

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue, Suite 217
Rockville, Maryland 20850
www.montgomerycountymd.gov/boa/

(240) 777-6600

**Case Nos. CBA-764, CBA-1000, CBA-1097, CBA-2125,
CBA-2481, S-246, S-246-A, and S-347**

PETITION OF POTOMAC ELECTRIC POWER COMPANY

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted February 25, 2026)
(Effective Date of Resolution: March 6, 2026)

The Board of Appeals granted special exception Case No. CBA-764, effective June 17, 1959, to the Potomac Electric Power Company ("PEPCO") to permit public utility facilities with high frequency microwave towers and auxiliary equipment and buildings at two different locations, pursuant to Section 107-29u of the Zoning Ordinance (Chap. 107, Mont. Co. Code 1955, as amended). One of the two locations is the PEPCO property that is the subject of this modification, which now has an address of 10611 Westlake Drive in Bethesda. Effective November 2, 1960, the Board of Appeals granted special exception Case No. CBA-1000 to PEPCO to erect and use a public utility building and structures on this property, pursuant to Section 107-29u of the Zoning Ordinance (Chap. 107, Mont. Co. Code 1955, as amended). Effective July 24, 1961, the Board of Appeals granted special exception Case No. CBA-1097 to PEPCO to permit the continued use and operation of public utility structures, and the expansion of a substation, pursuant to Section 107-29u of the Zoning Ordinance (Chap. 107, Mont. Co. Code 1955, as amended). Effective January 17, 1967, the Board granted special exception Case No. CBA-2125 to PEPCO to permit the continued use and expansion of an electric substation, pursuant to Section 104-29.u.(1), (4), and (5) of the Zoning Ordinance (Chap. 104, Mont. Co. Code 1960, as amended). Effective December 10, 1968, the Board granted special exception Case No. CBA-2481 to PEPCO, pursuant to Section 111-37.u.(1), (4), and (5) of the Zoning Ordinance (Chap. 111, Mont. Co. Code 1965, as amended), to permit the continued operation and expansion of an existing electric substation. Effective July 6, 1973, in Case No. S-246, the Board approved a special exception pursuant to Section 111-37.u.(1) of the Zoning Ordinance (Chap. 111, Mont. Co. Code 1965, as amended) for

the construction and operation of a public utility building. Effective November 17, 1976, the Board granted special exception Case No. S-347 to PEPCO, pursuant to Section 59-164 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1972, as amended), to permit expansion of the existing facilities within the fenced area. Effective December 10, 1980, the Board modified special exception Case No. CBA-764 to permit the installation of emergency stand-by generators and associated enclosures. Effective March 25, 1987, the Board modified special exception Case Nos. CBA-764, CBA-1000, CBA-1097, CBA-2125, CBA-2481, and S-347 to permit the installation of a new transformer. On October 7, 1987, in Case No. S-246-A, the Board approved an expansion of the public utility building. Effective September 26, 1988, the Board modified Case No. CBA-1000 to permit the installation of an additional capacitor bank. Effective July 16, 1990, the Board modified Case No. CBA-1000 to permit the installation of an additional 69kV circuit breaker, as well as six switching surge arrestors and 13 potential transformers, within the existing fencing. Finally, effective November 4, 2020, the Board modified the special exception to allow a new twenty-foot wide access driveway to serve the northern portion of the substation facility.

The subject property is 48.67 acres in size, located at 10611 Westlake Drive, Bethesda, Maryland, in the R-90 Zone.

The Board of Appeals has received a letter with attachments dated February 11, 2026, from Regina Chang, Land Use Associate, Network Building + Consulting, requesting an administrative modification of this special exception. Specifically, Ms. Chang requests that the special exception be modified to permit a new 270' self-support tower, a 13' x 25' un-manned pre-fabricated shelter, a diesel generator, and additional ancillary equipment at the existing PEPCO substation. Her letter states that the new tower "is intended solely for Pepco's internal utility communications and will not host any commercial telecommunications equipment or carriers," and that it will "enhance the reliability and coverage of Pepco's operational communications within the area." Ms. Chang's letter states that the requested modification "is not changing the nature, character or intensity of the use and is not substantially changing the effect on traffic or on the immediate neighborhood," and thus can be granted administratively pursuant to Section 59-G-3.1(a)(1) of the Zoning Ordinance (2004). Ms. Chang includes 50 pages of engineered drawing with her letter, including specifications for the proposed tower and a Site Plan indicating that there is currently a self-support 250' tower on the substation property that will be removed.

The Board of Appeals considered the modification request at a Worksession held on February 25, 2026. Owen Strohmer appeared at the Worksession on behalf of PEPCO, later clarifying, in response to a Board question, that he works for an outside consultant on behalf of PEPCO.¹ Mr. Strohmer explained that there is an existing 250' communications tower on this substation property that has exceeded its useful life,

¹ Member Alan Sternstein noted his on-going concern that PEPCO was not represented by counsel at the Worksession where this modification was considered, and he reiterated his standing objection to this practice.

and that PEPCO is proposing to install a new 270' tall tower about 325' east of the existing tower, within the existing substation fencing. Mr. Strohmer stated that the base of the new tower would be about 15' lower in elevation than the base of the existing tower, and that this would help minimize any visual impact of the increase in tower height. Mr. Strohmer stated that eastern portion of the property, along Interstate 270, is wooded, and that the area south of the subject property contains commercial development. In addition to the new tower, Mr. Strohmer stated that a new equipment shelter, generator, and other ancillary equipment such as microwave antennas and coaxial cable would also be installed in connection with the new tower. He stated that once the new tower is operational, the existing tower will be demolished. Finally, in response to Board questions, Mr. Strohmer stated that the proposed generator will comply with the County Noise Ordinance.

Because the affected special exceptions were approved prior to October 30, 2014, under Section 59.7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant requests otherwise. Section 59-G-1.3(c)(1) of the Zoning Ordinance (2004) provides:

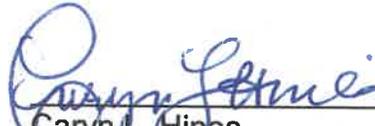
If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the proposed replacement tower, equipment shelter, generator, and ancillary equipment, will be located within the existing substation compound and will not substantially change the nature, character, or intensity of the use, or its effect on traffic or the immediate neighborhood. Thus the Board finds that the proposed modification meets the standard set forth in Section 59-G-1.3(c)(1) of the Zoning Ordinance (2004), and can be granted. Therefore, on a motion by Caryn L. Hines, Chair, seconded by Richard Melnick, Vice Chair, with Alan Sternstein, Donald Silverstein, and Amit Sharma in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the record in Case Nos. CBA-764, CBA-1000, CBA-1097, CBA-2125, CBA-2481, S-246, S-246-A, and S-347 is re-opened to receive Ms. Chang's letter of February 11, 2026, with attachments; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the request to permit the proposed 270' self-support tower, pre-fabricated shelter, diesel generator, and additional ancillary equipment, as described above and in Ms. Chang's letter, and as shown on the attachments to that letter, is granted; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exceptions, together with any modifications granted by the Board of Appeals, remain in effect.


Caryn L. Hines
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 6th day of March, 2026.


