

EDWARD J. RICH  
202-736-2728

October 11, 2006

Sharon Schellin  
Secretary to the Zoning Commission  
D C. Office of Zoning  
441 4th Street, N W  
2nd Floor  
Washington, D C. 20001

Re: Zoning Commission Case No 06-22 Application of District of Columbia Sports and Entertainment Commission for a Ballpark for Major League Sports and Entertainment and Associated Uses, Squares 702 Through 706 and Reservation 247; Draft Order

Dear Sharon

Enclosed please find the Applicant's draft order for consideration and use by the Zoning Commission in memorializing its July 6, 2006 decision in the above-captioned matter Please feel free to contact me if you have any questions or concerns

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L L P



Edward J Rich

Enclosure

cc Andy Litsky, ANC 6D  
Ellen McCarthy, Office of Planning  
James Joyce, General Counsel, Capitol Police Board  
Claude Bailey, General Counsel, DCSEC

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ZONING COMMISSION  
District of Columbia

CASE NO. 06-22

EXHIBIT NO. 42

ZONING COMMISSION  
District of Columbia

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ZONING COMMISSION**

**Zoning Commission Order No. \_\_\_\_\_**

**Case No. 06-22**

**(Construction of a Major League Baseball Ballpark – District of Columbia Sports and Entertainment Commission)**

**\_\_\_\_\_, 2006**

This Decision and Order arises out of an application by the District of Columbia Sports and Entertainment Commission (“DCSEC” or “Applicant”), pursuant to 11 D.C.M.R. §§ 1606 and 3101.1, for the construction and operation of a Major League Baseball stadium (the “Ballpark”) and ancillary uses in Squares 702 through 706 and Reservation 247 (the “Ballpark Site”) for use by the Washington Nationals Baseball Club and for entertainment and associated uses. The Applicant also sought relief from the requirements of 11 D.C.M.R. §§ 1606.7, 1606.14(d), 1606.14(e), and 1606.16 in order to construct the Ballpark, pursuant to 11 D.C.M.R. § 1606.22. As required by 11 D.C.M.R. § 3011.1, the Applicant included a written report of the Office of Planning certifying that the application was generally compliant with the standards of Section 1606 of the Zoning Regulations.

**HEARING DATE: June 26, 2006**

**DECISION DATE: July 6, 2006**

**SUMMARY ORDER**

The Commission provided proper and timely notice of the public hearing on this application by publication in the D.C. Register on May 19, 2006, and by mail to Advisory Neighborhood Commission (“ANC”) 6D and owners of property within 200 feet of the site.

ANC 6D was an automatic party in this proceeding. ANC 6D submitted a written statement in opposition to the application, primarily in response to the request by the Applicant for relief from the requirements of 11 D.C.M.R. § 1606.7 in order to construct a portion of the Ballpark-related parking in above-ground parking structures rather than underground. The Commission did not receive other requests for party status.

The Applicant has specific legislative authority to construct and lease the Ballpark that is the subject of the Application. The Ballpark Omnibus Financing and Revenue Act of 2004 (D.C. Law 15-320, 52 D.C.R. 1757) (“Ballpark Act”) specifically authorized the Applicant to develop, construct and lease the Ballpark on Squares 702, 703, 704, 705, and 706 and Reservation 247.

The Property consists of Squares 702, 703, 704, 705, and 706 and Reservation 247 and is already zoned for a ballpark use pursuant to Section 1606 of the Zoning Regulations. Section 1606 was added to the Capitol Gateway Overlay District regulations by Commission action in Z.C. Case No. 05-08, effective November 4, 2005 (50 D.C.R. 9874). The property is owned by the District of Columbia, with the exception of the approximately 2 acres of Reservation 247, the federally-

owned parcel currently controlled by the District through a transfer of jurisdiction from the federal government. The Ballpark Site has been consolidated through the closure of existing streets, alleys and sidewalks by Act 16-371, "Closing of Public Streets and Alleys in Squares 702, 703, 704, 705, and 706, and in U S Reservation 247, S O 05-6318, Emergency Act of 2006," which became effective on May 5, 2006. The total area of the Ballpark Site is approximately 852,907 square feet. The property is bounded by South Capitol Street on the west, N Street, S.E. on the north, First Street, S E on the east, and Potomac Avenue, S.E. on the south.

