

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Office of Zoning**

2008 JUN 25 AM 8:43



**MEMORANDUM**

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**To:** Office of Documents and Administrative Issuance

**From:** Sharon S. Schellin<sup>3</sup>  
Secretary to the Zoning Commission

**Date:** June 25, 2008

**Re:** Publication for the Office of Zoning

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Please publish the following in the *D.C. Register* on July 4, 2008:

1. Z.C. Notice of Final Rulemaking & Order No. 07-08A-2 (Case No. 07-08A).

Attachment

ZONING COMMISSION  
District of Columbia  
CASE NO. 07-08A  
EXHIBIT NO. 19

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441 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: [dcoz@dc.gov](mailto:dcoz@dc.gov)

Web Site: [www.dcoz.dc.gov](http://www.dcoz.dc.gov)

ZONING COMMISSION  
District of Columbia  
CASE NO. 07-08A-2  
EXHIBIT NO. 3B

2008 JUN 25 AM 8:43

### RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION:  EMERGENCY RULES  
 FINAL RULES  PROPOSED RULES  COMBINED

DATE AND TIME RECEIVED

AGENCY: OFFICE OF ZONING

Office of Documents use only

AGENCY REPRESENTATIVE: SHARON SCHELLIN

ADDRESS: 441 4<sup>th</sup> Street, N.W., Suite 210 South

TELEPHONE: 727-0340

TITLE AND DESCRIPTION OF RULES: Z.C. Case No. 07-08A: (Text Amendment – Additional Temporary Ballpark Accessory Surface Parking Lots)

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) Sections 601, 901, 2110.

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 54 DCR 12388 DATE: December 21, 2007

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.

DATE: MAY 30, 2008

SIGNED: *Alan Bergstein*

PHONE: (202) 442-9777

<input checked="" type="checkbox"/> FINAL	<input type="checkbox"/> CONDITIONAL	NAME: ALAN BERGSTEIN	TITLE: SECTION CHIEF
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PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)

Zoning Commission For The District Of Columbia

Title:

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules. Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OF VOTE: 5/12/07

APPROVAL OF ATTEST: *Sharon S. Schellin*

Secretary to the Zoning

TITLE: Commission

PHONE: (202) 727-0340

Office of Documents use only:

THIS NOTICE PUBLISHED AT:

VOL:

DCR:

DATE:

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING**

**and**

**Z.C. ORDER NO. 07-08A-2**

**Z.C. Case No. 07-08A**

**(Text Amendment – Additional Temporary Ballpark Accessory Surface Parking Lots)  
May 12, 2008**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District Charter; hereby gives notice of the adoption of the following amendments to Chapters 6, 9, and 21 of the Zoning Regulations (Title 11 DCMR).

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on December 21, 2007 at 54 DCR 12388. The Commission took final action to adopt the amendments at a public meeting on May 12, 2008. This final rulemaking is effective upon publication in the *D.C. Register*.

**Description of the Text Amendment**

This rulemaking expands the number of potential lots from those already approved by the Commission in Order No. 07-08 to meet short-term parking needs associated with the new Washington Nationals Ballpark. All lots allowed through this text amendment must meet the standards established in that earlier case, are subject to the same cap on the overall number of spaces, and are permitted for the same five-year temporary term.

**Relationship to the Comprehensive Plan**

The amendments are not inconsistent with the Comprehensive Plan for the National Capital: District Elements (“Comprehensive Plan”), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300), and are fully consistent with the following provisions of the Comprehensive Plan:

**Policy T-1.1.3: Context-Sensitive Transportation:**

Design transportation infrastructure to support current land uses as well as land use goals for compact, accessible neighborhoods. Make the design and scale of transportation facilities compatible with planned land uses. (10 DCMR § 403.9.)

**Policy T-2.5.4: Traffic Management:**

Establish traffic management strategies that separate local traffic from commuter or through-traffic and reduce the intrusion of trucks, commuter traffic, and “cut-through” traffic on residential streets. (10 DCMR § 411.15.)

