

**RECOMMENDATION ON THE VARIANCE APPLICATION OF  
PSE&G/49th Street Pothead Rack - New Bldg., Fence & Variance (Phase 2)  
FILE #18-139**

**I. INTRODUCTION**

An application for one bulk variance has been filed with the New Jersey Sports & Exposition Authority (NJSEA) by Public Service Electric and Gas Company (PSE&G), for the premises located at 4001 Paterson Plank Road and identified as Block 442, Lot 5, in the Township of North Bergen, New Jersey. The subject property, although located within a PSE&G right-of-way, is deemed to be within the Hackensack Meadowlands District's Light Industrial A zone pursuant to N.J.A.C. 19:4-3.6(a). The variance is sought in connection with the applicant's proposal to install electrical equipment on the subject premises associated with Phase 2 of PSE&G's 49<sup>th</sup> Street Pothead Rack 230kV Project.

Specifically, the applicant is requesting relief as follows:

1. N.J.A.C. 19:4-5.77(a)3iii, which requires a minimum rear yard setback of 75 feet, whereas the applicant is proposing concrete structures with a minimum setback of 19.3 feet from the westerly rear yard property line.

Notice was given to the public and all interested parties as required by law. The public notice was published in The Jersey Journal. No written objections were received. A public hearing was held in the Office of the Commission on Tuesday, August 14, 2018. All information submitted to the Division of Land Use Management relative to this application is made part of the record of this recommendation.

## II. GENERAL INFORMATION

### A. Existing and Proposed Use

The property in question, Block 442, Lot 5, has an area of approximately 12.32 acres. The property is designated as right-of-way (ROW) on the Official Zoning Map of the Hackensack Meadowlands District; however, pursuant to N.J.A.C. 19:4-3.6(a), the property is deemed to be within the District's Light Industrial A zone.

The site is rectangular in shape, with a depth of 150 feet and length of 3,578 feet, with frontage along West Side Avenue. The long, narrow property is bordered to the south by the 43<sup>rd</sup> Street unimproved right of way, to the east by West Side Avenue and to the west by undeveloped marshland. A warehouse/distribution facility is located to the north of the subject premises. Surrounding properties are principally developed with industrial uses. West Side Avenue is a heavily travelled roadway with significant trucking movements.

The proposed project involves utility improvements that are being implemented as part of Phase 2 of PSE&G's 49<sup>th</sup> Street Pothead Rack 230kV Project. The subject property is currently developed with an electric substation having a footprint of approximately 0.6 acres, which is comprised of a control house, pumping plant and transmission wires with associated site improvements. The site is accessed by a driveway from West Side Avenue.

This application proposes to upgrade the existing substation by installing a new 17-foot by 38-foot control building, a natural gas generator, capacitor voltage transformers (CCVT) and their foundations, mechanical switches, and station lighting. The footprint of the existing substation will be expanded slightly to accommodate the installation of a proposed natural gas generator. The equipment will be constructed a minimum of one foot above the FEMA base flood elevation, as indicated on FEMA's Flood Insurance Rate Maps. The easterly existing security fence will be relocated approximately nine feet further

east towards West Side Avenue; however, it will not be within the required front yard. The substation is not manned in either its existing or proposed condition.

**B. Response to the Public Notice**

No written objections were received prior to the public hearing.

**III. PUBLIC HEARING (August 14, 2018)**

A public hearing was held on Tuesday, August 14, 2018. NJSEA staff in attendance were Sara J. Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer; Sharon Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer; Mia Petrou, P.P., AICP, Principal Planner and Ronald Seelogy, P.E., P.P., Principal Engineer.

**A. Exhibits**

The following is a list of the exhibits submitted by the applicant at the public hearing and marked for identification as follows:

<u>Number</u>	<u>Description</u>
A-1	"Site Plan - Phase II," prepared by PSEG Services Corporation on March 26, 2018, last revised on June 1, 2018.
A-2	"Site Plan - Phase II," prepared by PSEG Services Corporation on March 26, 2018, last revised on June 1, 2018.
A-3	"Site Plan - Phase II," prepared by PSEG Services Corporation on March 26, 2018, last revised on June 1, 2018.
A-4	"Section Views," Drawing No. 253646, prepared by Worley Parsons on September 22, 1988, last revised on May 30, 2018.
A-5	"Control Building Arrangement," Drawing No. 703169, prepared by Worley Parsons on May 30, 2018.

A-6 "Pothead Rack Natural Gas Generator Enclosure Arrangement," Drawing No. 703176, prepared by Worley Parsons on May 30, 2018.