The Ballpark Site is zoned CG/CR, which, pursuant to 11 D.C.M.R. § 1606.5, permits a Ballpark<sup>1</sup> to have a height of 130 feet as a matter of right, inclusive of the "scoreboard, roof, cantilevered sunscreen, or parapet, with the exception of [mechanical penthouses, antennae and architectural embellishments]," utilizing South Capitol Street as the measuring street for determination of height.<sup>2</sup> Pursuant to 11 D.C.M.R. §§ 1606.4 and 1601.1, buildings within the Ballpark Site are allowed to be developed for non-residential purposes to a maximum of 60 FAR. If a residential component is included in non-Ballpark-related development, the Zoning Regulations permit a maximum FAR of 70, with a maximum height determined in accordance with the Height Act.

### **May 3, 2006 Application**

On May 3, 2006, the Applicant filed an application for the construction and operation of a ballpark, pursuant to 11 D.C.M.R. §§ 1606.18 through 1606.24 (the "Initial Application") and for relief, pursuant to 11 D.C.M.R. § 1606.22, from the [height and depth requirements for required retail uses, the above-grade parking requirements and the setback requirements along South Capitol Street]

In its Initial Application, the Applicant submitted (i) a base plan (the "Base Plan") for construction of the Ballpark, (ii) a first option to the Base Plan ("Option One"), (iii) a second option to the Base Plan ("Option Two"), and (iv) a second phase plan (the "Second Phase Plan")

The Applicant proposed to construct a Ballpark that would contain retail space along its exterior perimeter frontage as well as throughout the Ballpark, and that would occupy approximately 500,000 square feet within the central portion of the Ballpark Site. The Initial Application stated that certain program elements within the Ballpark would be oriented to allow for non-game-day use, including a restaurant, conference center, Washington Nationals ticket office, and the perimeter retail. In addition, two plaza areas were proposed to the north and south of the Ballpark, a south plaza containing a historical timeline element including milestone dates for Baseball in Washington, along with other noteworthy events in the history of the District. The

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<sup>1</sup> Defined by 11 D.C.M.R. § 1606.2 as "a stadium or arena, including accessory buildings or structures (including, but not limited to office and transportation facilities) that has as its primary purpose the hosting of professional athletic team events."

<sup>2</sup> Pursuant to An Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, D.C. Official Code §§ 6-601.01 to 6-601.09), as amended (the "Height Act")

north plaza would serve as the main pedestrian entry to the Ballpark for patrons traveling from the north from various Metrorail stations and would be flanked by restaurants and retail uses. The open end of the Ballpark is oriented towards the northeast, with a height of 110 feet. The application proposed a total gross floor area of approximately 1,209,874 square feet (exclusive of parking areas) and an FAR of 1.42. Finally, the Applicant proposed 1,225 Ballpark-related parking spaces located to the north and south of the Ballpark

The Base Plan, Option One and Option Two all provided for 114 parking spaces to be constructed underneath the south plaza of the Ballpark and for 1111 parking spaces to be constructed north of the N Place plaza portion of the Ballpark in two above-grade parking structures, for which the applicant requested relief under 11 D.C.M.R. § 1606.7. The Second Phase Plan also provided for the south plaza below-grade parking spaces, but anticipated Ballpark related development adjacent to the N Place plaza in lieu of the above-grade parking structures. The Base Plan, Option One and Option Two differed primarily with regard to the location, amount and depth of retail, service, arts and entertainment uses (“preferred uses”) fronting along the First Street, S E perimeter of the Ballpark and the configuration of the internal loading facilities for the Ballpark. Because the Base Plan did not provide for the minimum amount of perimeter preferred uses around the Ballpark, the Applicant requested, pursuant to 11 D C M R § 1606.15, maximum relief for the Base Plan from the Ballpark perimeter preferred uses requirement

