

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19845 of Potomac Electric Power Company, as amended,¹ pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 703.1 from the vehicle parking requirements of Subtitle C § 701.5, under Subtitle C § 807.1 from the bicycle parking requirements of Subtitle C § 802.1, and under Subtitle U § 320.1(a) from the utility use requirements of Subtitle U § 203.1(p), to construct an electrical substation in the RF-1 Zone at premises 1000 1st Street N.W. (Square 559, portion of Lot 82).

HEARING DATE: November 7, 2018

DECISION DATE: December 12, 2018

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 13 (Original); Exhibit 48A (Revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 2, 2018, at which a quorum was present, the ANC voted 7-0-0 to support the application with conditions. (Exhibit 59.) The Board adopted several of the conditions proposed by the ANC, finding that they were relevant to mitigating potential impacts of the zoning relief requested. The

¹ The Applicant originally sought relief for vehicle parking and bicycle parking as area variances, (Exhibit 13), but amended the application to instead request relief from these requirements by special exception. (Exhibit 48A.) The original application also included area variance relief from the trash room requirements under Subtitle C § 907.1, but that relief was withdrawn based on revised plans that meet this requirement. (Exhibits 48A and 48C.)

BZA APPLICATION NO. 19845
PAGE NO. 2

Board determined that the ANC's proposed condition requiring the Applicant to make a monetary contribution to neighborhood non-profits was not sufficiently connected with the relief requested to be adopted as a condition of this Order; however, the Board notes that the Applicant has agreed to abide by this condition nonetheless.

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 53.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 54.) The Department of Health filed a response, indicating that it has no comments on the project and that the appropriate agency to respond to the issues raised is the Department of Energy and Environment ("DOEE"). (Exhibit 57.) DOEE filed an initial response noting that it is engaged in litigation before the Public Service Commission on the project and did not have additional comments at that time. (Exhibit 56.) In advance of the hearing, DDOE filed additional testimony from its Chief Science Advisor of Risk Assessment/Toxicology to comment on the concerns raised about electromagnetic fields ("EMF"). (Exhibit 71.) DDOE indicated that the "low levels of EMF anticipated from the Mount Vernon substation are comparable (perhaps even generally lower) to the levels to which we are exposed on a daily basis from typical household appliances, or the normally occurring background levels." (Exhibit 71.) Based on DDOE's research, it opined that the public health and safety are not likely to be compromised as a result of the proposed substation. (Exhibit 71.)

Thirteen letters in support were submitted to the record. (Exhibits 33-36, 44, 45, 62-67, and 72.) Additional petitions and letters in support were submitted by the Applicant. (Exhibit 58.) Five letters in opposition were filed from community members and individuals raising environmental, health, and safety concerns. (Exhibits 17, 41, 43, 68, and 69.) Multiple petitions in opposition were also submitted, signed by many neighbors and parents of students at the adjacent Walker-Jones Education Campus. (Exhibits 14, 15, 37-40, and 46.)

At the public hearing on November 7, 2018, the Board heard testimony in support from Rosemary Segero and Bernadette Harvey. The Board also heard testimony in opposition from Robert Robinson of the D.C. Consumer Utility Board, Parisa Norouzi of Empower DC, Camila Thorndike of Chesapeake Climate Action Network, Nikhil Balakumar of Greentel Group, Tiffany Aziz of Not In My Community Project, Nick Firmand, Ra Amin, and Zulfekar AnsarBey.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under Subtitle C § 703.1 from the vehicle parking requirements of Subtitle C § 701.5, under Subtitle C § 807.1 from the bicycle parking requirements of Subtitle C § 802.1, and under Subtitle U § 320.1(a) from the utility use requirements of Subtitle U § 203.1(p), to construct an electrical substation in the RF-1 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

BZA APPLICATION NO. 19845
PAGE NO. 3

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle C §§ 703.1, 701.5, 807.1, and 802.1, and Subtitle U §§ 320.1(a) and 203.1(p), 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.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 48C AND WITH THE FOLLOWING CONDITIONS:**

1. Before the construction of the substation begins, the Applicant shall relocate the community garden (“The Farm at Walker Jones”) currently in place at New Jersey Avenue and K Street, N.W.
2. The Applicant shall support the creation of a Mt. Vernon Triangle Community Advisory Group (“CAG”), with the participation of the ANC, for ongoing engagement, and to provide guidance and issue recommendations on topics, including, but not limited to:
 - a. Future land use (in particular the parcel of land located at K Street and New Jersey Avenue, N.W., which had no designated use at the time Pepco presented at ANC 6E’s September 4th and October 2nd meeting) and themes for art;
 - b. Installation of an artistic construction fence;
 - c. Support for the relocation of The Farm at Walker Jones; and
 - d. Pepco’s future support for nonprofits serving the community focusing on students, children and seniors for 2021, and subsequent years.

VOTE: **5-0-0** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Peter A. Shapiro to Approve.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BYRDIN
Director, Office of Zoning

FINAL DATE OF ORDER: December 17, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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 SUBTITLE A § 303, 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.

BZA APPLICATION NO. 19845
PAGE NO. 5

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.