

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13199, of Potomac Electric Power, Co., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 4402.32 to permit a new electric substation in a W-2 District at the premises 3301 K Street, N.W., (Square 1184, Lot 831).

HEARING DATE: April 16, 1980

DECISION DATES: May 7, June 4 and July 2, 1980

FINDINGS OF FACT:

1. At the public hearing, the representative of the Citizens Association of Georgetown raised the question of whether a conflict of interest existed on the part of Theodore F. Mariani, who appeared as an expert architect for the applicant and who is also a member and Chairman of the Zoning Commission. The representative did not object to the hearing going forward.

2. Subsequent to the hearing, but within the time that the record was left open, Advisory Neighborhood Commission - 3A, by letter dated April 22, 1980, requested the Board not to decide the case until it had reopened the hearing and publicly examined the question of the appearance of fairness raised by Mr. Mariani's participation in the case. The ANC alleged that "The BZA's judging the project of one of its members might create the appearance of an apparent conflict of interest."

3. The Board requested the applicant and Mr. Mariani to respond to "the appearance of an apparent conflict of interest" as raised by the ANC. By letter dated May 15, 1980, Mr. Mariani advised the Board:

I would like to make it clear that I have not discussed this case with any members of the Board of Zoning Adjustment or the Zoning Commission; further, that I would not intend to participate in any way as a member of the Zoning Commission in the deliberation of this case, and if for any reason, the case would come before the Zoning Commission via Sua Sponte review, I would recuse myself from any participation in the matter.

By letter dated, May 28, 1980, counsel for the applicant also responded, as follows:

We have been furnished a copy of Mr. Mariani's letter to you of May 15 which we think fully answers the allegations made by the Advisory Neighborhood Commission and completely dispels any inference that his service on the Zoning Commission in any manner conflicts with his role as an expert witness on our behalf.

We would like to point out that Mr. Mariani has been retained by us on four other company projects, unrelated to the case before the Board, dating back to January 1973. Naturally, we are pleased that his reputation in the community qualified him to serve on the Zoning Commission. However, his membership on the Commission was not a consideration when he became involved in the planning of our new Georgetown substation in September 1979.

We feel it would be unfortunate indeed if the District were to be deprived of the services on its various boards and commissions of professionals of the quality and integrity of Mr. Mariani merely because they continued to practice their profession in matters unrelated to their service to the District.

4. The Board further requested the advise of the Office of the Corporation Counsel. By memorandum dated June 27, 1980, the Deputy Corporation Counsel, Legal Counsel Division, responded to the Board. The Corporation Counsel advised that what is at issue is not the "appearance of impropriety," but whether this is an actual conflict of interest or whether the potential for conflict of interest is sufficient to render the BZA proceedings questionable. The provisions governing Mr. Mariani's conduct are set forth in certain provisions of the United States Code, specifically 18 U.S.C. Secs. 203, 205, 208. The Corporation Counsel advised that Mr. Mariani's conduct does not fall within the prohibition of these laws, nor of similar District of Columbia Regulations.

5. In replying to the allegations that the basis for impropriety rests in the statutory relationship between the Zoning Commission and BZA, the Corporation Counsel further advised that the question is whether the appearance of a Zoning Commission Member before the BZA as a witness is inherently so coercive as to invalidate the BZA proceeding. After reviewing a number of cases from other jurisdictions, the Corporation Counsel advised that "the facts available to this office respecting Mr. Mariani's appearance as a witness are not such as would require, as a matter of law, that the proceedings be invalidated. Nothing in Mr. Mariani's appearance to testify before the BZA in his private capacity as an architect could be construed as so coercive as to constitute a conflict of interest per se."

6. There have been no ex parte communications between Mr. Mariani and other members of the BZA concerning this application. All of Mr. Mariani's oral communications to the Board were made at the public hearing. His letter of May 15, 1980 is a part of the record and was served upon all the other parties.

7. The Board finds that there is no conflict of interest in a member of the Zoning Commission appearing as an expert witness for an applicant before the BZA.