The Applicant requested relief from 11 D.C.M.R. § 1606.7 so as to be able to construct a portion of the required parking in two above-ground structures instead of constructing the parking underground. The Applicant also requested, pursuant to 11 D.C.M.R. § 1606.22, (i) relief from the setback requirements of 11 D.C.M.R. § 1606.16 in order to accommodate the pedestrian bridge to be located at the northern end of the Ballpark along South Capitol Street, (ii) relief from the strict applicability of the height requirement for preferred uses set forth at 11 D.C.M.R. § 1606.14(d) for a portion of the space within the Ballpark perimeter allocated for preferred uses; and (iii) relief from the strict applicability of the average depth requirement for preferred uses set forth at 11 D C M R. § 1606.14(e)

Finally, the Applicant submitted evidence to demonstrate compliance with §§ 1606.19 & 1606.20, as required by § 1606.18.

### **May 25, 2006 Zoning Commission Meeting**

Pursuant to 11 D.C.M.R. § 1606.24, the Commission held a meeting on May 25, 2006 to offer preliminary comments on the Application. At that meeting, the Zoning Commission raised concerns about the following certain aspects of the Application and suggested that the DCSEC provide further clarification on the following:

- Best practices with regard to Ballpark design, including a better understanding of how urban ballparks work, including how parking is handled at such ballparks,
- Further rationale for the above-grade parking garages on the northern portion of the Ballpark Site;

- Off-site parking options;
- The Administration Building located on the Southwest corner of the Ballpark, including its impact on stadium visibility;
- Signage, especially the location and lettering heights of the naming rights sign on the Ballpark above the South Plaza and above the main scoreboard;
- The freestanding light fixtures in the outfield and impact on the neighborhood,
- Exact scoreboard design,
- The pedestrian ramp extension beyond the South Capitol Street setback line
- The design and function of the South Plaza
- Lack of retail around the Ballpark and the need for the requested relief;
- How the Ballpark will incorporate "green" elements;
- Overall traffic issues, including mitigation of traffic in the surrounding neighborhoods;
- The "Pedestrian Experience" on and around the Ballpark Site, and
- Analysis of significant views and connection to the Anacostia Waterfront.

#### **June 19, 2006 Report from Office of Planning**

The Office of Planning ("OP") filed a report with the Commission on June 19, 2006, and stated in its report on the Application that it was generally supportive of the proposal and that the Application generally furthered the goals and objectives of the Comprehensive Plan and the Capitol Gateway Overlay District. In addition, the OP determined that the Application was largely in conformity with §§ 1606 19 & 1606 20 of the Zoning Regulations. The OP was, however, unable to recommend that the Zoning Commission approve the Application because of the above grade parking structures as proposed in the application. OP was also concerned with the level of retail uses in the Ballpark provided for in Option One. The OP stated that it anticipated that alternatives to the parking would be provided by the Applicant prior to the public hearing on the Application and that it would be filing a Supplemental Report prior to the hearing.

#### **June 19, 2006 Report from the Department of Transportation**

The Department of Transportation ("DDOT") filed a report with the Commission on June 19, 2006, and expressed concerns that the Application did not contain sufficient information to determine whether the Applicant would meet the District's goals with regard to accessibility, mobility and urban design. The DDOT was particularly concerned that a comprehensive and detailed Transportation Operations and Parking Plan ("TOPP"), addressing such issues such as game day traffic operations, parking strategies, and multi-modal transportation improvements had not been provided by the Applicant, although the Applicant did provide in its Application a Transportation Management Plan and later submitted a preliminary TOPP. The Applicant and DDOT subsequently entered into a Memorandum of Agreement delineating the Applicant's commitment to devising and using its best efforts to obtain funding for improvements to Ballpark traffic operations and infrastructure, which Memorandum of Agreement was submitted to the Commission on June 30, 2006.

