

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT for March 25, 2021 @ 7pm

Case Number: B-20-25, B260603

Applicant: The Potomac Edison Company,
c/o Christopher Burns, Esq.
500 E. Pratt Street, Baltimore MD, 21201

Request: Special Exception approval for a
Nongovernmental Utility Substation

Location: 3190 Burgee Drive, Jefferson,
Maryland 21755, Tax Map 84, Parcel 278,
Tax ID# 14325301, Zoning Agricultural, Size 9.7
acres

Planning Region: Brunswick

Zoning District: Agricultural (A)

Comp. Plan Designation: Agricultural

Applicable Ordinances: Sec. 1-19-3.210 Special Exceptions
Sec. 1-19-8.339 Nongovernmental Utility in
Agricultural (A) Zoning District

Background:

The subject Property is zoned Agricultural (A) and contains 9.7 acres.

Ordinance Section 1-19-6.100 *DESIGN REQUIREMENTS*, requires a minimum lot area of 40,000 sq.ft. for Nongovernmental Utilities.

Ordinance Section 1-19-11.100 defines *NONGOVERNMENTAL UTILITY* as “Any utility not owned by a governmental entity. Including a transmission and distribution substation for supplying electric service served by transmission lines of less than 500 kv, but excluding Solar Facility, Commercial.”

Proposal:

The Potomac Edison Company, a FirstEnergy Company, (“Potomac Edison”) is proposing to construct a nongovernmental utility and accessory communication pole (the “Proposed Utility”) on a 9.76 acre parcel in the Agricultural (A) zoning district, located at 3190 Burgee Drive, Jefferson, Maryland 21755 (the “Property”). The property information sheet from MD SDAT is attached as **Exhibit A**. The Proposed Utility will be proximate to the existing 130’ transmission poles and lines, situated within a 420’ x 264’ compound surrounded by a 8’ high fence. The

Proposed Utility will serve the increased demand for electric services and improve reliability to the 4,300 +/- customers served in the Brunswick, Petersville and Jefferson area. The Proposed Utility will help to meet the increased demand for electrical utility services, and avoid overloading the existing distribution system. Further, the Proposed Utility will increase the capacity of the existing distribution system, and minimize extended outages in the event of a distribution system failure. The Property is proximate to both Potomac Edison's existing 34.5kV sub-transmission lines, poles, and the customers the Proposed Utility will serve.

General Criteria – Special Exception:

(A) An application for a special exception may be made only by persons with a financial, contractual or proprietary interest in the property for which a special exception is requested.

The Applicant states that Potomac Edison has a financial, contractual, and proprietary interest in the Property. Potomac Edison purchased the Property from James C. Burgee and A.C. Burgee, the Property's owners, on October 4, 1995. See Deed attached as **Exhibit H**.

Further, Potomac Edison and Wade A. Burgee and Vickie A. Burgee executed an Easement Agreement that authorizes Potomac Edison to construct and operate a 60' wide easement/right of way for vehicular and/or pedestrian ingress and egress to the Property. See the Easement Agreement, attached as **Exhibit I**.

(B) A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:

(1) The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of Chapter 1-19 of the Frederick County Code; and

The Applicant states that the proposed use of the Property as a nongovernmental utility is consistent with the Livable Frederick Master Plan. See Section 10: Managing Our Growth of the Livable Frederick Master Plan, pp. 9-11 attached as **Exhibit J**. Jefferson has been identified as a Municipal Growth Area. The County enumerated specific efforts to facilitate the growth in Municipal Growth Areas in the Livable Frederick Master Plan. Chief among them is partnering with private resources to provide the physical infrastructure to maintain communities. Increasing the reliability of the existing electrical transmission system furthers the County's goals of promoting growth in Municipal Growth Areas.

(2) The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and

The Applicant states that the Proposed Utility is a self-contained operation that will minimally impact, if at all, the surrounding area and is located adjacent to the existing power lines. The nature and intensity of the Proposed Utility's operations are in harmony with the development of the neighborhood. Potomac Edison employees and/or contractors will visit the Proposed Utility to perform periodic maintenance, but there will be no employee presence on a daily basis. The size of the site, in relation to the surrounding area and forestry, is minimal and appropriate.

See Site Plan attached as **Exhibit B**; See Property Photos and Visual Impact Survey attached as **Exhibit G**.

