

City of Alexandria, Virginia

MEMORANDUM

DATE: February 27, 2020

TO: CHAIR MACEK AND MEMBERS OF THE PLANNING COMMISSION

FROM: KARL MORITZ, DIRECTOR, DEPARTMENT OF PLANNING & ZONING

SUBJECT: DOCKET ITEM #11- SUB #2019-0022 – 1300 NORTH ROYAL STREET

The purpose of this memorandum is to recommend deletion of Condition #4 of SUB #2019-0022. The condition was originally added to note the inconclusive findings, related to the dedication of historic rights-of-way (other than those vacated in Ordinance 297), of recent title searches for the parcel. Here, the historic rights-of-way refers to a street grid that was planned prior to 1930 and was never constructed.

Staff now believes it is unnecessary to tie a restriction of future land use approvals to either the planning of new publicly dedicated streets or to a conclusive dedication finding of the historic public rights-of-way at this point. It determined that future events, such as title searches prior to the transfer of property ownership and redevelopment compliance with the Old Town North Small Area Plan street grid, will adequately confirm the dedication status of the previous, unconstructed street grid.

Staff, therefore, continues to recommend approval of Subdivision #2019-0022 with the deletion of Condition #4:

4. ~~**CONDITION DELETED BY PLANNING COMMISSION:** No application(s) for the development of any parcel(s) created by this subdivision, including but not limited to, through land use approvals, grading plans, or building permits, shall be accepted until a site plan containing publicly dedicated rights of way consistent with the Old Town North Small Area Plan for the parcel(s) is proposed to the City or until the City's rights with respect to public rights of way on the parcel(s) is determined. (P&Z)~~



February 28, 2020

VIA EMAIL

Mr. Mark Jinks, City Manager
City of Alexandria
301 King Street
Alexandria, Virginia 22314

Re: Application for Subdivision No: SUB2019-00022

Dear Mr. Jinks,

This letter is to inform you that GenOn Potomac River, LLC (“GenOn Potomac”), a wholly owned subsidiary of GenOn Holdings, Inc., objects to the above-referenced application for subdivision that has been submitted to the Planning Commission, and is now on the March 3, 2020 Planning Commission public hearing docket with a recommendation for approval. The application was submitted by Potomac Electric Power Company (“PEPCO”), for the subdivision of 1300 North Royal Street, Alexandria, Virginia, into three (3) separate lots of land for future sale or development. The application is currently on the agenda as New Business, item 11. For the reasons outlined below, we urge the removal of this matter from the docket.

Under a December 19, 2000, lease between GenOn Potomac’s predecessor company and PEPCO (the “Lease”), GenOn Potomac owns a 99-year lease interest on 22.58222 acres of the 25.366546-acre property that PEPCO wants to subdivide. GenOn Potomac’s property rights extend to over ninety percent of the property that is subject to the subdivision application and continue through the year 2099. The proposed subdivision was submitted without the knowledge, or consent of GenOn Potomac. In fact, GenOn Potomac only became aware of the application through a newspaper article in the Alexandria Times.

GenOn Potomac urges you to remove this application from the docket for the following reasons:

1. GenOn Potomac is a necessary party to the application.

As a 99-year leaseholder, GenOn is in possession and control of the majority of the property. Pursuant to GenOn’s Lease, this property right remains in effect for the next 79 years.

2. The Application is deficient.

The staff report for the public hearing includes a recommendation for a variance pursuant to Zoning Ordinance Section 11-1713. The proposed subdivision does not meet the criteria for a lot, because one of the lots does not have frontage on a public street. Staff recommends the variance to prevent “substantial injustice” because the strict application of the criteria would create an

unreasonable burden on the development, use and enjoyment of the property. This analysis entirely neglects GenOn Potomac's long-term property rights in the property that is offered up for access to the landlocked lot. This variance is being recommended without input or consent of the long-term lessee who enjoys significant control over the leased property. Should the 99-year tenant not have a say in access to the leased premises?

