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS

OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.