8. The subject property is located on the west side of 33rd Street, between K Street and the C and O Canal on the Georgetown Waterfront, N.W. The site is predominantly zoned W-2. There is a strip of W-1 zoning twenty feet wide adjacent to the Canal.

9. The site is presently improved with an electric substation operated by the applicant. The property is improved with a warehouse constructed in the 1890s which is not currently being used, a substation building containing 4000 volt transformers and related equipment constructed about 1900, a 13,000 volt control house containing transformers and related equipment constructed in 1950 and various types of outdoor electrical substation equipment installed over the years.

10. The applicant proposes to remove the north and west walls of the building built in the 1890s, but retain the facades along K Street and 33rd Street in keeping with the historical importance of that building, remove the buildings built in 1900 and 1950 and remove all of the outdoor electrical equipment now on the property.

11. The applicant proposes to construct a new substation on the site. The new substation building would be approximately 75 feet along 33rd Street and 160 feet along K Street and would be designed, not only to preserve the facades mentioned above, but to be part of a larger structure of mixed residential and office uses. The future larger structure was not before the Board. Only the new substation is in need of the special exception.

12. The existing substation is strained to its limit of electrical capacity by over-dutied equipment.

13. The traditional area served by the existing substation is defined as being bounded by the Potomac River on the south, the Glover-Archibold Parkway on the west, Whitehaven Parkway on the north and Rock Creek Parkway on the east.

14. Some electrical load that was on the substation has been transferred to other substations leaving only the Kennedy Center as a large customer. All residential and business areas in Georgetown would be served by the proposed substation.

15. A new substation on the same site provides for new facilities in a new building, keeps the old substation in service for the entire construction period and provides for the orderly transfer of electrical load to the new substation. All underground lines feeding the Georgetown area originate or terminate on the subject property so that line work off the property would be held to a minimum thereby eliminating the need for extensive excavation in the streets of Georgetown.

16. The operation of the substation would cause no change in the day to day traffic once construction has been completed. There would be periodic weekly visits by a substation operator to change charts and make routine inspections. A small crew would visit for routine annual maintenance. Off street parking would be provided on the property for the applicant's employees who would make the visits described. Since the substation would be unmanned, there would be no traffic associated with on site workers or shift changes.

17. All of the electrical equipment will be contained within the substation building. The substation's doors will be fully locked at all times and only those employees with special keys and specific work assignments will have access. The substation will have no windows or other points of access beyond the doors. The substation design would include accoustical treatment to insure effective attenuation of noise and no odors or adverse electrical effects would result from its operation. The substation will have no adverse effect on TV or radio reception. Normal maintenance will include housekeeping duties as required to maintain appearance and cleanliness.

18. The applicant's witnesses stated that if the special exception were granted, the applicant would provide landscaping on the entire property if there were a delay between the completion of the new substation and the start of construction of the larger structure which would incorporate the substation. The applicant filed with the Board for its consideration a plat showing the landscape plan if construction of the larger structure is delayed.

19. The design of the substation takes into account the requirements of the Zoning Regulations for setbacks and screening. The exterior walls of the building will completely enclose the substation and screen the mechanical equipment from public view. The substation has been located in the southwest quadrant of the site, well set back from the Canal. The applicant has further proposed to set the east wall of the substation fifteen feet inside the wall of the present conduit warehouse building. This would create a fifteen foot covered pedestrian walkway to supplement circulation along 33rd Street.

20. The new substation will not adversely affect the use of neighboring property but, on the contrary, would improve the neighborhood through the removal of exposed electrical equipment on the subject property.

21. A special effort was made to preserve the two existing facades to reflect the existing construction and to tie in with the old industrial architecture along the waterfront. The substation itself, as a service facility, provided a needed use that blended with the neighborhood and would be compatible with new development.

22. The applicant's architectural witness described the structure that would encompass the substation and occupy all of the applicant's property and stated that the building would be designed for residential and office use, consistent with the purposes of the Waterfront zone, and would be in harmony with existing structures and uses in the vicinity of the applicant's property, and structures now in various stages of construction near the applicant's property. The Board so finds.