**June 23, 2006 Supplement to Application**

On June 23, 2006, the Applicant filed a supplemental plan for the Ballpark Site ("Supplemental Plan") to address comments received from members of the Commission at its meeting on May 25, 2006, and to provide plans for development on the northern portion of the Ballpark Site, the location of the above-grade parking garages in the Initial Application.

In the Initial Application, the Applicant requested relief from the requirements of 11 D.C.M.R. §1606.7 in order to construct a portion of the ballpark related parking in two above-ground parking structures to be located north of the Ballpark. In the Supplement, the Applicant requested Commission approval for a preferred alternative development in lieu of the above-grade parking garages on the northern portion of the Ballpark Site that would provide for residential, hotel and retail development wrapped around reconfigured above-grade parking for Ballpark related use and below-grade parking for the additional uses on that portion of the Ballpark Site. Because the Ballpark related parking would still be located above-grade, the Applicant continued to request approval, pursuant to 11 D.C.M.R. § 1606.07, for above-grade parking on the Ballpark Site. However, the Applicant noted that this preferred alternative was dependent on a number of critical reviews, approvals and events that would not occur until after consideration of this Application by the Commission, and therefore requested that the Commission also approve the above-grade parking structures for the northern portion of the Ballpark Site as shown on the Initial Application in the event that circumstances dictated that the proposed development would not be able to deliver the Ballpark related parking requirements within the timeframe required in the Lease with Baseball Expos, L.P.

The Supplemental Plan called for a preferred alternative of hotel, retail, and residential development on the portion of the Ballpark Site bounded by South Capitol Street to the west, N street to the north, 1<sup>st</sup> Street to the east and the Ballpark to the south. The development would consist of approximately 672 units of housing totaling approximately 725,000 square feet, of which approximately 63 units would be reserved for low and moderate income renters or purchasers, 180 hotel rooms totaling approximately 92,000 square feet, and space allocated to Ballpark program and preferred uses, primarily on the street level, with certain of the space reserved for local, small and disadvantaged businesses. The uses would consist of two levels of below grade structured parking, one story of at-grade retail, four stories of above grade parking faced with residential use, and eight stories of residential and hotel above the parking. Below grade, structured parking occupies the entire width of the northern portion of the Ballpark Site. Above grade, the mass of the building would be broken in two halves, or towers, by the north plaza serving as the ballpark entrance, which aligns with Half Street and provides on grade pedestrian access to Ballpark turnstiles. The total gross square footage of the development on the northern portion of the Ballpark Site would be 1,306,604 square feet, with an FAR of 1.53. The proposed development would contain approximately 700 additional parking spaces in two levels of below-grade parking for the residential, hotel and retail uses, exceeding the parking requirements for such uses as set forth in 11 D.C.M.R. § 2101.1. The required building setback of 15 feet on South Capitol Street would be met and the entire length of the mixed use buildings would be constructed on the setback line, with vertical setbacks along South Capitol Street starting at 78 feet above grade. There would be no curb cuts along the South Capitol Street perimeter of the development, consistent with the requirements of the Zoning Regulations. The

development would be connected to the Ballpark building through an above-grade conditioned pedestrian bridge from the east tower at the above-grade parking levels, making all development on the Ballpark Site one building

The Applicant requested that the Commission approve the perimeter preferred uses along the First Street façade as envisioned in Option One set forth in the Application and withdrew its request for relief from the requirements of 11 D C M.R. § 1606.15 and, accordingly, for approval of the Base Plan. The Applicant continued to request approval for Option Two, provided that funds were later identified by the Applicant in order to construct the expanded retail along the First Street perimeter of the Ballpark provided for in Option Two.

Finally, the Applicant modified the Application with regard to parking on the southern portion of the Ballpark Site to provide for 300 spaces instead of the originally requested 114 spaces and requested approval for a combination of underground and below-grade partially exposed parking on the South Plaza as an interim condition, with the understanding that the Applicant, another entity of the District or a private developer would replace the parking as part of a Second Phase plan for development south of the Ballpark on the Ballpark Site.