(3) Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district; and

The Applicant states that the Proposed Utility's operations will not generate fumes and will not cause adverse effects such as noise, vibrations, or other characteristics on the neighboring properties that are above and beyond those typically associated with the Proposed Utility in any other location within an Agricultural Zone. See Noise Level Analysis attached as Exhibit F.

(4) Parking areas will comply with the off street parking regulations of Chapter 1-19 of the Frederick County Code and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

The Applicant states that the Proposed Utility will comply with the off-street parking regulations, which will be screened as necessary. Potomac Edison designed the entrance and exit of the proposed drive connecting the Substation to Burgee Drive through the setoff to achieve maximum safety. See Site Plan at **Exhibit B**.

(5) The road system providing access to the proposed use is adequate to serve the site for the intended use.

The Applicant states that Burgee Drive provides adequate service to the Property for its proposed use as a Proposed Utility.

(B) In addition to the general requirements listed above, uses requiring a special exception shall be subject to the specific requirements for each use outlined in §§ [1-19-8.320](#) through [1-19-8.355](#) of this Code.

(C) In addition to the general requirements listed above, uses requiring a special exception shall be subject to the specific requirements for each use outlined in §§ 1-19-8.320 through 1-19-8.355 of this Code.

As detailed in this document, the Proposed Utility will comply with the special exception requirements for a nongovernmental utility provided in § 1-19-8.339.

(D) A special exception approval may be granted in accordance with the general and specific requirements enumerated in this section. The Board of Appeals may, in addition to other requirements imposed under Chapter 1-19 of the Frederick County Code and is hereby authorized to add to the specific requirements any additional conditions that it may deem necessary to protect adjacent properties, the general neighborhood, and its residents or workers. Violation of such additional conditions, when made a part of the terms under which the special exception permit is granted, is a violation of Chapter 1-19 of the Frederick County Code and may be grounds for termination of the special exception.

The Applicant states that the Proposed Utility will be located adjacent to the existing 130' power lines and designed for minimal impact to the general neighborhood. Potomac Edison acknowledges the authority of the Board of Appeals to imposed additional specific requirements and conditions it deems necessary and will comply with any such conditions.

(E) The Board of Appeals shall not grant a special exception unless and until:

- (1) A written application for a special exception is submitted indicating the section of Chapter 1-19 of the Frederick County Code under which the special exception is sought and stating the grounds on which it is requested; and

The Applicant states that a written application complying with all requirements has been included with its filing package and that its Statement of Justification and Compliance details the compliance and grounds for approval.

- (2) A public hearing has been held; and the Board had made a finding of fact that the special exception requested meets the general and specific requirements outlined in this section.

The Applicant states that Potomac Edison looks forward to the public hearing, where it will present evidence of compliance, affirm the evidence submitted, and address any inquiries from the Board.

(F) The grant of special exception may include approval of customary incidental accessory uses as reviewed and approved by the Zoning Administrator.

The Applicant states that Potomac Edison will comply with any necessary approval of the Zoning Administrator.

(G) No use or activity permitted as a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception. All enlargements, extensions, and changes in use shall require grants of special exception, as in the case of an original petition.

The Applicant states Potomac Edison will not enlarge or extend the Proposed Utility's use beyond the limits authorized in the grant of a special exception.

(H) If a grant of special exception is denied, no new petition for the denied use on the same property shall be accepted by the Board of Appeals for 1 year after the date of denial of the petition.

The Applicant states Potomac Edison agrees that it will not seek a new petition within 1 year following a denial from the Board of Appeals.

(I) A decision of the Board of Appeals granting a special exception will be void 5 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

The Applicant states Potomac Edison intends to complete construction of and commence the operation of the Proposed Utility as soon as possible and within the 5

year period. A statement with details explaining how the proposed use is to be operated has been submitted, along with the following information:

- a. Days and hours of operation;
- b. Number of anticipated employees;
- c. Equipment involved; and
- d. Any special conditions or limitations which the Applicant proposes for adoption by the Board.

The Proposed Utility will operate 24 hours each day, 7 days each week, and 365 days each year to stabilize and improve Potomac Edison's existing PDS. The Proposed Utility will not require employees and will include electrical substation equipment.

1-19-8.339. NONGOVERNMENTAL UTILITY IN A [and other] DISTRICTS.

The following provisions shall apply to a nongovernmental utility in Agricultural Districts.

(A) Minimum setback from all property lines is 50 feet. Structures, fencing or parking are not permitted within the setback area.

