

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Appeal No. 15204, of the Potomac Electric Power Company, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Joseph F. Bottner, Jr., Zoning Administrator, made on June 8 and August 10, 1989, to the effect that the generator exhaust stack of one combustion turbine was not exempt from the height requirement of Section 840.1 of the Zoning Regulations, for the installation of two combustion turbines and ancillary facilities of the Benning Generating Station in a C-M-1 District at premises 3400 Benning Road, N.W., (Parcel 169/114).

HEARING DATE: December 13, 1989

DECISION DATE: January 3, 1990

FINDINGS OF FACT:

1. This appeal challenges the decision of the Zoning Administrator that the generator exhaust stack of a proposed combustion turbine is subject to the 40-foot height limit that applies in the C-M-1 zone district.

2. Appellant bases its challenge on two alternative grounds: (1) that the turbine is mechanical equipment, is therefore not a structure, and is not subject to the height limit; and (2) the only portion of the turbine that exceeds the height limit is an exhaust stack that serves as a chimney or smokestack, and is therefore not subject to the height limit.

3. The exhaust stack is the only portion of the turbine that would exceed the height limit. The exhaust stack would not be a supporting element of the turbine.

4. The function of the combustion turbine is to drive the generator. Outside air would be brought into the turbine, combined with fuel, and burned. This combustion process drives the generator. A smaller portion of the outside air would be drawn into the generator and circulated through it to prevent it from overheating. During this process, this air would rise in temperature about 85 degrees. It would then be blown into a hollow, vertical exhaust shaft, through which it would rise to the exhaust stack, and be expelled into the atmosphere.

5. In conjunction with the exhaust shaft, the exhaust stack would remove heated air from the generator, by expelling it into the atmosphere. The stack would not discharge smoke or gases of combustion.

6. In the context of the generating process, the heated air that would be expelled is an undesirable gas, because it will have lost its effective cooling capacity.

7. The height of the combustion turbine would be 49.04 feet above the measuring point.

8. The dimensions of the open channel in the exhaust shaft and stack would be about 6 feet by 8½ feet.

9. Although the over-all orientation of the exhaust shaft and stack would be vertical, the portion of the exhaust stack that would rise above the remainder of the turbine would in part be horizontal, and therefore cannot be deemed to be vertical, notwithstanding the fact that the shaft and stack include a primary vertical component that would be enclosed within other elements of the turbine.

10. The exhaust stack will not have an internal structural element that lines the channel through which the air would pass.

11. It appears that the primary reason for the Zoning Administrator's ruling that the exhaust stack is not a chimney is that he concluded that it will not enclose a flue. He may also have concluded that it would not be sufficiently vertical. The Board has considered both of these factors. In addition, the Zoning Administrator apparently relied on advice from structural and mechanical engineers that the exhaust stack would not qualify as a chimney under the construction code.

12. The site of the appeal is within ANC 7A, which submitted issues and concerns about the impact of the proposed construction on the environment and public health, and stated its agreement with the view of the Zoning Administrator that a portion of the structure would exceed the 40-foot height limit that applies in the C-M-1 zone district. The ANC also recommended that the appeal be deferred until after final decisions are reached in other proceedings relating to the proposed construction.

CONCLUSIONS OF LAW

1. Pursuant to 11 DCMR 840.1, the height limit of a building or structure located in a C-M-1 zone district may not exceed 40 feet.

2. Pursuant to 11 DCMR 840.2, neither a chimney nor a smokestack is subject to the height limit set forth in 11 DCMR 840.1.

3. Pursuant to the definition of "structure" in 11 DCMR 199, the term does not include mechanical equipment, but does include the supports for mechanical equipment.

4. Although the combustion turbine could be construed to be mere "mechanical equipment", the Board concludes that such a reading would adopt a literalistic and impractical application of the definition of the term "structure." The Board is not persuaded that the Zoning Commission intended to exempt a structure of such scale as the combustion turbine from the height limitations of Title 11.