Barbara Jay
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

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CBA-2481, S-246, S-246-A, and S-347**

PETITION OF POTOMAC ELECTRIC POWER COMPANY

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted October 28, 2020)

(Effective Date of Resolution: November 4, 2020)

The Board of Appeals granted special exception Case No. CBA-764, effective June 17, 1959, to the Potomac Electric Power Company ("PEPCO") to permit public utility facilities with high frequency microwave towers and auxiliary equipment and buildings at two different locations, pursuant to Section 107-29u of the Zoning Ordinance (Chap. 107, Mont. Co. Code 1955, as amended). One of the two locations is the PEPCO property that is the subject of this modification, which now has an address of 10611 Westlake Drive in Bethesda. Effective November 2, 1960, the Board of Appeals granted special exception Case No. CBA-1000 to PEPCO to erect and use a public utility building and structures on this property, pursuant to Section 107-29u of the Zoning Ordinance (Chap. 107, Mont. Co. Code 1955, as amended). Effective July 24, 1961, the Board of Appeals granted special exception Case No. CBA-1097 to PEPCO to permit the continued use and operation of public utility structures, and the expansion of a substation, pursuant to Section 107-29u of the Zoning Ordinance (Chap. 107, Mont. Co. Code 1955, as amended). Effective January 17, 1967, the Board granted special exception Case No. CBA-2125 to PEPCO to permit the continued use and expansion of an electric substation, pursuant to Section 104-29.u.(1), (4), and (5) of the Zoning Ordinance (Chap. 104, Mont. Co. Code 1960, as amended). Effective December 10, 1968, the Board granted special exception Case No. CBA-2481 to PEPCO, pursuant to Section 111-37.u.(1), (4), and (5) of the Zoning Ordinance (Chap. 111, Mont. Co. Code 1965, as amended), to permit the continued operation and expansion of an existing electric substation. Effective July 6, 1973, in Case No. S-246, the Board approved a special exception pursuant to Section 111-37.u.(1) of the Zoning Ordinance (Chap. 111, Mont. Co Code 1965, as amended) for the construction and operation of a public utility building. Effective November 17, 1976,

the Board granted special exception Case No. S-347 to PEPCO, pursuant to Section 59-164 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1972, as amended), to permit expansion of the existing facilities within the fenced area. Effective December 10, 1980, the Board modified special exception Case No. CBA-764 to permit the installation of emergency stand-by generators and associated enclosures. Effective March 25, 1987, the Board modified special exception Case Nos. CBA-764, CBA-1000, CBA-1097, CBA-2125, CBA-2481, and S-347 to permit the installation of a new transformer. On October 7, 1987, in Case No. S-246-A, the Board approved an expansion of the public utility building. Effective September 26, 1988, the Board modified Case No. CBA-1000 to permit the installation of an additional capacitor bank. Finally, effective July 16, 1990, the Board modified Case No. CBA-1000 to permit the installation of an additional 69kV circuit breaker, as well as six switching surge arrestors and 13 potential transformers, within the existing fencing.

The subject property is 48.67 acres in size, located at 10611 Westlake Drive, Bethesda, Maryland, in the R-90 Zone.

The Board of Appeals has received a letter with attachments dated October 12, 2020, from John Sekerak, Jr., ASLA, AICP, on behalf of PEPCO, requesting an administrative modification. Specifically, Mr. Sekerak requests a new twenty-foot wide access driveway to serve the northern portion of the substation facility. He includes a site plan showing the location of the requested driveway with his submission. Mr. Sekerak states that the new paved driveway will realign and replace an existing gravel driveway, and is needed to accommodate large trucks and the delivery of equipment like transformers to the substation. Mr. Sekerak notes in his letter that the requested change will not substantially change the nature, character, or intensity of the use, and will not have an effect on traffic or the immediate neighborhood.

Due to COVID-19, the Board of Appeals considered the modification request at a remote Worksession held on October 28, 2020, using Microsoft Teams. Mr. Sekerak participated in the Worksession. He explained that PEPCO is seeking to re-establish a second entrance on the northern side of their property, stating that there had previously been such an entrance, but that it was cut off when a portion of the original special exception property was deeded to the Board of Education. He stated that a gravel driveway was installed as a replacement, but that the gravel driveway is insufficient to allow for large equipment. Thus Mr. Sekerak described the proposed entrance as a replacement for the original second entrance and an improvement and relocation of the existing gravel driveway.

Because the affected special exceptions were approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant requests otherwise. Section 59-G-1.3(c)(1) of the Zoning Ordinance (2004) provides:

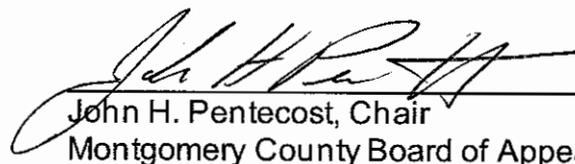
If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the proposed new entrance, which will re-establish a former and replace an existing entrance to this special exception property, will not substantially change the nature, character, or intensity of the use, or its effect on traffic or the immediate neighborhood. Thus the Board finds that the proposed modification meets the standard set forth in Section 59-G-1.3(c)(1) of the Zoning Ordinance (2004), and can be granted. Therefore, on a motion by Bruce Goldensohn, Vice Chair, seconded by Katherine Freeman, with John H. Pentecost, Chair, Mary Gonzales, and Richard Melnick in agreement:

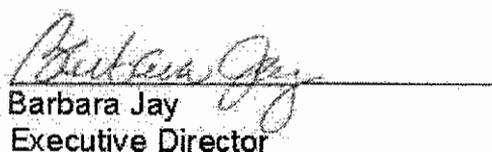
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the record in Case Nos. CBA-764, CBA-1000, CBA-1097, CBA-2125, CBA-2481, S-246, S-246-A, and S-347 is re-opened to receive Mr. Sekerak's letter of October 12, 2020, with attachments; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the request to permit the proposed second entrance, as described above and in Mr. Sekerak's letter, and as shown on the attachments to that letter, is granted; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exceptions, together with any modifications granted by the Board of Appeals, remain in effect.


John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 4th day of November, 2020.


Barbara Jay
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(301) 317-6600

Case Nos. CBA-764, CBA-1148, CBA-2126, CBA-2693, S-260 and S-581

PETITIONS OF POTOMAC ELECTRIC POWER COMPANY

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution adopted February 20, 1997)

(Effective date of Resolution, April 11, 1997)

The Board received correspondence dated February 13, 1997, from Michael J. Boland, petitioner's attorney, which states, in part:

"Potomac Electric Power Company (PEPCO) owns and operates the Quince Orchard Substation (No. 118) located at 1701 Darnestown-Germantown Road in Montgomery County. The property consists of 36.4 acres in an RDT Zone. As a result of the proposed merger with the Baltimore Gas and Electric Company (BGE), it is necessary to construct an additional telecommunications equipment building at this site to service the wireless needs of the new company. BGE is cooperating with PEPCO in this effort. A proposed 24' X 48' X 12' high preengineered metal building, as shown on the attached PEPCO Site Plan No. 7E-118-039, would be located in the enclosed and secured portion of the substation, adjacent to the existing communications tower and control building. It represents an insignificant addition to the overall site. Enclosed is a picture of an identical structure located at the Windy Edge Substation in Baltimore County (Exhibit A)."

"Pursuant to Section 59-G-1.3(c) of the Zoning Ordinance, we respectfully request an administrative modification to the referenced special exceptions. It is imperative that construction begin on this proposed building as soon as possible. The building will house equipment for the 800 Mhz radio system that controls various types of telecommunications, including voice and mobile data communications for all bulk power operations, distribution and substation operations, gas operations, and customer service operations. These functions are all indispensable components of both normal and emergency utility operations and are critical in the restoration of service. The Federal Communications Commission (FCC) has granted licenses for this site with the understanding that they be in service by September of this year."

"All radio equipment and facilities associated with the building have been approved and type accepted by the FCC. The addition of this building can be accomplished without changing the nature, character or intensity of the use of the property as the site for an electric substation. It will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity. There will be no substantial change in traffic or the immediate neighborhood, and the facility will remain unmanned. The enclosed photos, marked Exhibits B, C, and D, show the site to be well screened and large enough that this would represent an insignificant addition."

The Board, after careful consideration of the correspondence and a review of the record in the above-referenced case, finds that the request to permit construction of an additional telecommunications equipment building can be granted without the necessity of a public hearing. The Board further finds that the request will have no effect on traffic and on the immediate neighborhood.