23. The Office of Planning and Development, by report dated March 28, 1980, and by testimony at the hearing, recommended that the application be approved. The OPD reported that the proposed substation is designed with consideration to other architectural character of the Georgetown Waterfront/K Street frontage and will not tend to affect adversely the use of neighboring properties. The OPD was further of the view that the proposal is in harmony with the general purpose and intent of the Zoning Regulations. The Board so finds.

24. The Citizens Association of Georgetown appeared at the hearing and testified in opposition to the application. The Association did not oppose the construction of the new substation itself. However, the Association did oppose the application on the grounds that if the applicant were permitted to build the substation, it would lead to more intensified use of the remainder of the property through the construction of a building to house office and residential uses which would worsen the already bad parking and traffic conditions in that part of Georgetown.

25. Advisory Neighborhood Commission - 3A, by letter dated April 22, 1980, recommended that a decision on the application be deferred, pending receipt of further information. The ANC requested the Board to obtain further information on the need to consolidate all facilities in one new substation. The ANC further requested the Board to obtain additional information on the applicant's future plans for developing the whole site. The ANC also raised the conflict of interest question regarding Theodore F. Mariani.

26. The Board is required by statute to give "great weight" to the issues and concerns of the Advisory Neighborhood Commission. The Board has already extensively addressed the conflict of interest question in this Order. In regard to the need for the facility, the applicant's engineer testified at the hearing as to the alternative to building the substation as proposed in this application. The Board is satisfied by the reasons put forth by the applicant that the substation should be built as proposed. The Board notes additionally, that under Paragraph 4402.32, the Board is not required to make a determination concerning the need for the facility. Such issue might more properly be addressed to other regulatory bodies. As to the further development of the total site, the Board is limited to dealing with the specific application presented. The applicant testified that any future development which might be undertaken would occur pursuant to the Zoning Regulations in effect at that time. The applicant testified that any future development which would occur would not be adversely effected by the proposed substation. The Board finds no reason to believe otherwise.

CONCLUSIONS OF LAW AND OPINION:

In the case of Philip Brown, et al v. District of Columbia Board of Zoning Adjustment (No. 13670, decided March 31, 1980), the D.C. Court of Appeals directed the Board to resolve questions of conflict of interest properly raised before it, stating that "The BZA has not only the authority, but the responsibility to regulate practice before it." The Board has thus given considerable attention to the allegations of conflict of interest raised by the parties in opposition to the application. Based on Findings of Fact three through six, the Board concludes that there was no conflict of interest in a member of the Zoning Commission appearing as an expert witness for an applicant before the Board.

As to the merits of the application, the Board concludes that the applicant has satisfied all of the requirements of Paragraph 4402.32 and Sub-section 8207.2. The proposed substation is consistent with the general purpose and intent of the Waterfront Districts, its design is generally compatible with other buildings in and the general character of the area and the substation is suitably designed so as not to adversely effect other uses in the area or potential future uses on this site. The Board concludes that approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with said Regulations and Maps.

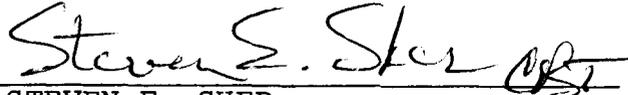
The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. It is therefore ORDERED that this Application is GRANTED SUBJECT to the following CONDITIONS:

1. The applicant shall demolish the existing electric substation upon completion of the new substation.
2. The new substation shall be constructed in accordance with the plans marked as Exhibit Nos.5-9 of the record.
3. The applicant shall landscape and maintain the remainder of the site in accordance with the plans marked as Exhibit No. 26 of the record, until construction commences on the development of the remainder of the site.

VOTE: 4-0 (Walter B. Lewis, Connie Fortune, Leonard L. McCants and William F. McIntosh to GRANT; Charles R. Norris not voting, not having heard the case).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

25 AUG 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.