#### **Office of Planning June 26, 2006 and July 5, 2006 Supplemental Reports**

The OP, in its June 26, 2006 Supplemental Report, noted that the changes in the Applicant's Supplement were "substantial, and significantly change the form of development on the site and the degree to which the development conforms to the regulations and guidelines of the Capitol Gateway (CG) Overlay District and other planning efforts for the Ballpark area." OP found that the Supplement, with its development on the northern portion of the Ballpark Site, significantly enhanced the proposed development's conformity with the CG Overlay District objectives through the provision of new residential, retail, and hotel development. The OP also stated that this additional development on the northern portion of the Ballpark Site furthered the objectives of the Anacostia Waterfront Initiative and Near Southeast Plans. OP strongly supported the direction and intent of these changes. OP continued to support the Applicant's Option 1 for its additional retail along First Street and its internalization of Ballpark loading facilities. OP also continued to support the retail option set forth in Applicant's Option 2, provided that the remaining sidewalk width along First Street was shown to "accommodate pedestrians in a safe and comfortable manner." OP expressed concern with the change to parking on the South Plaza, because it would remove the lawn panel from the South Plaza and provide partially exposed parking which would be visible from the Frederick Douglass Bridge

In a supplemental report dated July 5, 2006, OP commented on the supplemental material filed by the Applicant on June 30, 2006 in response to concerns and requests for clarification raised by the Commission at the conclusion of the June 26, 2006 hearing. In its supplemental report, the OP again reiterated its lack of support for the exposed parking on the South Plaza area of the Ballpark Site. OP supported the MOU between the DCSEC and the DDOT, particularly as it would ensure that the Ballpark Site would better address District planning, streetscape, and environmental initiatives. OP stated that concerns regarding the relationship between the East Tower of the development north of the Ballpark and the Ballpark itself had been adequately

addressed in the Applicant's subsequent submission. Finally, OP stated its support for the affordable housing provisions of the new development and the environmental measures described by the Applicant to be implemented at the Ballpark.

**Public Hearing**

The Commission held a public hearing on this case on June 26, 2006. Commission members present were Vice Chairperson Anthony J. Hood and Commissioners Gregory N. Jeffries, John G. Parsons and Michael G. Turnbull.

The Mayor of the District of Columbia, the Honorable Anthony A. Williams, testified in favor of the Ballpark and the related development on the northern portion of the Ballpark Site. Councilmember Sharon Ambrose testified in favor of the Ballpark and the related development. Councilmember Marion Barry also presented testimony concerning the Ballpark.

According to Mayor Williams, the Ballpark "will be the engine that will speed development throughout the surrounding area which will become the ballpark district. It will be the draw for an entire mix-use community with offices, housing, new retail and entertainment." The Mayor stated that while the District's preference was to have underground parking for the Ballpark, because of budgetary and time constraints he fully supported the preferred development alternative presented by the Applicant as the best way of balancing the parking requirement of the regulations with the needs to have the parking "up and running on opening day." The Mayor also requested that the Commission approve the structured parking outlined in Option \_\_\_ of the Initial Application as a fallback, in the event that the compromise development on the northern portion of the Ballpark Site did not move forward.

Councilmember Ambrose stated her support for the Ballpark and the preferred development alternative requested by the Applicant, stating that "parking has been a real struggle for everybody and I would just say along with the Mayor that I think we're at a position right now where we have to say we can't let the perfect be the enemy of the good and we really need to move forward with the best we can possibly put together and I think the compromise plan is that."

Councilmember Barry did not present a preference for above-grade or below grade parking, but expressed his concern about the need for more information about the project construction and the ability to finance the parking within the financial limitations placed on the project by the Council.