The Applicant states that the Proposed Utility, any off-street parking, and fencing will be set back at least 50 feet from all property lines. See Site Plan at Exhibit B at page 3. Therefore, the Proposed Utility exceeds the setback requirements pursuant to this section and will be set back as follows:

North: 165' (complies with required 50')
East: 154.7' (complies with required 50')
South: 265' (complies with required 50')
West: 82.4' (complies with required 50')

(B) Screening and landscaping is required as approved by the Board of Appeals.

The Proposed Utility is naturally screened because of its relatively small size within the surrounding acreage, the rolling topography, and the existence of nearby mature tree lines. Potomac Edison conducted a visual impact survey at the Property using a crane. The crane was raised to 80' and Potomac Edison took pictures from thirteen different locations. These thirteen photos were updated to include the 1230' communication pole within the proposed utility. See Visual Impact Survey and Property Photos at Exhibit G. Potomac Edison also proposes additional landscaping to screen the Proposed Utility as needed and in cooperation with the County. **See Exhibit B at page 5.**

(C) Within the RC District, the requirements of § 1-19-7.200 of this Code will be met.

The Applicant states that (C) is not applicable because the Proposed Utility is located within an Agricultural district.

(D) When permitted in any residential district, a nongovernmental utility shall have the exterior appearance of residential buildings and shall have suitable landscaping, screen planting and fencing, deemed necessary by the Board of Appeals.

The Applicant states that the Property is in an Agricultural (A) zoning district and not a residential district.

(E) Provide information to indicate the general conditions of use and existing improvements on adjoining properties within a 1,000-foot radius surrounding the subject property.

The Applicant states that all properties within a 1,000' radius are agricultural and located in the A district zone. Four residential dwellings are located within the 1,000' radius. See the Aerial Exhibit with 1,000' Radius attached as **Exhibit C**.

(F) When approving a nongovernmental utility use, the Board of Appeals may authorize future changes not requiring further Board of Appeals approval within a 10 year period of the initial special exception approval. Such changes shall be limited to the addition, relocation, or modification of foundations or equipment, or additions to existing buildings, within a fence line approved by the Board of Appeals. The site plan must show initially proposed and future buildings and structures as reasonably expected within 20 years or the foreseeable future.

The Applicant states The Proposed Utility will be installed with a 230-34.5kV configuration and may eventually include an additional transformer. The upgrade will not impact the use or footprint of 4 - 37712974.10 the Proposed Utility and all improvements and structures are included in the Site Plan at **Exhibit B at page 3**.

(G) A reasonable effort shall be made by the applicant to contact and inform area homeowner associations and community associations of the proposed use together with an informational meeting.

There are no homeowner associations near the Property. Potomac Edison mailed letters to the adjoining and confronting property owners that explained the Proposed Utility. A copy of the letter Potomac Edison sent to all adjoining and confronting property owners is attached as **Exhibit D** and a List of the Adjoining and Confronting Property Owners are attached as **Exhibit E**.

(H) Tests to determine mitigation requirements. In the event the Board determines to grant the special exception, the Board shall consider the following areas to determine the extent that impact mitigation measures will be required.

(1) The Board shall make findings that the proposed building or structure at the location selected 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.

The Proposed Utility 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. The location was specifically chosen to minimize the Proposed Utility's impact on the neighboring properties.

First, the Property is proximate to existing electrical infrastructure. There is an overhead transmission line that crosses over the Property. The Proposed Utility will tap into this transmission line. The proximity reduces the amount of construction of additional overhead transmission lines.

Second, the Property is relatively isolated from more developed zoning districts in

Frederick County. The Proposed Utility is surrounded by rural land. Potomac Edison will minimize the impact to the surrounding rural land to the fullest extent possible during construction. See the Aerial Exhibit with 1,000' Radius attached as Exhibit C. Lastly, the construction of the Proposed Utility on the Property will not result in greater impact to the surrounding properties than a substation constructed at any other location in the Agricultural Zoning District.

(2) The Board shall make findings regarding adverse effects of the project on the character of the surrounding area including impacts from sound, light, visual appearance, impervious surfaces, traffic impacts, and on forest and wildlife impacts.

The Applicant states that the Proposed Utility will minimize any adverse effects on the character of the surrounding area. Please note that this site will be subject to site development plan review and during that process Staff and the FCPC will review, Lighting, FRO, APFO, and SWM.