**Set Down Proceeding and Emergency Action**

The Office of Planning (OP) initiated this rulemaking by filing a report with the Commission. The OP report recommended that the Commission take emergency action to adopt the amendment, so that it could immediately take effect.

At its October 15, 2007 public meeting, the Commission set down the case for a public hearing, took emergency action, and authorized the immediate publication of a notice of proposed rulemaking. The Commission took a second emergency action at its February 11, 2008 public meeting.

**Public Hearing and Proposed Action**

The Commission opened a public hearing on this case on February 21, 2008. At the public hearing, OP testified that the proposed text amendments would:

- Expand the potential locations of temporary Ballpark parking lots to include eight new sites in the CG/CR District – Squares 603, 605, 657, 658 Lot 7, 661, 662, 662E, and 664; and to one additional square in the CG/W-2 District – Square 664E; and
- Subject the Ballpark parking lot locations to all of the restrictions and requirements currently contained in Order No. 07-08, including the overall limit of 3,775 spaces in total, the termination date of April 1, 2013, the requirement that a portion of the parking spaces be restricted to use by a car/ride-share program, and the obligation to promote and publicize the use of this program on the Nationals’ website and promotional materials.

Advisory Neighborhood Commission (“ANC”) 6D testified in opposition to the text amendments, stating that its principal concerns were: the proposal to locate parking sites east of South Capitol Street, the potential for traffic through existing residential neighborhoods, and potential impacts on neighborhood parking; potential safety issues for pedestrians walking from the proposed new parking sites to the ballpark; and the configuration of the South Capitol and Potomac Avenue intersection.

Three residents also testified in opposition to the proposal. Their concerns were similar to those of the ANC. In addition, the residents expressed concerns regarding impacts of the additional automobile traffic on transit operations in the neighborhood, concerns that the parking sites will become permanent, potential environmental and flood plain issues, and whether the sites are actually needed for parking in the current year. Residents noted particular concerns with

proposed parking sites located north of Potomac Avenue, S.E. and adjacent to the Anacostia River.

The Commission continued the public hearing to March 24, 2008, to provide an opportunity for discussion with representatives of the Nationals Baseball team and the District Department of Transportation (“DDOT”) regarding broader traffic and parking management plans. At the reconvened public hearing, a representative from the Nationals addressed questions regarding immediate and longer term parking needs, and described efforts to allocate parking spaces to minimize traffic impacts and to encourage ballpark patrons to use other means to get to the ballpark, such as Metro. DDOT staff provided a presentation of the Transportation Operations and Parking Plan (“TOPP”), which was developed to organize and manage traffic; to ensure pedestrian and traffic safety in the ballpark area; to make sure that the transportation system operates efficiently; to minimize impacts to the residents and commuters by providing additional roadway and transit access capacity; to segregate the ballpark traffic and parking from the local access; and overall to maximize the usage of public transportation including walking and bicycling. DDOT described parking and vehicular access restrictions intended to alleviate neighborhood impacts of ballpark related traffic.

### **Great Weight Given to ANC Issues and Concerns**

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the written recommendation of the affected ANC. By letter dated February 19, 2008, ANC 6D stated that it was opposed to the text amendments because it had the following issues and concerns:

- the text approved in Z.C. Case No. 07-08, “specifically prohibited either the Washington Nationals or the District Department of Transportation from directing baseball patrons to approved temporary surface parking lots over I, 4<sup>th</sup> or P Streets, S.W.” The squares approved through this case are located just south of that area, and the ANC is concerned that traffic would be directed through the area;
- “the ANC received no documentation that the use of these squares for parking is supported by the recently adopted DC Comprehensive Plan, which in fact, specifically ensures that the established communities adjacent to the South Capitol Street corridor including James Creek and Greenleaf Gardens housing projects and adjacent residential areas are buffered from adverse impacts associated with increased density and traffic relating to stadium area development.” (internal citations and quotations omitted);
- “[ANC 6D’s] primary concern is the potential impact of a maximum of 2,950 cars on the health and safety of our children and others ... [w]hile we believe the Nationals are acting in good faith when they say they will use their best marketing and promotional materials to direct traffic away from residential streets, they cannot guarantee the behavior of game goers or prevent them from ignoring any prohibitions that will be established – hopefully in time for opening day”; and