THEREFORE, in accordance with the provisions of Section 59-G-3.1(c)(1) of the Zoning Ordinance, BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the records of Case Nos. CBA-764, CBA-1148, CBA-2126, CBA-2693, S-260 and S-581, shall be and hereby are reopened to receive the following exhibits: Mr. Boland's February 13, 1997, letter, with its enclosures, including a site plan, No. 7E-118-039, a photograph of an identical structure located at Windy Edge Substation in Baltimore County, and photographs of the subject property, with the originals entered in Case No. CBA-764, and copies in the other case files; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that petitioner may construct the additional telecommunications equipment building, as shown on the site plan, with the condition that the merger between PEPCO and BGE must take place for the building to be retained; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that, except as modified herein, all terms and conditions of the original special exceptions, and any modifications thereto, shall remain in full force and effect.

The subject property contains approximately 36.4 acres, located on the east side of Maryland Route 118, at 1701 Darnestown-Germantown Road, Germantown, Maryland, in the RDT zone.

On a motion by Allison Bryant, seconded by William S. Green, with Susan W. Turnbull, Chair, Donna L. Barron and Wendell M. Holloway, in agreement, the Board adopted the foregoing Resolution.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland,
this 11th day of April, 1997.



Tedi S. Osias
Executive Secretary to the Board

NOTE: Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision.

COUNTY BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

COUNTY OFFICE BUILDING
ROCKVILLE, MARYLAND 20850

CASES NOS. 764, 1148, 2126, 2693, S-260 and S-581
(Quince Orchard Substation No. 118)

Telephone
Area Code 301
279-1226

and

CASES NOS. 2516 and S-258
(Norbeck Substation No. 158)

PETITIONS OF POTOMAC ELECTRIC POWER COMPANY

RESOLUTION TO MODIFY SPECIAL EXCEPTIONS
(Resolution adopted December 4, 1980)

The Board has received a letter dated November 26, 1980, from Thomas E. O'Dea, Associate General Counsel, requesting modification to the special exceptions on the above-entitled cases, governing use of the Potomac Electric Power Company's Quince Orchard Substation and the Norbeck Substation. Mr. O'Dea's letter states, in part:

"...The Company now proposes to install emergency standby engine generators and associated enclosures at these two substations to provide on-site power to permit rapid, orderly and efficient restoration of the electric system in the event of a system shutdown. The equipment will maintain the integrity of the oil insulated pipe cable system, maintain the gas pressure for the gas operated circuit switching equipment and operate the critical 230kV ring switching substations. The location of the equipment to be installed is marked in red on the enclosed drawings: Quince Orchard Substation No. 118 Drawing No. 118-S-041 Rev. A (given Exhibit No. 16(a) in Case No. S-581) and Norbeck Substation No. 158 Drawing No. 158-S-11 Rev. B (given Exhibit No. 20(a) in Case No. S-258).

"The proposed installations of the standby facilities would be within the existing fenced area of both substation properties and their operation will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity. The proposed installations can be accomplished without substantially changing the nature, character or intensity of the use of the properties as the sites for electric substations, and without

Cases Nos. 764, 1148, 2126, 2693, S-260 and S-581
and

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Cases Nos. 2516 and S-258 (re: Modifications)

substantially effecting traffic or the neighborhoods in the vicinity of the substations ..."

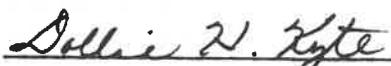
Based on the foregoing information and upon review of the plans submitted, the Board finds that the proposed installations at the Quince Orchard Substation No. 118 and the Norbeck Substation No. 158 will be minor additions to the sites, and will not substantially change the nature, character or intensity of the use of the properties, and will not substantially change the effect on traffic or on the immediate neighborhoods. Therefore, pursuant to the authority granted the Board in Section 59-G-1.3 (c) (1) of the Zoning Ordinance,

BE IT RESOLVED by the County Board of Appeals that the special exceptions granted in the above-entitled cases shall be re-opened to admit the letter from Thomas E. O'Dea, Esq., as Exhibit No. 16 in Case No. S-581, and Exhibit No. 20 in Case No. S-258, and the attachments, Drawing No. 118-S-041 Rev. A, Exhibit No. 16(a) in Case No. S-581, and Drawing No. 158-S-11 Rev. B in Case No. S-258; and

BE IT FURTHER RESOLVED that these cases, Quince Orchard Sub-station No. 118 and Norbeck Sub-station No. 158, shall be, and hereby are amended to permit the installations of the emergency standby engine generators and associated enclosures according to Exhibit No. 16(a) in Case No. S-581, and Exhibit No. 20(a) in Case No. S-258.

The foregoing Resolution was proposed by Mrs. Marjorie H. Sonnenfeldt, Chairman, and concurred in by Mrs. Doris Lipschitz, Mrs. Rita A. Morgan, Mr. Wallace I. Babcock and Mr. Joseph E. O'Brien, Jr.

Entered in the Minute Book of the
County Board of Appeals for Montgomery
County, Maryland, this 10th day of
December, 1980.


Clerk to the Board

Cases Nos. 764, 1148, 2126, 2693, S-260 and S-581
and

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Cases Nos. 2516 and S-258 (re: Modifications)

NOTE: Any party may, within 15 days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision, ...

Case No. 764

PETITION OF POTOMAC ELECTRIC POWER COMPANY

(Hearing held May 21, 1959; final date for briefs June 1, 1959;
case decided June 12, 1959)

OPINION OF THE BOARD

This proceeding is on a petition by Potomac Electric Power Company for a special exception under Section 107-28u of the Zoning Ordinance (Chap. 107, Mont. Co. Code 1955, as amended) to permit use for public utility facilities (two high-frequency micro-wave towers and auxiliary equipment and buildings) of (1) 69.33 acres which are part of a tract called "MacGruder's Discovery", between Lux Lane & Bells Mill Road, three-quarters of a mile west of Old Georgetown Road, in an R-90 zone; and (2) 38.71 acres, which are part of a tract called "Resurvey of Wolf's Pit", on Md. Route 118, one-quarter mile south of Brownstown, Maryland, in an R-R zone.

At the public hearing a question arose as to whether the Board might lack jurisdiction for the reason that no special exception was needed in order to make the contemplated use of the land. Briefs on that question were filed by Petitioner and the County Attorney, and have been considered.

We find no provision for the proposed land use as a permitted use in either the R-R zone (see sections 107-5a and 107-6a of the Ordinance) or the R-90 zone (see sections 107-5a and 107-7a). Hence, the proposed use is prohibited unless a special exception can be granted.

But we find also that there is provision for a special exception for the proposed use (see sections 107-5b, 107-6b, 107-7b, 107-28u), where the required findings are made by the Board. (As to the fact that the definition of "structure" in section 107-2 says merely "See 'Building,'" and the definition of "Building" does not include towers such as those proposed here, it is nevertheless clear from the more specific provisions in the sections previously cited that such towers are "structures" for the purposes of the special exceptions authorized in those sections).

Hence, we do have jurisdiction over the petition.

The case presents no other question requiring detailed discussion, and the evidence provides ample basis for the findings required by the Ordinance.

We find that each of the requirements of sections 107-26 and 107-28u of the Ordinance is satisfied.

The special exception for the proposed use, in the manner proposed in the exhibits and testimony, is granted.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County,

Maryland, that the opinion stated above be adopted as the Resolution required by law, as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mr. William A. Quinlan, and was concurred in by Messrs. Everett R. Jones, Chairman, Mrs. Mary A. Hepburn and Mr. Joe M. Kyle. Mr. Edwin L. Bright, Vice Chairman, did not participate in this decision. Mr. Quinlan filed a separate concurring opinion.

SEPARATE CONCURRING OPINION

By Mr. Quinlan:

In my opinion Mr. Jones should not participate in the decision of this case, in view of his and Mr. Bright's ex parte conference on April 7, 1959, with a county official who is not a member of the Board, after I had objected to such a conference and Mrs. Hepburn and I had declined to attend it.

