GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16546 of Potomac Electric Power Company, pursuant to 11 DCMR 3103.2 for a variance from the height requirement (Subsection 840.1), and 3104.1 for a special exception from the roof structure setback requirement (Subsection 411.11) for the construction of a five-story office building in a C-M-1 District at premises 3400 Benning Road, N.E. (Parcel 169/114).

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

SUMMARY ORDER

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

The site of this application is located within the jurisdiction of ANC 7D. ANC 7D, which is automatically a party to this application, filed a written statement, dated January 19, 2000, of issues and concerns in support of the application (Exhibit 19). The Board also received a letter of support from ANC 7C.

As directed by 11 DCMR 3119.2, the Board required the Applicant to satisfy the burden of proving the elements which are necessary to establish the case for a variance and a special exception from the strict application of the requirements of 11 DCMR Subsections 840.1 and 411.11. No person or entity appearing as a party to this case testified in opposition to the application. 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 the burden of proof, pursuant to 11 DCMR 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property which 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.

The Board further concludes that the Applicant has met the burden of proof, pursuant to 3104.1, that the requested relief can be granted 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. It is therefore **ORDERED** that this application be **GRANTED** subject to the following **CONDITIONS:**

Board of Zoning Adjustment
District of Columbia
CASE NO.16546
EXHIBIT NO.28

#28

1. The Applicant will (a) advocate, along with ANC 7D, for adequate and safe access 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, Kenilworth Terrace and Foote Street.

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

3. The Applicant will sponsor, through 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 site will be as identified on Exhibit No. 27 of the record.

Pursuant to 11 DCMR 3101.6, the Board has determined to waive the requirement of 11 DCMR 3125.3 that findings of fact and conclusions of law accompany the order of the Board. The waiver will not prejudice the rights of any party, and is appropriate in this case.

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

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: MAR 21 2000

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 DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO SUBSECTION 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.

BAB/3-16-00

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16546

As Director of the Office of Zoning, I hereby certify and attest that on MAR 21 2000 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Norman M. Glasgow, Jr.
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Michael Johnson, Zoning Administrator
Building & Land Regulation Administration
Dept. of Consumer and Regulatory Affairs
941 North Capitol Street, NE, Suite 2000
Washington, DC 20009

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director