- “the squares under consideration are currently primarily industrial in use, and lack sidewalks and curbs. The ANC believes that there are far better uses for DDOT’s limited funds than upgrading a streetscape that baseball patrons will use only a few months out of the year.”

The Commission has considered each of these issues and concerns in its deliberations.

In response to the first issue, the Commission shares ANC 6D’s concern about traffic in the area surrounding the Ballpark generally, and specifically traffic on I, 4<sup>th</sup>, and P Streets, S.W. The Commission has taken several steps to ensure that the effects of the temporary lots are minimized and that traffic is not directed through those streets. It has paid careful attention to the locations chosen for potential lots to ensure they are well distributed and have effective access to arterial streets. It has capped the maximum number of spaces that can be created as a matter-of-right, and ensured any additional spaces must obtain special exception approval of the Board of Zoning Adjustment (“BZA”) that includes an examination of a traffic study assessing the impacts of the additional spaces on local traffic patterns and a referral to DDOT. And perhaps most importantly, the Commission has prohibited issuance of a certificate of occupancy until DDOT has approved a traffic routing plan for the lot, which shall include the impact of other proposed lots if required by DDOT. While ANC 6C is correct that some of the potential lots are located just south of the area containing I, 4<sup>th</sup>, and P Streets, S.W., the Commission is convinced these measures are sufficient to protect the area.

In response to the second issue, the Commission is unaware of any affirmative obligation to provide the ANC with affirmative evidence that the use of these squares for parking is supported by the recently adopted DC Comprehensive Plan. Nonetheless this Order contains references to other portions of the Comprehensive Plan that support the amendments. In addition, the Commission carefully tailored the text amendment to shelter adjacent neighborhoods from the impacts of the increase in density and influx of traffic associated with the Ballpark and related development. The Commission must balance the interests of Ballpark patrons against those of residents from adjacent neighborhoods.

In response to the third issue, because of the importance of involving the Nationals in the planning process, the Commission held an additional hearing on March 24<sup>th</sup> in order to have a Nationals’ representative and a DDOT representative address the concerns expressed by the ANC.

Regarding the fourth issue, the Commission has no authority to decide issues related to the streetscape, such as whether to build sidewalks and curbs.

At its regular public meeting of April 14, 2008, the Commission took proposed action to adopt the text amendment as advertised.

The proposed rulemaking was also referred to the National Capital Planning Commission (“NCPC”) under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated May 1, 2008, commented that the proposed text amendment would not adversely affect the identified federal interests subject to:

- Section 1603.3 of the Zoning Regulations is amended to include temporary surface parking lots as to maintain the 75 foot setback along the Anacostia Waterfront;
- The final order for the text amendment clarifies that the existence of the parking lots beyond the April 1, 2013 time limit is not subject to Board of Zoning Adjustment Special Exception review; and
- The Zoning Regulations require that the BZA assess any request for exception to the 3,775 parking space cap be accompanied by documentation from the relevant District of Columbia permitting agencies that the project design conforms to the environmental design standards adopted by the Anacostia Waterfront Corporation as required by the National Capital Revitalization Corporation and Anacostia Waterfront corporation Reorganization Act of 2008.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

### **Final Action**

At its properly noticed May 12, 2008 public meeting, the Commission took final action to adopt the proposed text amendments.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapters 1, 3, 7, 9, and 21 of the Zoning Regulations, Title 11 DCMR:

Title 11 (DCMR) is amended as follows:

- A. Chapter 6, MIXED USE (CR) DISTRICTS, § 601 Uses As A Matter of Right, is amended by adding the following new text (additions to the existing text are shown in **bold and underlined**):