Whether Mr. Jones considers himself to be prejudiced by that conference in his opinion with respect to the case is not the point. " * * * litigants have a right to expect that no discussion of the cause will be had out of court with the judge or jury trying the same." Finlen v. Heinze, 28 Mont. 548, 576, 72 Pac. 123, 130. Cf. Barnes v. United States, 241 F.2d 252, 255 (C.A. 9). This standard must apply "not only to the courts themselves but to every kind of tribunal * * * exercising judicial or quasi-judicial functions." Segal & Smith, 5 F.C.C. 1, 10, 9-13. See also Tumey v. Ohio, 273 U.S. 510, 522. Indeed, courts have indicated that the requirement of fairness and impartiality may apply even more strictly to the administrative adjudication. See Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U.S. 292, 304. See also Root Refining Co. v. Universal Oil Products Co., 169 F.2d 514; Massachusetts Bay Telecasters, Inc., v. Federal Communications Commission, Case No. 13896 (C.A.D.C.), decided July 31, 1958; McGuire v. Blount, 199 U.S. 142; Morgan v. United States, 304 U.S. 1.

Edweta B. Baber

Clerk to the Board

I do hereby certify that the foregoing Minutes were officially entered upon the Minute Book of the County Board of Appeals this 17th day of June, 1959.

Edweta B. Baber

Clerk

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Telephone
Area Code 301
217-6600

Case No. CBA-1000

PETITION OF POTOMAC ELECTRIC POWER COMPANY

RESOLUTION TO MODIFY SPECIAL EXCEPTION
(Resolution adopted June 27, 1990)

The Board is in receipt of correspondence dated June 19, 1990, from Michael J. Boland, Assistant Counsel, PEPCo, which states, in part:

"The Potomac Electric Power Company (Company) obtained an order on October 27, 1960 from the Board in Case No. 1000 to construct and operate an electric substation.... The special exception in Case No. 1000 was modified by the terms of Board orders ... The Company was permitted to expand the substation in accordance with the testimony and exhibits on file ...

"... The Company has determined the need for an additional 69kV circuit breaker, six switching surge arrestors and 13 potential transformers. The 69kV circuit breaker will rest on a concrete foundation and the surge arrestors and potential transformers will be mounted on new steel structures. ... The 69kV circuit breaker is located to the north of Transformer #11 ... The circuit breaker installation was first identified in 1968 as a future installation ... in Case No. 2481. It is required to supply a proposed third 69/13kV transformer at the Company's Potomac Substation No. 20. The potential transformers and surge arrestors are necessary to prevent damage to the Company's system equipment during fault conditions on its system.

"The proposed installation of equipment mentioned would be within the existing fenced area and its operation would cause no objectionable noise, vibrations, fumes, odors, dust, glare, or physical activity. The installation of the proposed equipment can be accomplished without changing the nature, character, or intensity of the use of the property as the site for an electric substation, and without changing the effect on traffic or on the immediate neighborhood.

"Accordingly, we request, pursuant to the terms of Section 59-G-1.3(c) of the Montgomery County Zoning Ordinance, that the special exception granted to the Company on October 27, 1960, and subsequently modified by the Board ... be further modified to permit the installation of the equipment described ..."

Based on the foregoing information, the Board is of the opinion that Mr. Boland's request represents a minor modification to the special exception and can be granted without changing the nature, character or intensity of the use of the property, and without changing the effect on traffic or on the immediate neighborhood. THEREFORE, in accordance with the provisions of Section 59-G-1.3(c)(1) of the Zoning Ordinance,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case No. CBA-1000, shall be and hereby is re-opened to receive the following exhibits: Mr. Boland's June 19, 1990, letter; Site plan; list of adjoining and confronting property owners; and a tax map showing property locations; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that petitioner may install the equipment described herein and in Mr. Boland's June 9, 1990, letter, at the locations shown on the Site Plan.

All terms and conditions of the original special exception and any modifications thereto, shall remain in full force and effect.

The subject property consists of a tract of land containing approximately 50 acres, located between Westlake Drive and Interstate Route 270, one-half mile north of Democracy Boulevard, Bethesda, Maryland, in the R-90 Zone.

The foregoing Resolution was proposed by Howard Jenkins, Jr., and concurred in by Helen R. Strang, K. Lindsay Raufaste and Judith Heimann, Chairman. William Green was necessarily absent and did not participate in the foregoing Resolution.

Entered in the Minute Book of
the Board of Appeals for
Montgomery County, Maryland,
this 16th day of July, 1990.


Irene H. Gurman
Clerk to the Board

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision.



Montgomery County Government

Case No. 1000

PETITION OF POTOMAC ELECTRIC POWER COMPANY

RESOLUTION TO MODIFY SPECIAL EXCEPTION (Resolution adopted September 22, 1988)

The Board has received a letter from Michael J. Boland, Representative of Potomac Electric Power Company, which states in part:

"The Company has determined the need for an additional capacitor bank. The proposed 34.5kV 14.4 MVAR capacitor bank and 34.5kV SF-6 puffer breaker will rest on concrete foundations at the location shown in blue on Drawing No. 121-S-77.

"The proposed installation of equipment mentioned above would be within the existing fenced area and its operation would cause no objectionable noise, vibrations, fumes, odors, dust, glare, or physical activity. The installation of the proposed equipment can be accomplished without changing the nature, character or intensity of the use of the property as the site for an electric substation, and without changing the effect on traffic or on the immediate neighborhood".

Based on the foregoing information, the Board is of the opinion that The Potomac Edison Company's request represents a minor modification to the special exception and can be granted without substantially changing the nature, character or intensity of the use of the property, nor changing the effect on traffic or on the immediate neighborhood. Therefore, in accordance with the provisions of Section 59-G-1.3(c)(1) of the Zoning Ordinance:

BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that: Case No. 1000, The Potomac Electric Power Company shall be and hereby is reopened to receive the letter from Michael J. Boland as Exhibit No. 32.

BE IT FURTHER RESOLVED by the County Board of Appeals that petitioner may implement above noted changes in accordance with Exhibit No. 32(a).

All other terms and conditions of the special exception shall remain in full force and effect.

The foregoing Resolution was proposed by Judith B. Heimann, Chairman and concurred in by Max Novinsky, Helen Strang, K. Lindsay Raufaste and Howard Jenkins, Jr.

County Board of Appeals

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 26th day of September, 1988.



Irene H. Gurman
Clerk to the Board

NOTE: Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision. ...

PETITION OF POTOMAC ELECTRIC POWER COMPANY

(Hearing held October 13, 1960; case decided October 27, 1960)

OPINION OF THE BOARD

This proceeding is on a petition under Section 107-28u of the Zoning Ordinance (Chap. 107, Mont. Co. Code 1955, as amended) to erect and use a public utility building and structures on approximately 69.33 acres located in Rockville, Maryland, between Lux Lane and Bells Mill Road, 3/4 of a mile west of Old Georgetown Road, adjacent to Route 240, in an R-90 zone.

Petitioner proposes two buildings to be on this site, one of which will be a transformer building, containing small pumps, the other will house relays and small pumps also. In addition there will be a steel tower. The circuits from these buildings will be underground and will be the primary source of supply to the Bethesda substation. Evidence showed that it is not practical to house this installation in a residential type building. This installation will be unattended, except for periodic inspections, and the equipment contained in the buildings will be entirely automatic. The buildings are insulated and petitioner testified that no noises from the equipment would be audible beyond the property line.

The frontage for this property is on Lux Lane and is 152 feet at the property line. It will be barred for any other traffic and the entrance will be secured by locked gates. The area to be used for the structures will consist of eleven of the sixty-nine plus total acreage and will be enclosed by a seven foot chain link fence with strands of barbed wire atop.