The DCSEC was represented by Mark H. Tuohey, III, Chairman of the Board; William N. Hall, Chairman of the Baseball Committee of the DCSEC; and Allen Y. Lew, Chief Executive Officer of the DCSEC. Mr. Tuohey testified that the Ballpark (including the parking and the northern development as integral components) would be a catalyst for achieving the District's vision for the Southeast waterfront. However, Mr. Tuohey also reiterated the need to have a fallback plan in order to ensure that the Ballpark and required parking were delivered by the beginning of the 2008 season. Mr. Hall provided background on the Ballpark program agreed upon by the DCSEC and Major League Baseball, particularly with regard to the issue of on-site parking for



the Ballpark, and stated the necessity for approval of both parking options presented by the DSCEC as allowing for the District to meet “the development objective of the city as well as the important objective of providing the parking on time and on budget.” Mr. Lew spoke about the planning that resulted in the design before the Commission and architects, environmental planners and traffic consultants that made up the team working on the Ballpark project

The Applicant continued its case presentation with Joe Spear, the lead architect from HOK Sports, who provided a PowerPoint presentation to describe the site, the underlying principals and requirements that brought about the design of the Ballpark, the location of the Ballpark on the Ballpark Site, and the orientation of the Ballpark to the areas surrounding the Ballpark Site. Mr. Spear testified that it is not unusual for there to be above-grade parking structures adjacent to most newly-constructed urban ballparks

Alan Harwood of EDAW, the Applicant’s environmental consulting firm, presented testimony concerning the impact of noise and light from the Ballpark on the adjacent neighborhood, and Lou Slade of Gorove/Slade, the Applicant’s traffic consultant, provided testimony on proposed traffic mitigation and traffic flow measures designed to encourage use of alternative forms of transportation and measures designed to address traffic flow and pedestrian, parking, and vehicular conflicts. Susan Klumpp of HOK provided a Power Point presentation on environmental measures being implemented to address energy consumption, re-use of materials, and effective storm water management for the Ballpark Site. Ms Klumpp also spoke about the voluntary environmental clean-up and remediation the Applicant is currently undertaking on the Ballpark Site. Duncan Kirk of HOK also provided a Power Point presentation on the development on the northern portion of the Ballpark Site.

The Director of the Office of Planning, Ellen McCarthy, stated her support for the Ballpark with the preferred development alternative on the northern portion of the Ballpark Site, reasoning that it supports the purpose of speeding up revitalization of the Anacostia Waterfront, something not accomplished by structured parking with retail on the ground level. Joel Lawson, also testifying on behalf of the OP, stated OP’s additional support for the retail opportunities provided along First Street either in Option One or Option Two of the Application.

Ken Laden, on behalf of DDOT, spoke about the discussions with the Applicant about a Memorandum of Agreement that would outline transportation policies and certain capital budget recommendations to improve transportation connections to the new Ballpark. A copy of that MOU was presented to the Commission by the Applicant on June 30, 2006

Ellen Saum of the National Capitol Planning Commission, and Adrian Washington and Uwe Brandes of the Anacostia Waterfront Corporation also testified in favor of the application.

Andy Litsky, Chairman of Advisory Neighborhood Commission 6D, testified in opposition to the structured parking on the northern portion of the Ballpark Site. Mr. Litsky stated that the ANC believes that as much space as possible on the Ballpark Site should be devoted to providing positive community amenities, which could not be accomplished by using the northern portion of the site for above-ground parking.

Rob Tilson, on behalf of the Potomac Chapter of the American Society of Landscape Architects, testified in opposition to the above-grade parking plan and in favor of the preferred alternative development on the northern portion of the Ballpark Site, stating that the plan preserves the mixed-use principles that will tie the ballpark together with the neighborhood and help create a lively environment in a baseball season and in every season.”

Carolyn Mitchell, the District 3 representative for the Southwest Neighborhood Assembly, testified in favor of underground parking as a means of ensuring “better development opportunities on all sides of the stadium, housing, stores, restaurants and businesses that will serve community residents and visitors all year around ”

Richard Westbrook testified in opposition to the location of the Ballpark in the location chosen by the District.