5. The terms "chimney," "flue," "flue lining," and "smokestack" are not defined in the Zoning Regulations.

6. Insofar as is pertinent, Webster's Unabridged Dictionary ("Webster's") defines "chimney" as follows: "a vertical structure incorporated into a building and enclosing a flue or flues that carry off smoke or other undesirable fumes or gases: esp: the part of such a structure extending above a roof".

7. Insofar as is pertinent, Webster's defines "flue" as follows: "an enclosed passageway for establishing and directing a current of gas (as air): as a (1) now dial: CHIMNEY (2): a channel in a chimney for conveying flame and smoke to the outer air [a big 4-flue chimney] b: a passageway for carrying a current of air from one place to another (as for heating, cooling, or ventilating)".

8. Webster's defines "flue lining" as follows: a lining for chimney flues that consists of successive hollow sections of rectangular or circular hard burned clay and serves to protect the house against escape of gases or fire from the flue, the brick of the chimney [usually] being built around the lining".

9. A flue is not a structural element or lining. That is, the channel or passageway through which the undesirable fumes or gas are carried off must be an open way. It follows that the open way by which the heated air would be carried through the exhaust stack is a flue.

10. Inherently, a chimney must have a flue. It need not have a flue lining.

11. Because the exhaust stack would not be completely vertical, it is not a chimney, even though it would be incorporated into a building, enclose a flue that would

carry off an unwanted gas, and, considered together with the exhaust shaft, would be predominantly vertical in orientation.

12. An essential element in Webster's definition of a "smokestack" is the discharge of smoke or gases of combustion. Because the exhaust stack would discharge neither, it is not a smokestack.

13. The Board recommends that the Zoning Administrator exercise caution in referring to technical definitions in provisions of the District of Columbia Municipal Regulations other than Title 11, for guidance in the interpretation of words used in Title 11. The Zoning Commission has directed in 11 DCMR 199.8 that words that are not defined in 11 DCMR 199 shall have the meanings given in Webster's Unabridged Dictionary. Title 11 does not generally provide for reference to other District of Columbia regulatory systems for this purpose. In other words, the Zoning Commission has decided that words used in Title 11, but not given a special definition in that title, shall be applied in accord with their common definition. Reference to a special definition in another DCMR title may work counter to this decision of the Commission.

14. The environmental and public health concerns raised by ANC 7A are not before the Board in this appeal. The Board has set forth above the reasons why it in part concurs with the ruling of the Zoning Administrator. The Board has not been presented with a sound reason for deferring this appeal.

Accordingly, it is ORDERED that the appeal is DENIED, and the decision of the Zoning Administrator is hereby SUSTAINED.

VOTE: 3-1 (William F. McIntosh, Paula L. Jewell, and Charles R. Norris to deny; Tersh Boasberg to Grant, by proxy; Carrie L. Thornhill, not voting, having recused herself).

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

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

FEB 16 1990

UNDER 11 DCMR 3103.1, "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."

Appeal15204/BJW42

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 15204

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated FEB 16 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

~~DAN WEDDERBURN~~
~~George R. Keys, Jr., Esq.~~ *DW 5/14/90*
1101 - 14th St, N.W.
City 20009

~~GEORGE R. KEYS, JR., ESQ.~~
~~JORAN E KEYS~~
~~Dan Wedderburn~~ *2ND FL. 5/14/90*
1606 N. Hampshire Ave., N.W.
City 20005

Ronald M. Marth
PEPCO
1900 Pennsylvania Ave., N.W.
City 20068

James B. Blackwell
1205 Twekesbury Pl., N.W.
City 20012

James Short, Sr.
16 - 33rd St., N.E.
City 20017

Bernard Caine
1328 Newton St., N.E.
City 20017

George E. Gurley, Chairperson
Advisory Neighborhood Commission 7-A
650 Anacostia Avenue, N.E.
Washington, D. C. 20019

Minnie Robinson, Chairperson
Advisory Neighborhood Commission 7-E
P.O. Box 63440, Benning Station
Washington, D. C. 20029-3440



EDWARD L. CURRY
Executive Director

DATE: FEB 16 1990