Petitioner proposes to leave a ring of trees 200 feet wide circling the property on all sides except where the gates on Lux Lane are located. These trees are both deciduous and evergreens. Testimony showed that even in winter one could not see through this screening. The nearest residence is 500 to 600 feet from subject property. Residential property presently in existence cannot view these proposed structures.

Lux Lane is narrow and unimproved at the entrance to subject property and petitioner has permission to enter Lux Lane from U. S. Route 240 over a special ramp, for the sole purpose of transporting heavy machinery and equipment to be housed in proposed buildings. This temporary special egress from Route 240 is barricaded and cannot be used by the public.

At the hearing, petitioner's witness stated that the Master Plan shows commercial uses are proposed near interchange of U. S. Route 240 and Democracy Blvd. Democracy Blvd. will be a new road making an interchange with U. S. Route 240. Petitioner stated that they will dedicate 1 1/2 acres from subject property to assist in providing for proposed new road.

Testimony showed that there would be no radio or television interference as a result of this installation. Petitioner further stated that this installation is about as remote as is possible in order to carry the cable and to provide the service.

On the basis of evidence presented at the hearing we find that each of the requirements of Sections 107-26 and 107-28u of the Ordinance has been satisfied.

The special exception for the proposed use, in the manner proposed in the exhibits and testimony is granted.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law, as its decision on the above-entitled Petition."

The foregoing Resolution was adopted by the Board as its decision on the affirmative vote of Mrs. Mary A. Hepburn, Chairman, Mrs. Rita C. Davidson, Vice Chairman and Mr. Everett R. Jones. Mr. Edwin L. Bright disqualified himself because he is a stockholder in the corporation.


Clerk to the Board

I do hereby certify that the foregoing Minutes were officially entered upon the Minute Book of the County Board of Appeals this 3rd day of November, 1960.


Clerk

COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. 2125

PETITION OF POTOMAC ELECTRIC POWER COMPANY
(Hearing held December 15, 1966)

OPINION OF THE BOARD

This proceeding is on a petition for a Special Exception under Section 104-29. u. (1), (4) and (5) of the Zoning Ordinance (Chap. 104, Mont. Co. Code 1960, as amended) to permit the continued use and expansion of an existing electric substation, located on a parcel of land containing 57.6 acres between Westlake Drive and Interstate Route 270, approximately one-half mile north of Democracy Boulevard, in an R-90 Zone, Bethesda, Maryland. Previous Special Exceptions granted for this same property were Cases Nos. 764, 1000 and 1097.

From testimony and evidence adduced at the time of the public hearing, including documents and exhibits in the file, the Board makes the following findings of fact and conclusions:

1. The Petitioner is a public utility corporation which provides electric service to the public in a large part of Montgomery County.
2. The proposed expansion would be the addition of two new 230 to 69 KV transformers and a 69 KV bus which would require additional structures to terminate these additional lines. This addition is necessary at the Bells Mill location to meet the increasing demands for the distribution of power in the Bethesda area.
3. The substation, as expanded, will remain fully automatic and no employees will be stationed there.
4. Proposed expansion of the Bells Mill Road substation is necessary for public convenience and service at the subject location.
5. The substation will be totally fenced with chain link fence and will be kept locked at all times.
6. The Bells Mill substation is screened on its easterly, westerly and southerly sides by trees and other natural growth located on Petitioner's property, and the proposed substation expansion will not result in any material lessening of such screening. On the substation's northerly side (along Westlake Drive), Petitioner's landscaping is being worked out with representatives of the Maryland National Capital Park and Planning Commission for the benefit of the Cabin John Regional Park, which is located across Westlake Drive from the substation.

7. The proposed addition will not endanger the health and safety of workers and residents in the community, nor will it affect adversely the general plan for the physical development of the district as embodied in the Zoning Ordinance and in any master plan or portion thereof.
8. There was no opposition to this petition.

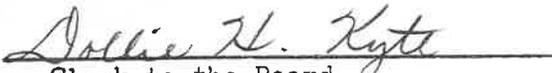
Wherefore, and in accordance with the testimony and exhibits of record, the requested Special Exception is hereby granted.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mrs. Helen H. Burkart, and concurred in by Messrs. Charles R. Richey, Chairman, Calvin R. Sanders, Vice Chairman, Bernard D. Gladhill and Kenneth E. denOuter, constituting all the members of the Board.

I do hereby certify that the foregoing Minutes were officially entered upon the Minute Book of the County Board of Appeals this 17th day of January, 1967.


Clerk to the Board

NOTE: Please see Section 104-24. c. of the Ordinance regarding the 12-months' period within which the right granted by the Board must be exercised.

This opinion mailed to all persons who received notice of the hearing.

PETITION OF POTOMAC ELECTRIC POWER COMPANY
(Hearing held July 6, 1961; case decided July 20, 1961)

OPINION OF THE BOARD

This proceeding is on a petition for a special exception under Section 107-28u of the Zoning Ordinance (Chap. 107, Mont. Co. Code 1955, as amended) to permit the continued use and operation of public utility structures, and expansion of existing substation, approximately 69.33 acres located between Lux Lane and Bells Mill Road, 3/4 of a mile west of Old Georgetown Road, adjacent to Route Number 240, Rockville, Maryland, in an R-90 Zone. (This is the same property for which the Board granted special exceptions in Cases Nos. 764, June 12, 1959 and 1000, October 27, 1960.)

At the public hearing the petitioner moved that the records in Case No. 1000 be incorporated by reference in the instant case. The Board granted this motion.

Petitioner proposes a 30 foot high structure, which will house electronic equipment. Because of the clearances required for the high voltage equipment to be housed in the proposed new building it will be virtually impossible to construct this building so that it will be residential in appearance.

Petitioner's agent stated that the area is heavily wooded and that the existing structures cannot be seen by adjoining property owners. The buffer provided for the new construction will consist of trees presently on the property.

Petitioner has a lease on this property until October 31, 1973, which contains an option to purchase.

The case presents no other question requiring detailed discussion and the evidence provides ample basis for the findings required by the Ordinance.

We find that each of the requirements of Sections 107-26 and 107-28u of the Ordinance is satisfied.

The special exception for the proposed use, in the manner set forth in the exhibits and testimony, is granted for the life of the lease (October 31, 1973) or until the Potomac Electric Power Company purchases the property.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law, as its decision on the above-entitled Petition."

The foregoing Resolution was adopted by the Board as its decision by the affirmative vote of Mrs. Mary A. Hepburn, Chairman, Mrs. Rita C. Davidson, Vice Chairman, Messrs. Everett R. Jones and Philip M. Fairbanks. Mr. Edwin L. Bright disqualified himself and did not participate in this proceeding.


Acting Clerk to the Board

I do hereby certify that the foregoing Minutes were officially entered upon the Minute Book of the County Board of Appeals this 21st day of July, 1961.



COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. 2481

PETITION OF POTOMAC ELECTRIC POWER COMPANY
(Hearing held October 24, 1968)

OPINION OF THE BOARD

This proceeding is on a petition for a Special Exception under Section 111-37. u.(1), (4) and (5) of the Zoning Ordinance (Chap. 111, Mont. Co. Code 1965, as amended) to permit the continued operation and the expansion of an existing electric substation. The subject property contains approximately 57.6 acres of land, located between Westlake Drive and Interstate Route No. 270, approximately one-half mile north of Democracy Boulevard, Bethesda, Maryland, in an R-90 Zone. (This is the same property for which the Board granted Special Exceptions in Cases No. 764, No. 1000, No. 1097 and No. 2125.)