In addition to the variance issue, the application itself is not correct. First, the Ownership and Disclosure Statement references PEPCO's address and not the property address. This omission could lead to the omission of required disclosures. Second, GenOn Potomac is not listed on the Ownership and Disclosure Statement. Pursuant to the application form, and Section 11-406 of the Zoning Ordinance, the name, address and percent of ownership of any person or entity owning an interest in the property must be identified on the Ownership and Disclosure Statement. The Ownership and Disclosure Statement, and Zoning Ordinance Section 11-406, defines ownership to include "any legal or equitable interest held at the time of the application in the real property that is the subject of the application." It is undisputed that GenOn Potomac, by virtue of its interest in the Lease, possesses a legal interest in the property that is the subject of the application. PEPCO's failure to list GenOn Potomac makes the application materially deficient.

3. GenOn Potomac plans to develop the property.

GenOn Potomac is focused on development of the property in accordance with the City of Alexandria's Master Plan, a goal that is shared with local stakeholders and the City. Because of intersecting and overlapping rights and obligations between the leasehold and fee interests in the property, a merger of the leasehold and fee interests is crucial to an orderly development of the property. In addition, PEPCO has been aware of GenOn Potomac's interest in purchasing the property since at least early 2017.

GenOn Potomac is under no obligation to terminate or modify its Lease. If the subdivision is approved and the fee sold to a third party, the property will remain subject to the competing rights of GenOn Potomac, as lessee, and a third-party owner of the fee. Meaningful development of the property will be delayed indefinitely.

For the above reasons, we respectfully request that the City of Alexandria Planning Commission remove the application from its March 3, 2020, docket to give all affected parties an opportunity to discuss a resolution to the situation that incorporates all rights holders related to the leased property.

Absent prior confirmation that this item has been deferred, GenOn Potomac representatives will be in attendance at the public hearing on March 3, 2020. to voice their disapproval.

Sincerely,

GenOn Potomac River, LLC

By _____

Daniel D. McDevitt, its Vice President

Cc:

Nanette Paris, PEPCO
All members of the City Council of Alexandria
City of Alexandria Planning Commission

City of Alexandria, Virginia

MEMORANDUM

DATE: MARCH 3, 2020

TO: CHAIR AND MEMBERS OF THE PLANNING COMMISSION

FROM: KARL W. MORITZ, DIRECTOR, DEPARTMENT OF PLANNING & ZONING

SUBJECT: SUB #2019-00022 – 1300 NORTH ROYAL STREET

The purpose of this memorandum is to address concerns regarding SUB #2019-00022 raised by Daniel D. McDevitt, Vice President of GenOn Potomac River, LLC in a letter emailed to you on February 28, 2020. Mr. McDevitt states that GenOn Potomac River, LLC owns a long-term lease of a significant portion of the subject property and objects to the subdivision request. The applicant has also provided additional justification for the variation criteria which is appended to this report.

Staff responses to GenOn letter dated February 28, 2020:

Mr. McDevitt asserts that in the analysis of the “substantial injustice” variation criteria that staff should have analyzed the interests of GenOn as the lessee. The variation criteria are intended to weigh the burden the subdivision ordinance’s strict application would have “on the development, use and enjoyment of the property” versus the purposes served by the zoning ordinance provision. It does not and is not intended to take into account the interests of a lessee who is not an applicant. The conduct of PEPCO and GenOn with respect to one another is a private matter governed by the agreements between those parties.

The address information provided in the Ownership and Disclosure Statement information is correct. This portion of the application requests the addresses of the entities with an ownership interest in the applicant or real estate. It is not intended to include the property addresses; that information is provided in another section of the application and was provided in this case.

Mr. McDevitt also alleges that Zoning Ordinance section 11-406 is applicable. However, Section 11-406 governs site plan applications, while Section 11-1706 governs subdivision applications. Section 11-1706(A) requires the disclosure in applications of “the name and address of each person or entity owning an interest in the applicant or owner and the extent of the ownership interest[. . . ownership interest shall include any legal or equitable interest. . . .” This means the disclosure of those people or entities with interest in the applicant or the property owner. The application provided that information, it indicates that 100% of the ownership interest in the applicant and the property owner is held by “Potomac Electric Power Company (PEPCO), a wholly-owned subsidiary of Pepco Holdings, LLC, a Delaware corporation.” Since the lessee does not have a legal ownership interest in the applicant or the property owner the application was prepared correctly. Further, this provision is not intended to and has not been interpreted to require that an applicant provide the City with information about the lessees of a property, unless the lessee is the applicant.