**B. Testimony**

Jennifer M. Carrillo-Perez, Esq., of the firm, Connell Foley LLP, represented the applicant at the hearing. The following witness testified in support of the application:

1. Tom Mullarney, PSE&G;
2. John J. Horgan, P.E., Worley Parson Resources & Energy; and
3. William F. Masters, Jr., P.P.

Staff findings and recommendations are based on the entire record. A transcript of the public hearing was prepared and transcribed by Beth Calderone, Certified Shorthand Reporter.

**C. Public Comment**

No members of the public were present at the public hearing.

**IV. RECOMMENDATION**

**A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.77(a)3iii, which requires a minimum rear yard setback of 75 feet, whereas the applicant is proposing concrete structures with a minimum setback of 19.3 feet from the westerly rear yard property line.**

The Hackensack Meadowlands District Zoning Regulations at N.J.A.C. 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written*

*findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*

- i. *The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The subject premises is owned by PSE&G and deemed to be within the District's Light Industrial A zone, pursuant to N.J.A.C. 19:4-3.6(a). The subject property is uniquely configured, having a 150-foot-wide lot depth and 3,578-foot-long frontage along West Side Avenue to the east. The subject property is currently improved with an existing electric substation consisting of a control house, pumping plant and transmission wires with associated site improvements, and contains an access driveway from West Side Avenue. The location and configuration of these existing improvements on the lot include an existing, nonconforming rear yard setback of 8.7 feet, whereas a minimum rear yard setback of 75 feet is required.

The upgrade project will improve reliability of PSE&G's electric transmission by raising equipment above FEMA's 100-year base flood elevation. As part of this initiative, the applicant proposes to install concrete structures and supports to raise capacitor voltage transformers a minimum of one foot above FEMA's effective base flood elevation of 7.9 feet NAVD88. The proposed concrete structures will be located at a minimum 19.3-foot rear yard setback from the westerly property line. Constraints related to the location of the existing equipment, as well as regulatory requirements of the National Electric Safety Code (NESC), dictate the placement of the

proposed capacitor voltage transformers, as certain clearances between equipment and structures are required to be maintained. Therefore, the variance requested arises from conditions that are unique to the property in question and are not ordinarily found in the same zone.

- ii. *The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The concrete foundations for the capacitor voltage transformers are proposed to be located a minimum of 19.3 feet from the westerly rear property line. The proposed foundations are further away from the westerly property line than four existing masonry structures, which are set back only 8.7 feet from the rear lot line and, as such, are an existing nonconformity. No adverse visual impacts are anticipated to affect the portion of the adjoining property to the west that is immediately adjacent to the substation, which consists of undeveloped marshland. Existing site and maintenance operations will be maintained at their present levels. The site contains an unmanned electric substation that requires, and will continue to require, only occasional maintenance visits by PSE&G personnel.

The proposed variance will not impact the ability of neighboring industrial and commercial properties to function as intended. Rather, the proposed improvements will promote energy reliability, which will benefit area electric customers. In addition, no residential uses are located within the vicinity of the subject property. Therefore, the granting of the requested variance will not

adversely affect the rights of neighboring property owners or residents.

*iii. The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.*

The strict application of the minimum rear yard setback requirement of 75 feet on the subject property will result in particular and exceptional practical difficulties to, and exceptional and undue hardship upon, the property owner. The subject property is exceptionally long and narrow, and the location of new equipment on the site is constrained by the presence and location of existing equipment whose function must be maintained as the facility is upgraded.

The subject property has a depth of 150 feet. When applying both the required front yard setback of 50 feet and the required rear yard setback of 75 feet, the resulting building envelope is only 25 feet deep. The proposed capacitor voltage transformers cannot be constructed within that 25-foot-wide building envelope due to the location and configuration of the existing electric process equipment, as well as regulatory requirements to maintain certain clearances between equipment structures, which, when these constraints are combined, represent exceptional practical difficulties in the ability of the proposed improvements to comply with the rear yard setback requirement.

Four existing structures within the westerly rear yard of the site have an existing nonconforming rear yard setback of 8.7 feet. The installation of the proposed concrete structures at a minimum setback of 19.3 feet from the westerly rear property line will provide a setback that is greater than the current degree of nonconformity. Without the ability to install new equipment within the required westerly rear yard setback, PSE&G would be impeded in its efforts to provide safe, adequate and reliable energy from this site to the region it serves.

*iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

Approval of the requested variance to permit equipment to be installed at a minimum rear yard setback of 19.3-foot, whereas a minimum rear yard setback of 75 feet is required, will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. Rather, the proposed substation upgrades will promote the general welfare and public good through the improvement of electric transmission capacity, energy reliability, and resiliency of the electricity network to the public customers of PSE&G who are served by this substation. The upgrade project proposes the installation of concrete structures that will support capacitor voltage transformers, at a minimum 19.3-foot rear yard setback. The layout of the concrete structures and the capacitor voltage transformers is based upon required clearances between equipment and existing structures on the site,

which are dictated by regulatory requirements of the National Electric Safety Code (NESC).

The electric substation is an unmanned facility that requires, and will continue to require, only periodic maintenance by PSE&G personnel. Therefore, it is anticipated that traffic levels will not differ from the existing operations at the site.

Due to the narrow depth of the parcel, the location of the existing equipment, and the substation design requirements and safety regulations, it is not possible to provide a 75-foot rear yard setback.

*v. The variance will not have a substantial adverse environmental impact.*

The granting of the variance to permit a minimum rear yard setback of 19.3 feet, whereas a minimum of 75 feet is required, will not have a substantial adverse environmental impact. The property contains structures with an existing nonconforming rear yard setback of 8.7 feet along the westerly lot line. All minimum lot coverage and open space requirements will continue to be met, and existing drainage patterns will be maintained. The proposed substation upgrade project includes the installation of concrete structures that will elevate the proposed capacitor voltage transformers at least one foot above the FEMA effective base flood elevation, which is particularly important from a resiliency perspective on a property within a floodplain. In addition, the applicant's professionals have testified that the District's environmental performance standards for noise, glare, vibrations,

airborne emissions, hazardous materials or water quality will not be exceeded.

*vi. The variance represents the minimum deviation from the regulations that will afford relief.*

The proposed project consists of an upgrade to an existing PSE&G substation and involves the raising of equipment above the FEMA 100-year base flood elevation to improve reliability. The particular characteristics of the subject property, including its shallow depth and the location of existing improvements within the rear yard setback, constrain the ability of the proposed improvements to comply with the rear yard setback requirements of the Light Industrial A zone. These conditions represent exceptional practical difficulties in the accommodation of the required upgrades to the substation. Two proposed concrete structures, which are approximately nine square feet in plan area, occupy a small portion of the property's westerly rear yard. The installation of the concrete structures at a minimum setback of 19.3 feet from the westerly rear property line will not increase the current degree of nonconformity. Adequate light, air, and open space will continue to be provided. Therefore, the requested variance represents the minimum deviation from the regulations that will afford relief.

*vii. Granting the variance will not substantially impair the intent and purpose of these regulations.*

The granting of the requested variance to permit a concrete foundation with a minimum rear yard setback of 19.3 feet, whereas

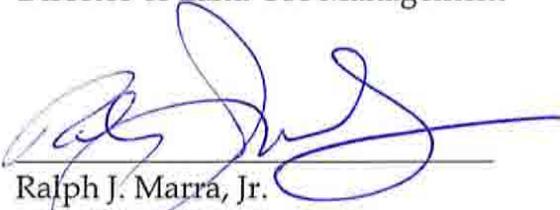
a minimum rear yard setback of 75 feet is required, will not substantially impair the intent and purpose of these regulations. The minimum required 75-foot rear yard setback in the Light Industrial A zone is generally intended to provide sufficient area for loading areas and truck maneuvering in the rear of industrial properties; however, this intent will not be impaired as the subject electric substation utility use on this site does not involve such loading operations.

The site is constrained in its ability to meet the required rear yard setback due to the configuration of the property and the existing improvements on the site. In particular, the subject property is limited by the shallow depth of the parcel and regulatory requirements that necessitate the layout of the proposed utility upgrade equipment within the existing nonconforming setback. As the District regulations are also intended to provide for infrastructure and utility improvements and to promote the efficient use of the land, the requested variance will not substantially impair these purposes.

IV. SUMMARY OF CONCLUSIONS

- A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.77(a)3iii, which requires a minimum rear yard setback of 75 feet, whereas the applicant is proposing concrete structures with a minimum setback of 19.3 feet from the westerly rear yard property line.

Based on the record in this matter, the bulk variance application to construct concrete structures associated with Phase 2 of PSE&G's 49<sup>th</sup> Street Pothead Rack 230kV Project within the required rear yard with a minimum setback of 19.3 feet, whereas a minimum rear yard setback of 75 feet is required, is hereby recommended for **APPROVAL**.

<u>APPROVAL</u> Recommendation on Variance Request	<u>9/5/2018</u> Date	 Sara J. Sundell, P.E., P.P. Director of Land Use Management
<u>Approval</u> Recommendation on Variance Request	<u>9/5/18</u> Date	 Ralph J. Marra, Jr. Senior Vice President Legal & Governmental Affairs