On the basis of the testimony and exhibits presented at the hearing, the Board makes the following findings:

1. The Petitioner is a public utility corporation which provides electric service to the public in a large part of Montgomery County.
2. Expansion of Petitioner's Bells Mill Road Substation, contemplated in the subject petition, is an extension of the plan for orderly expansion of the station approved by the Board on January 17, 1967, in Case No. 2125.
3. Continued growth in Petitioner's Montgomery County service area will cause the existing 34.5 KV facilities at Parklawn Drive and Linden substations (both supplied from Petitioner's Bells Mill substation) to become overloaded in 1969 unless relief is provided.
4. A new substation is scheduled in the Rockville area in 1970. This, too, will be supplied at 69 KV from Petitioner's Bells Mill Road substation. To provide proper supply for 69 KV cables to these stations, it is proposed that a new 230 to 69 KV transformer (the third such transformer at Bells Mill) be installed to increase the firm capacity of the 69 KV bus from 200 to 400 MVA to meet predicted loads of 218 MVA in

1970, 307 MVA in 1971, 350 MVA in 1972.

5. Two new 230 KV transmission lines will extend from an existing steel tower across Westlake Drive to a new tower to be installed within the substation site. Four new outgoing 69 KV feeders will leave the substation underground.
6. The 230 KV overhead lines will not be in closer proximity to any places of assembly (Cabin John Regional Park and Montgomery Mall Shopping Center) than are the two existing such lines. There are no airports or landing strips near this line and the presence of the line will not create any hazard or impediment to the efficient use of fire fighting equipment.
7. The substation, as expanded, will remain fully automatic and no employees will be stationed there.
8. Petitioner's Bells Mill Road substation is screened on its easterly, westerly and southerly sides by trees and other natural growth located on Petitioner's property, and the proposed substation expansion will not result in any material lessening of such screening.
9. The existing fenced area will remain intact and the gates will be securely locked at all times.

Based on the foregoing findings, the Board concludes that:

10. The expansion of Petitioner's Bells Mill Road substation is necessary for public convenience and service, and the proposed expansion of the facility will not endanger the health and safety of workers and residents in the community.
11. The proposed expansion of the facility will not substantially impair or prove detrimental to the neighboring properties and will not affect adversely the General Plan for the physical development of the Maryland-Washington Regional District in Montgomery County, as embodied in the Zoning Ordinance and in any Master Plan or portion thereof adopted by the Maryland-National Capital Park and Planning Commission.

Accordingly, the Special Exception is granted for the expansion of the public utility facility in accordance with the exhibits and testimony.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mr. Ralph F. Berlow and concurred in by Messrs. Calvin R. Sanders, Chairman, Bernard D. Gladhill and Kenneth E. denOuter. Mrs. Helen H. Burkart was necessarily absent for this proceeding and did not participate in the foregoing decision.

I do hereby certify that the foregoing Minutes were officially entered upon the Minute Book of the County Board of Appeals this 10th day of December, 1968.


Clerk to the Board

NOTE: Please see Section 111-32. c. of the Ordinance regarding the 12-months' period within which the right granted by the Board must be exercised.

This opinion mailed to all persons who received notice of the hearing.

COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. S-246

PETITION OF POTOMAC ELECTRIC POWER COMPANY
(Hearing held June 7, 1973)

OPINION OF THE BOARD

This proceeding is on a petition for a Special Exception pursuant to Section 111-37. u.(1) of the Zoning Ordinance (Chap. 111, Mont. Co. Code 1965, as amended) to permit the construction and operation of a public utility building. The subject property contains approximately 57.6 acres of land, located between Westlake Drive and Interstate Route 270, approximately one-half mile north of Democracy Boulevard, at 10611 Westlake Drive, Rockville, Maryland, in an R-90 Zone. (This is the same property for which the Board granted Special Exceptions in Cases Nos. 764, 1000, 1097, 2125 and 2481.)

Testimony and exhibits in the record indicate that the petitioner proposes to construct a public utility building on the subject property which is partially developed at the present time with an electric substation. The proposed public utility building will be located on the south side of the tract of land and will be used for the petitioner's consolidated control center, which will act as the command control system for the petitioner's entire electric system. The building will house a power system control room, computers, communication systems, power supplies including emergency generators, and shops and offices needed to support the equipment.

The proposed building will be one-story with basement, approximately 160 feet by 140 feet with a maximum height of 25 feet. The building will be located on the south side of the existing substation, adjacent to the microwave tower. The south side will be screened by 200 feet of existing woodland and the existing substation will screen the proposed building from the other directions. The neighborhood is established and the nearest residential development is approximately 3,000 feet away.

A maximum of 50 persons are expected to be in the building during the day shift and six to ten persons during the night shift. Sufficient parking spaces will be provided for the employees. Access to the facility will be by way of the existing entrance from Westlake Drive.

The present control system was installed in the early 1930's and is no longer adequate to satisfy the present needs. The petitioner now has over 100 substations which are all remotely controlled. Petitioner stated it is necessary to install a new control center to gather and maintain a continuous record of the entire system. There is an existing microwave facility on the property. In addition, there would be a two-way radio system and leased telephone lines.

The subject property is adjacent to major access roads with direct access to the site so that repair trucks could get to the center easily.

Petitioner stated they are aware of the sewer moratorium but they have been working for four years on this project. It is anticipated that it will be 1976 before the center can be placed in operation. Petitioner has been working with the Washington Suburban Sanitary Commission and the Montgomery County Council has instructed them to continue with this facility with the idea that an interim, or temporary sewer can be used if the moratorium is still in effect when the building is completed. There is an existing sewer facility at the corner of the property line into which the petitioner will tie. The proposed control center will include the latest appliances to conserve water and sewer useage. The property is in the Cabin John Watershed.

Based on the testimony and exhibits in the record, the Board finds that: (a) the proposed structure at the subject location is necessary for public convenience and service; (b) the proposed structure at the subject location will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties. Additionally, the Board finds that the proposed control center will have suitable landscaping and screening, and that the proposed facility will not change the character of the general neighborhood in which the use is proposed.

Accordingly, the requested Special Exception to construct and operate the electric control system is granted, to be constructed and operated in the manner set forth by testimony and exhibits of record.

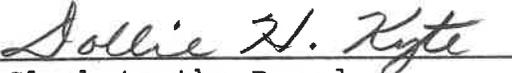
The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the

Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mrs. Beverly S. Pearson, Chairman, and concurred in by Mrs. Shirley S. Lynne, Messrs. Bernard D. Gladhill, Joseph E. O'Brien, Jr., and James G. Early.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 6th day of July, 1973.


Clerk to the Board

NOTE: See Section 111-32. c. of the Zoning Ordinance regarding the 12-months' period within which the right granted by the Board must be exercised.

For information relating to the petition, call Board of Appeals, 279-1226; for information relating to compliance call Department of Environmental Protection, 279-1426.

COUNTY BOARD OF APPEALS

FOR

MONTGOMERY COUNTY

STELLA B. WERNER COUNCIL OFFICE BUILDING
100 MARYLAND AVENUE
ROCKVILLE, MARYLAND 20850

Telephone
Area Code 301
279-1226

Case Nos. CBA-764, CBA-1000, CBA-1097, CBA-2125, CBA-2481 and S-347

PETITION OF POTOMAC ELECTRIC POWER COMPANY

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution adopted March 19, 1987)

The Board of Appeals has received a letter dated March 9, 1987, from Betty K. Cauley, Assistant General Counsel, Potomac Electric Power Company, which states, in part:

"The Potomac Electric Power Company hereby requests that the special exception granted on October 27, 1960 in Case No. 1000, and modified by the Board in subsequent cases, be further modified to permit the installation of the transfer described herein at the location shown ... on the enclosed drawing.

"The site involved consists of a tract of land, zoned R-90, containing approximately 50 acres located between Westlake Drive and Interstate Route 270, one-half mile north of Democracy Boulevard, Bethesda, Maryland. An initial zoning special exception was granted to this Company for the construction of a micro-wave tower (Case No. CBA-764). Subsequently, the Company filed for a zoning special exception to construct and operate its unattended electric substation (Case No. CBA-1000). In accordance with the terms of the order issued by the Board in Case No. 1000 on October 27, 1960, the Company constructed and now operates the unattended electric substation

"Pursuant to the terms of Board orders in Case Nos. 1097, 2125, 2481 and S-347, this Company has been permitted to expand this substation in accordance with the testimony and exhibits on file in those cases.