601.1 (dd) Notwithstanding § 602.1, temporary surface parking lot accessory to the Ballpark shall be permitted on Squares **603, 605, 657, 660, 661, 662, 662E, 664, 665, 700, 701, 882**; and on **Square 658, Lot 7**; Square 767, Lots 44-47; Square 768, Lots 19-22; and Square 769, Lot 19 and those

portions of Lots 18 and 20 within the CR District; in accordance with § 2110. In the event that the cumulative parking limit established in § 2110.1 (a) is met, additional temporary surface parking spaces accessory to the Ballpark on Squares 603, 605, 657, 658, 660, 661, 662, 662E, 664, 665, 700, 701, 882; and on Square 767, Lots 44-47; Square 768, Lots 19-22; and Square 658, Lot 7; Square 769, Lot 19 and those portions of Lots 18 and 20 within the CR District, shall be permitted as a special exception if approved by the Board of Zoning Adjustment pursuant to § 2110.2.

- B. Chapter 9, WATERFRONT (W) DISTRICTS, § 901 Uses As A Matter of Right, is amended by adding the following new text (additions to the existing text are shown in bold and underlined):

901.1 (dd) Notwithstanding § 352.3, temporary surface parking lot accessory to the Ballpark shall be permitted on Squares 664E, 707, 708, 708E, 708S, or 744S, in accordance with § 2110. In the event that the cumulative parking limit established in § 2110.1 (a) is met, additional temporary surface parking spaces accessory to the Ballpark on Squares 664E, 707, 708, 708E, 708S, or 744S shall be permitted as a special exception in a W-2 District if approved by the Board of Zoning Adjustment pursuant to § 2110.2.

- C. Chapter 21, OFF STREET PARKING REQUIREMENTS, § 2110 Temporary Surface Parking Lots and Spaces for the Ballpark, is amended as follows (additions to the existing text are shown in bold and underlined):

1. § 2101.1 is amended by adding the following new text:

2110.1 Permitted Use - Notwithstanding §§ 602.1 and 902.1 and not subject to any otherwise applicable proximity requirement, a temporary surface parking lot accessory to the Ballpark shall be permitted as a temporary use on Squares 603, 605, 657, 658, 660, 661, 662, 662E, 664, 664E, 665, 700, 701, 707, 708, 708E, 708S, 744S, and 882; Square 658, Lot 7; and Square 767, Lots 44 – 47; Square 768, Lots 19 – 22; and Square 769, Lots 18 - 21 (“the subject squares”) in accordance with §§ 2110.3 through 2110.5 and the following provisions:

2. § 2110.5 is amended by adding the following new subsection:

(j) A minimum of 5% of parking spaces shall be reserved for a registered and recognized, publicly accessible car/ride-share program with a significant District user base and a mandate that is not commuter-oriented, such as GoLoco. These car/ride share spaces shall be provided in premium, visible, bannered locations



**and will be available, for a fee, exclusively for this use until the start of the event on that day.**

Vote of the Zoning Commission taken at its public meeting on April 14, 2008 to **APPROVE** the proposed rulemaking by a vote of 5-0-0 (Anthony J. Hood, Peter G. May, Gregory N. Jeffries, Curtis L. Etherly, Jr., and Michael G. Turnbull to approve.)

Vote of the Zoning Commission taken at its public meeting on May 12, 2008 to **ADOPT** the final rulemaking by a vote of 5-0-0 (Anthony J. Hood, Curtis L. Etherly, Jr., Gregory N. Jeffries, and Peter G. May to adopt; Michael G. Turnbull to adopt by absentee ballot).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the D.C. Register; that is, on     **JUL**    **4**    **2008**    .

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING**

**and**

**Z.C. ORDER NO. 07-08A-2**

**Z.C. Case No. 07-08A**

**(Text Amendment – Additional Temporary Ballpark Accessory Surface Parking Lots)**

**May 12, 2008**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.