Sound: Proposed Utility noise emission will comply with the Frederick County Code noise ordinance. The Proposed Utility will emit no more than approximately 49 dBA, which is well below the maximum allowable noise level of 55 dBA at night. See Noise Level Analysis attached as **Exhibit F**.

Light: Potomac Edison will install minimal lighting as needed for safe access and maintenance access to the Proposed Utility, none of which will spillover to adjacent properties or produce glare.

Visual Appearance: The Proposed Utility is naturally screened because of its relatively small size within the surrounding acreage, the rolling topography, and the existence of nearby mature tree lines. Potomac Edison conducted a visual impact survey at the Property using a crane. The crane was raised to 80' and Potomac Edison took pictures from thirteen different locations. These thirteen photos were then updated to include the proposed 120' monopole within the Proposed Utility. See Visual Impact Survey and Property Photos at **Exhibit G**. Potomac Edison also proposes additional landscaping to screen the Proposed Utility as needed and in cooperation with the County. See **Exhibit B at page 5**.

Impervious Surfaces: The Proposed Utility will include 2.25 acres of impervious surface. The stormwater management plan will be in accordance with the Frederick County Stormwater Management Ordinances and Maryland Department of Environment's Stormwater Design Manual.

Traffic Impacts: The Proposed Utility will have a negligible impact on traffic after the conclusion of construction. Potomac Edison employees and/or contractors will only visit the Proposed Utility to perform periodic repairs and maintenance. There will be no daily employee presence.

Forest and Wildlife Impacts: There will be minimal impacts to wildlife and forestry during construction and then no impacts thereafter.

(3) All applications for nongovernmental utilities before the Board shall be forwarded to the Historic Preservation Commission (HPC) for review and comment. The Board shall consider comments from the Historic Preservation Commission and shall make findings regarding the project's impacts on any historic district, registered historic

property, parks, designated heritage area, and other historic or cultural resource. When there is a finding of negative impact based upon evaluation of the above, the Board shall to the maximum extent practicable require mitigation. Required mitigation may include the construction of fences, barriers, mandatory setbacks, the surfacing of access drives, shielding of lighting, or the establishment of buffers, vegetative screening, or landscaping.

The Applicant states that Potomac Edison acknowledges the importance of the Historic Preservation Commission's review of its Statement of Justification and Compliance and related application materials. The HPC approved a motion on March 3, 2021, of "no negative impacts on the project". Potomac Edison will comply with or exceed mitigation deemed necessary based on the Commission's findings.

(I) All applications shall include information as to how the applicant has addressed the visual impact of the nongovernmental utility on neighboring county designated preservation areas, such as rural legacy areas, agricultural preservation areas, critical farms, Monocacy scenic river, Appalachian Trail, designated heritage areas, historic sites and sites eligible for designation.

The Applicant states that Potomac Edison will comply with or exceed all requirements necessary to minimize or eliminate any visual impact the Proposed Utility has on the neighboring preservation areas, rural legacy areas, agricultural preservation areas, critical farms, Monocacy scenic river, Appalachian Trail, designated heritage areas, historic sites and any other sites eligible for designation. See Subsection (K) below for a summary of the results of the balloon test and Visual Impact Survey. Potomac Edison has designed the Proposed Utility to visually conform with the surrounding rural neighborhood. See Property Photos and Visual Impact Survey attached as **Exhibit G**, and Site Plan attached as **Exhibit B**.

(J) Provide photographs of the existing conditions of the site and area.

The Applicant states that the photographs of the site and Property are attached as **Exhibit G**.

(K) Provide photo-documentation that a balloon test has taken place at the proposed site location (for substations only).

The Applicant states that Frederick, Seibert & Associates, Inc. ("FSA") conducted a visual impact survey and balloon test of the Proposed Utility on the Property on September 21, 2020. See Property Photos and Visual Impact Survey attached as **Exhibit G**. The balloon test revealed that from the Proposed Utility's visibility will be minimal in the surrounding area. See **Exhibit G**.

Action Needed:

Staff requests that the Board review the request for Special Exception as per Sections 1-19-3.210 (*Special Exceptions*) and 1-19-8.339 (*Nongovernmental Utility in (A) District*) and render a decision on the Applicant's request Special Exception approval for a Nongovernmental Utility.

Attachment 1

There were too many attachments to include them in this staff report.

GIS Maps