"We now propose to increase the electrical capacity of this substation through the installation of one 230/138 kV transformer. This equipment will be on a concrete foundation ... identified in Case No. S-347 as Exhibit 26. This transformer was included as a proposed/future addition on all prior applications and in previous proceedings before the Board.

"The installation of the transformer can be accomplished without substantially changing the nature, character or intensity of the use of the property as the site for an electric substation and without substantially changing the effect on traffic or on the immediate neighborhood.

"Accordingly, the Company hereby requests, pursuant to the terms of Section 59-G-1.3(c) of the Zoning Ordinance, that the special exception granted on October 27, 1960, and modified by the Board in the cases identified in preceding paragraphs, be further modified to permit the installation of the transformer described herein at the location shown ... on the drawing.

"Also enclosed is ... a list of adjacent and confronting property owners and a tax map showing property locations. ..."

Based on the foregoing information, the Board is of the opinion that Potomac Electric Power Company's request was contemplated in previous proceedings before the Board, represents a minor modification to the special exception, and can be granted without changing the nature, character or intensity of the use of the property, nor changing the effect on traffic or on the immediate neighborhood. Therefore, in accordance with the provisions of Section 59-G-1.3(c) (1) of the Zoning Ordinance,

BE IT RESOLVED by the County Board of Appeals that the special exceptions granted on this site shall be re-opened to receive the following exhibits, to be entered in Case No. S-347: Ms. Cauley's letter dated March 9, 1987, Exhibit No. 30; Site plan, Exhibit No. 30(a); Tax Map, Exhibit No. 30(b); and updated list of adjoining/confronting property owners, Exhibit No. 30(c); and

BE IT FURTHER RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that the petitioner may install one 230/138kV transformer on the subject property, in accordance with Ms. Cauley's letter (Exhibit No. 30) and as shown on the site plan, Exhibit No. 30(a). All other terms and conditions of the special exception, except as modified, shall remain in full force and effect.

The foregoing Resolution was proposed by Thomas S. Israel, Chairman, and concurred in by Joseph E. O'Brien, Jr., Howard Jenkins, Jr. and Max H. Novinsky. The Board members aforementioned constitute the current members of the Board.

Entered in the Minute Book of
the County Board of Appeals for
Montgomery County, Maryland,
this 25th day of March, 1987.


Irene H. Gurman
Clerk to the Board

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision.

...

COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. S-347

PETITION OF POTOMAC ELECTRIC POWER COMPANY
(Hearing held October 28, 1976)

OPINION OF THE BOARD

These proceedings are on the petition of the Potomac Electric Power Company (PEPCO) for a special exception pursuant to Section 59-164 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1972, as amended) to permit the expansion of existing facilities within the fenced area, at the Bells Mill substation number 21. The subject property contains approximately fifty acres of land, located between Westlake Drive and Interstate Route 270, one-half mile north of Democracy Boulevard, Bethesda, Maryland, in an R-90 Zone. (This is the same property for which the Board granted special exceptions in Cases Number 764, 1000, 1097, 2125 and 2481.)

Findings of the Board: Special exception granted,
subject to condition enumerated
herein.

PETITIONER'S PROPOSAL

Spokesmen for the petitioner appeared and agreed to be bound by oral testimony and exhibits in the record, to the effect that: petitioner proposes to build and operate additional public utility buildings and structures at the existing substation, which has been under development over the past fifteen years. The PEPCO tract now contains approximately fifty acres, since some seven acres have been sold to Montgomery County to accommodate the Board of Education's bus parking and maintenance facilities. All facilities, including those which are proposed in the subject petition, have been confined to an area of approximately seventeen acres located at the south end of the PEPCO tract, totally enclosed by a security fence.

The equipment which is proposed to be installed consists of one 230-138 KV transformer, which will receive its power from a new 230 KV heater. The transformer would be housed within a masonry structure. The proposed equipment will be similar to that which exists within the fenced area, particularly with regard to height and bulk of structures. Although only one additional transformer is proposed in this petition, PEPCO testified that it will probably be necessary to add still another transformer as future power demands increase.

Mr. William F. Trapp, Manager of PEPCO's Systems Planning

Department, testified that the proposed facilities are needed in order to maintain adequate and reliable electrical service in the area served by the Bells Mill substation. He stated that if one of the three lines which currently supplies existing transformers should be put out of service, remaining lines would become overloaded and important facilities with the service area (such as the Naval Ship Development Center, the Navy Hospital, and the Washington Suburban Sanitary Commission) would be jeopardized.

The petitioner introduced Exhibits Nos. 25 and 26 showing the revised boundary survey and a revised site plan taking into account the reduced size of the PEPCO property after sale of seven acres to the Board of Education. Except for the reduced acreage, these site plans are identical to those initially filed in the record as Exhibit No. 8, upon which the Staff of the Maryland-National Capital Park and Planning Commission based its study and favorable recommendation on this project. Spokesmen for the petitioner noted that no additional trees would be cut in order to accommodate the proposed additional facilities; landscaping will remain as it is along Westlake Drive, and a substantial buffer of trees would shield the view of the PEPCO facility from the Board of Education property and from Interstate Route 270 as well as from portions of Cabin John Regional Park.

The proposed equipment will be fully automatic, and will require only occasional visits by maintenance personnel. Therefore, there would be very little vehicle traffic to and from the site, and the petitioner testified that there would be no detrimental effect arising from traffic, noise or fumes.

Mr. Alvin A. Turner, Manager of the PEPCO Real Estate Department, introduced an aerial photo of the vicinity, and noted that the PEPCO installation pre-dated the construction of Montgomery Mall Shopping Center and Cabin John Park. He testified that, in his opinion, the proposed use is consistent with the recommendations of the Cabin John Watershed Area Master Plan, and that the addition of the proposed equipment within the enclosed fenced area would probably not even be noticeable to persons outside the site.

The petitioner testified that the proposed addition would be consistent with all requirements set forth in Sections 59-123¹ and 59-164 of the Zoning Ordinance.

1. See Appendix 1.

There was no opposition to the proposed grant.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING
COMMISSION ADVISORY RECOMMENDATION:

The Staff of the Maryland-National Capital Park and Planning Commission reports (Exhibit No. 18(b)) that the proposed use is consistent with the Area Master Plan, that the additional electrical facilities would not adversely affect the area or have a detrimental effect upon the Cabin John Regional Park, and that additional traffic will not be generated. Both the Staff and the Montgomery County Planning Board recommend approval of the petition as proposed.

FINDINGS OF THE BOARD:

The Board finds, on the basis of testimony and exhibits submitted for the record, that construction of the proposed electrical facility according to the site plan entered as Exhibit No. 26 in the record, is necessary for public convenience and service in order to assure reliable electrical service to the area serviced by this substation. The Board further finds that the proposed use, being an extension of an existing use which will generate virtually no vehicle traffic and which will not materially alter the appearance of the existing PEPCO site, is consistent with all requirements set forth in Section 59-123; that the proposed buildings and structures at this location will not endanger the health and safety of workers and residents in the community, and will not substantially impair or prove detrimental to neighboring properties.

Therefore, the proposed special exception shall be and is hereby granted subject to the following condition:

1. Facilities shall be constructed in accordance with the revised site plan, Exhibit No. 26.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mrs. Marjorie H. Sonnenfeldt, Chairman, and concurred in by Mrs. Doris Lipschitz, Mrs. Shirley S. Lynne, Mr. Sheldon P. Schuman and Mr. Joseph E. O'Brien, Jr.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 17th day of November, 1976.

Dollie H. Kyte
Clerk to the Board

NOTE: See Section 59-6.(c) of the Zoning Ordinance regarding the 12-months' period within which the right granted by the Board must be exercised.

