

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OFFICE OF THE ZONING ADMINISTRATOR



July 13, 2015

Christine Moseley Shiker  
Holland & Knight LLP  
800 17<sup>th</sup> Street, N.W. -Suite 1100  
Washington, DC 20006

Re: PEPCO – Harrison Street Substation - 5210 & 5220 Wisconsin Ave, N.W. (Square 1657)

Dear Ms. Shiker:

This is to confirm the substance of our discussions on November 19, 2014, and April 15, 2015, relating to the renovation and modernization of the existing PEPCO substation building known as the Harrison Substation ("Substation Building"). The Substation Building is located at 5210 Wisconsin Avenue, N.W. and known as Lot 21, Square 1657 ("Existing Substation Property"). The Existing Substation Property is zoned R-5-B.

PEPCO also owns the adjacent property located at 5220 Wisconsin Avenue, N.W. and known as Lots 810, 811, and 812, Square 1657 ("Adjacent Property"). Development of the Adjacent Property was originally approved as a Planned Unit Development ("PUD") by Zoning Commission Order No. 06-31, but that PUD expired by its own terms on June 2, 2012. The Adjacent Property was previously used as a classic car dealership, but it is now in the process of being razed. The Adjacent Property is also zoned R-5-B.

The Substation Building was constructed in the 1940s. A certificate of occupancy dated February 20, 1948, for use as a "Public Utility and Electric Power Substation" is attached ("1948 Certificate of Occupancy"). When the current Zoning Regulations were adopted in 1958, the Existing Substation Property was zoned C-M-1. The Substation Building was expanded in or around 1959 or 1960 (see Zoning Computation Sheets ZA 59-272 and ZA 60-232 for additions in 1959 and 1960), copies of which are attached, and the Board of Zoning Adjustment granted relief from the rear yard required by virtue of BZA Order No. 5803, a copy of which is attached. A certificate of occupancy dated September 9, 1973, for use as an "Electric Substation" is also attached ("1973 Certificate of Occupancy").

In or around 1966, the zoning changed to C-3-A. In 1974, the Existing Substation Property and the Adjacent Property were downzoned from C-3-A to R-5-B (See Order No. 87, February 12, 1974). An electric substation is permitted in the R-5-B District only by special exception (11 DCMR § 207). However, by virtue of Section 199.1 of the Zoning Regulations, the substation use is a conforming use. Specifically, Section 199.1 provides that a "use lawfully in existence at the time of adoption or amendment of this title that would thereafter require

special exception approval from the Board of Zoning Adjustment shall not be deemed a nonconforming use. That nonconforming use shall be considered a conforming use, subject to the further provisions of §§ 3104.2 and 3104.3.” Section 3104.2 provides that any extensions or enlargement of the substation uses shall require special exception approval from the Board.

You informed me that PEPCO intends to renovate and modernize the Substation Building (the “Modernization Project”). The Modernization Project includes extending the equipment enclosures on the north side of the Substation Building to the north property line of the Existing Substation Property. The extended equipment enclosure will continue to be covered only by a health and safety screen to prevent animals or people from accessing the equipment. Because this health and safety screen is less than 50% solid, the screen will not constitute a roof, consistent with past rulings of this office. Because the additional space for the equipment enclosure is not a building, there is no additional gross floor area generated by this portion of the Modernization Project. In addition, there is no additional building area (i.e., "the maximum horizontal projected area of a building and its accessory buildings" (*emphasis added*)) and thus no increase in lot occupancy.

In addition, the Modernization Project includes the lowering a portion of the existing floor within the lower level of the Substation Building to provide clearance for upgraded equipment, as shown on the Color Modernization Plan attached hereto. This modification also does not result in an increase in gross floor area or building area.

Based on the information that you provided to me, the Modernization Project will not increase the height of the building and will not result in any change in the rear yard of the Substation Building, all as shown on the attached Modernization Plans that you provided to me.

Because there is no expansion of gross floor area or building area for the Substation Building, I find that there is no extension or enlargement of the substation use which would trigger a requirement for this conforming use to be reviewed and approved by the Board of Zoning Adjustment as required by Section 3104.2.

Section 2100.3 of the Zoning Regulations only requires parking for a building built after May 12, 1958. Because the Substation Building was constructed before that date, no parking is required. Section 2100.6 of the Zoning Regulations provides that, when the intensity of use of a building or structure existing before May 12, 1958 is increased by an addition of gross floor area, among other things, parking spaces shall be provided for the addition, if the addition increases the intensity of the use by 25% or more. Based on the Zoning Computation Sheets, the increase in gross floor area in the 1960 was below 25%. Because the Modernization Project will not increase the gross floor area of the Substation Building, no parking is required for the Modernization Project.

Loading is required only for a building built after May 12, 1958. 11 DCMR § 2200.1. Section 2200.6 provides that when the intensity of use of a building or structure existing before May 12, 1958, is increased by an addition or additions of gross floor area, among other things, loading berths, loading platforms, and service/delivery loading spaces shall be provided for the addition or additions, if the addition increases the intensity of the use by 25% or more. As noted

above, the previous increase in gross floor area of the Substation Building was below 25% and the Modernization Project will not increase the gross floor area of the Substation Building. Thus, no loading is required for the Modernization Project.

As part of the Modernization Project, the Existing Substation Property will be subdivided with a portion of the Adjacent Property (specifically, Lots 811 and 812 in Square 1657). The subdivision will provide open space for an access drive on the north side of the Renovated Substation Building. The open space will be a conforming side yard. A side yard is not required in the R-5-B District, but if it is provided, it must be 3 inches wide per foot of height, but not less than 8 feet. Based on the height of the building of no more than 28 feet, the required width of side yard would be 8 feet. The proposed access drive will have a width of 25 feet. PEPCO facilities, including below-grade conduits and manholes, will be located within the below-grade space of the side yard.

During the construction of the Modernization Project, PEPCO will use the Adjacent Property to temporarily locate electric facilities. Specifically, according to the Temporary Site Plan and Section, PEPCO will locate three prefabricated buildings to house power control rooms, two small prefabricated buildings to house capacitor banks, and three transformers behind screen walls. The Adjacent Property will also be used for construction staging. All of the temporary facilities and the construction staging will be located behind the construction fence to be located at the property line. Following completion of the construction of the Modernization Project, the temporary facilities will be removed. These temporary structures are permitted pursuant to Section 201.1(s), which allows temporary buildings for the construction industry that is incidental to erection of buildings or other structures.

As part of the Modernization Project, PEPCO has committed to improving the façade of the Existing Substation as well as the public space. PEPCO met with Advisory Neighborhood Commission 3E (“ANC 3E”) to review these proposed façade improvements. ANC 3E issued a letter in support of these improvements which will be incorporated into the Modernization Project.

Based on my review of the foregoing, I find that the Modernization Project is permitted as a matter of right and without requirement for review by the Board of Zoning Adjustment. Upon proper presentation of plans, I will approve a building permit application for the construction required for the Equipment Enclosure and the installation of the new equipment.

I believe that I have addressed the issues which we discussed and agreed upon. Please let me know if you have any further questions.

Sincerely,   
Matthew Le Grant  
Zoning Administrator

Attachments:

1948 Certificate of Occupancy

Zoning Computation Sheets ZA 59-272 and ZA 60-232

BZA Order No. 5803

1973 Certificate of Occupancy

Modernization Plans and Color Modernization Plan (collectively, Modernization Plans)

Temporary Site Plan and Section

ANC 3E Letter