Staff continues to recommend approval of the subdivision request with the deletion of Condition #4.

Applicant's variation justification:

The Planning Commission may, as part of the approval of a plat of subdivision, grant variations from the strict application of the zoning regulations governing the property and/or buildings on the property to be subdivided pursuant to §11-1700 et seq. of the Alexandria Zoning Ordinance, 1992, as amended (the “**Ordinance**”). The variation procedure is included in the Ordinance to provide flexibility to prevent a property owner from suffering a substantial injustice as the result of the strict application of the zoning regulations.

The 1300 N. Royal Street Property, City of Alexandria Real Estate Tax Map Parcel 045.01 01 04, is 25.36646 acres of land currently described by a singular metes and bounds description. The property is comprised by multiple historically described parcels of land that existed as of January 1, 1952, on which an electrical generating power plant and associated infrastructure were constructed in the 1940's subsequent to the original construction there have been numerous additions and expansions. Notwithstanding the use of a single metes and bounds description of the property, the 25.36646-acre parcel has not been subdivided or consolidated into a single legal lot of ground (the “**Property**”). The Property is bounded on the South by the Southern Railway Company right-of-way, on the West by East Abingdon Road, on the North by Slaters Land and on the East by Potomac River shoreline property owned by the United States of America. There are no public or private street rights-of way in the interior of the Property. No new public rights-of-way are proposed as part of the approval of the plat of subdivision.

The approval of the plat of subdivision is requested to facilitate the future orderly development and transfer of ownership to one or more of the newly created lots and to create three new legal lots of land in furtherance of the purpose of the subdivision regulations to provide for an accurate system of recording land divisions by eliminating and consolidating multiple smaller parcels of land into the three lots shown on the proposed subdivision plat.

The Property is Zone UT/Utilities and Transportation zone. The UT/Utilities and Transportation zone regulations so not specify any minimum lot (size, width or **FRONTAGE**) or yard requirements, as such the proposed lots comply with the UT/Utilities and Transportation zone regulations as required by the subdivision ordinance. The proposed lots are also consistent with the Old Town North Small Area Plan Chapter of the City's Master Plan.

In order for Planning Commission to approve the plat of subdivision to be approved it has been determined it is the policy of the City, as set forth in the Zoning Ordinance definition of “lot”, that newly created lots shall have frontage on dedicated public streets in order to be usable as a building site. As such the City determined that a variation from the strict application of the Ordinance must be granted as part of the Planning Commission action. Proposed lot two (2) is an interior lot that as proposed does not have frontage on dedicated public street. Lot Two (2) is an interior lot on which is constructed an existing electrical substation and switchyard which is to remain as part of Pepco's electric grid transmission system and not as a buildable site. Lot Two (2) has access to the Slaters Lane public Right-of-way by existing easements. Lot two qualifies for a variation under Section 11-1700 (A) (2), based on to the fact: (i) the irregularity in shape of the Property, the location of the existing electrical substation and switchyard on the Property prevents conformance

with general policy that lots used a building sites have street frontage. As previously stated, the UT/Utilities and Transportation zone regulations do not require street frontage. The requested variation is within the scope and justification of Section 11-1700 (A)(2) of the Ordinance.

The strict adherence of the regulation for which the variation is requested, in this instance would result in a substantial injustice to the property owner by precluding the subdivision of the property into three (3) lots that meet or exceed all applicable zoning regulations and to facilitate the redevelopment of the Property consistent with the Old Town North Small Area Plan. Further, in this instance the strict adherence of the Regulations would not advance a significant public benefit. The unreasonable burden on the development, use and enjoyment of the property by the owner outweighs the material land use or land development purposes served by the strict adherence of the Regulations. For the reasons stated, variations should be granted and the plat of subdivision approved.