Section 59-122.(c) of the Montgomery County Zoning Ordinance 1972, as revised, requires that "On or before March 15 of each year, each applicant who has been granted a special exception shall file with the Department of Environmental Protection a sworn certificate specifying current hours of operation, number of employees and occupants, equipment utilized, and stating that such operation is in all respects in full compliance with the terms and conditions imposed by the Board; provided, however, that the first such certificate shall not be filed unless and until at least twelve months have elapsed since the date of the grant of the special exception."

Section 59-123. Prerequisites to granting.

(a) A special exception may be granted when the Board, or the director, as the case may be, finds from a preponderance of the evidence that the proposed use:

(1) Will be consistent with the general plan for the physical development of the district, including any master plan or portion thereof adopted by the commission;

(2) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses;

(3) Will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity;

(4) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;

(5) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public improvements. In making this determination the Board, or the director, as the case may be, shall take into consideration existing development in the area, the proposed use, uses that have valid building permits and development reasonably probable of fruition in the foreseeable future. The Board, or director, as the case may be, shall also take into consideration planned improvements or additions to public services and facilities including those shown in public capital improvement programs and the Montgomery County Ten Year Water and Sewerage Plan. Documentation of the adequacy of water and sewerage facilities and services shall be provided by the applicant.

With regard to findings relating to facilities for the transmission and treatment of sewage generated by the use: the Board or the director as the case may be, shall further consider estimates of sewage flow anticipated to be generated by the proposed use; data regarding sewage generated by existing development using public sewer facilities in the sewer basin serving the

project; estimates of flow in the sewer basin serving the project to which WSSC has committed public sewer service; and local, state and regional plans, programs and policies. A project for which the WSSC has made a sewer commitment in accordance with the Montgomery County Ten Year Water and Sewerage Plan and other applicable regulations shall be deemed to have satisfied the requirement of this section regarding adequate sewerage facilities.

With regard to findings relating to public roads, the Board or the director as the case may be, shall further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Nothing herein shall be construed as relieving the applicant from the necessity of complying with all requirements for obtaining a building permit or any other authorization or approval required by law, nor shall the Board's finding of facts regarding sewerage facilities be binding on any other governmental agency or department responsible for making a determination relevant to the authorization, approval, or licensing of the project.

(6) Meets the definition and specific standards set forth elsewhere in this chapter for such use.

(b) The applicant for a special exception shall have the burden of proof which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board or the director.

(c) The provisions of this ordinance shall not apply to petitions for special exceptions for which public hearings by the Board of Appeals have begun as of August 12, 1975.

Ordinance No. 8-8; adopted 8-12-75

Amended by Ordinance No. 8-19; adopted 12-9-75

COUNTY BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

COUNTY OFFICE BUILDING
ROCKVILLE, MARYLAND 20850

Case Nos. 764, 1000, 1097, 2125,
2481 and S-347

Telephone
Area Code 301
279-1226

PETITION OF POTOMAC ELECTRIC POWER COMPANY

RESOLUTION TO EXTEND TIME FOR IMPLEMENTING
MODIFICATION TO SPECIAL EXCEPTION
(Resolution adopted October 9, 1980)

The Board of Appeals has received a letter dated September 25, 1980, from Thomas E. O'Dea, Associate General Counsel for the petitioner, stating, in part, that:

"...Due to delays in material deliveries and our inability (due to the extremely warm weather during the past several months) to take portions of the substation out of service to enable us to do the necessary work, we will not be able to start the construction that we had planned to do when we filed our request for a modification.

"Accordingly, we hereby request a one year extension to permit modification of the substation consistent with the terms of the authorization contained in the Board's December 20, 1979 resolution..."

In view of the foregoing information, the Board finds that the special exception holder has been prevented from proceeding with the modification granted by the Board December 28, 1979, due to certain conditions beyond his control. Therefore, the Board finds that the request for a one year extension of time to begin implementing the special exception is reasonable, and will not be cause for any adverse effect upon surrounding properties. Accordingly, pursuant to the authority granted the Board in Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance,

BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that the record of this case shall be, and hereby is re-opened to admit the aforementioned letter dated September 25, 1980, into the record, to be filed in Case No. S-347 as Exhibit No. 29; and

Case Nos. 764, 1000, 1097, 2125,
2481 and S-347

-2-

BE IT FURTHER RESOLVED that the time for implementing the modification granted December 28, 1979, shall be and hereby is extended for one year, time to terminate December 31, 1981.

The foregoing Resolution was proposed by Marjorie H. Sonnenfeldt, Chairman, and concurred in by Doris Lipschitz, Shirley S. Lynne, Wallace I. Babcock and Joseph E. O'Brien, Jr.

Entered in the Minute Book of the
County Board of Appeals this
15th day of October, 1980.

Dollie N. Hyde
Clerk to the Board

Note: Any party may, within 15 days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision,

COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case Nos. 764, 1000,
1097, 2125, 2481 and S-347

PETITION OF POTOMAC ELECTRIC POWER COMPANY

RESOLUTION TO MODIFY SPECIAL EXCEPTION
(Resolution adopted December 20, 1979)

The Board has received a letter dated December 12, 1979, from Thomas E. O'Dea, Associate General Counsel, requesting modification to the special exceptions granted in the above-entitled cases, governing use of the Potomac Electric Power Company's Bells Mill Road Substation #121 Site. The property involved "... consists of 50 acres located between Westlake Drive and Interstate Route 270, one-half mile north of Democracy Boulevard, Bethesda, Maryland, zoned R-90 ..."

Mr. O'Dea's letter states, in part, that: "... This Company now proposes to increase the electrical capacity of this substation further through the installation of one 200 MVA, 230/69 kV power transformer with a 230 kV primary and 69kV secondary disconnect switch, two 138 kV feeders, one 138 kV oil-filled circuit breaker, three 138 kV disconnect switches, and an extension of the existing oil pump house. All equipment will be on concrete foundations at the locations shown colored in yellow on Drawing No. 121-S-77 enclosed herewith and identified in Case No. S-347 as Exhibit 26.

"The proposed installation of the equipment mentioned above, would be within the existing fenced area and its operation would cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity..."

The Board has reviewed the request for modification of the special exception, and finds that the proposed increase of the electrical capacity of the substation was contemplated in previous proceedings before the Board, will be a minor addition to the site; will not substantially change the nature, character or intensity of the use of the property; and will not substantially change the effect on traffic or on the immediate neighborhood. Therefore, pursuant to the authority granted the Board in Section 59-G-1.3(c)(1) of the Zoning Ordinance,

BE IT RESOLVED by the County Board of Appeals that the special exceptions granted on this site shall be re-opened to admit the letter from Thomas E. O'Dea, Esq., and the attachment thereto,

into the record of Case No. S-347 as Exhibit No. 28(a) and No. 28(b) respectively; and

BE IT FURTHER RESOLVED that the records of these cases shall be, and hereby are amended to permit modification to the site plan in the following manner:

Install one 200 MVA, 230/69 kV power transformer with a 230 kV primary and 69 kV secondary disconnect switch, two 138 kV feeders, one 138 kV oil-filled circuit breaker; three 138 kV disconnect switches, and an extension of the existing oil pump house, as shown on Drawing No. 121-S-77, entered into the record of Case No. S-347 as Exhibit No. 28(b).

The foregoing Resolution was proposed by Mrs. Marjorie H. Sonnenfeldt, Chairman, and concurred in by Mrs. Shirley S. Lynne, Mrs. Doris Lipschitz, Mr. Sheldon P. Schuman, and Mr. Joseph E. O'Brien, Jr.

Entered in the Minute Book of
the County Board of Appeals
this 28th day of December, 1979.

Lollie H. Kute
Clerk to the Board

NOTE: Any party may, within 15 days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision, and conduct a public hearing to consider the particular action taken.