Brian Vanway, the Anacostia River Keeper at the Earth Conservation Corps, urged the Commission to reject the Application until the Applicant provided further details to demonstrate how the Ballpark would incorporate best practices environmental design and minimize impact on the Anacostia River Doug Sigley of the Chesapeake Bay Foundation associated himself with Mr. Vanway’s remarks

Finally, Mary Williams, Commissioner for ANC 6D03, testified in opposition to the Ballpark due to increased traffic on South Capitol Street and the streets west of the Ballpark Site, and Ahmed Assalam, Commissioner for ANC 6D06, expressed concern with the large number of ballpark patrons and their impact on neighborhood safety and the ability of neighborhood residents to move about freely on game days.

At the conclusion of the hearing, the Commission requested that the Applicant provide additional information with regard to certain aspects of the Application, as amended by the June 23, 2006 submission and as presented at the hearing The additional information was provided by the Applicant to the Commission and served on all parties to the application on June 30, 2006.

#### **FINDINGS OF FACT**

1. Based upon the evidence in the record before the Commission and the testimony given at the June 26, 2006 public hearing, the Commission finds that DCSEC has met its burden of demonstrating, with the exceptions noted below, compliance with 11 D.C.M.R. §1606.1 *et seq* , particularly §§ 1606.19 and 1606.20 (as required by §§ 1606.18) for the Ballpark, including the Ballpark-related development, to be constructed on the northern portion of the Ballpark Site.
2. The Commission further finds that the Applicant has met its burden of proof in seeking Commission approval for relief from the requirements of 11 D.C.M.R. §1606.7 in order to construct a preferred alternative development in lieu of the originally requested above-grade parking garages on the northern portion of the Ballpark Site that would provide for residential,

hotel and retail development wrapped around reconfigured above-grade parking for Ballpark related use. The Commission finds that the construction of this development on the northern portion of the Ballpark Site is consistent with the uses of land sought by the establishment of the Capitol Gateway Overlay District and by the District in the redevelopment of the Ballpark Site and the area around the Ballpark Site.

3. The Commission finds that the DCSEC has not met its burden of proof in seeking, as a fallback position in the event that the proposed development would not be able to deliver the Ballpark related parking requirements within the timeframe required in the Lease with Baseball Expos, L P, relief from the requirements of 11 D C M R. §1606.7 in order to construct a portion of the ballpark related parking in two above-ground parking structures to be located north of the as shown in the originally filed Application. The Commission finds that the construction of two above-grade parking garages is contrary to the uses of land sought by the establishment of the Capitol Gateway Overlay District and by the District in the redevelopment of the Ballpark Site and the area around the Ballpark Site.

4. The Commission finds that the DCSEC has not met its burden of proof in seeking approval for the requested modification of the South Plaza of the Ballpark from the originally filed application in order to accommodate below-grade surface parking rather than underground parking completely covered by a lawn panel. The Commission finds that the requested modification is contrary to efforts to make an exciting Anacostia Waterfront area and a first-class development adjacent to the waterfront. The Commission finds that the South Plaza area of the Ballpark as originally proposed in the May 3rd Application more appropriately meets the requirements for the design of the Ballpark set forth in the Zoning Regulations.

5. The Commission finds that the Applicant has met its burden of showing that, due to practical difficulties relating to the topography of the Ballpark Site, the Commission should grant relief from the strict applicability of the 14' floor-to-ceiling height requirement for preferred uses set forth at 11 D.C M R. § 1606 14(d) for a portion of the preferred use space within the Ballpark perimeter and the Ballpark related development. The Commission finds that the mixture of heights ranging from 11' to 23' is appropriate.

6. The Commission finds that, because it requires the construction of the preferred use space along the First Street elevation of the Ballpark as envisioned in Option Two, which provides for preferred use space with an average depth from the exterior façade in towards the center of the Ballpark of 50' minimum, there is no need to grant the relief sought by the Applicant from the strict applicability of the average depth requirement for Ballpark perimeter preferred uses set forth at 11 D C M R. § 1606 14(e).

7. The Commission finds that the DCSEC has not met its burden of proof in seeking approval for relief from the setback requirements of 11 D C M.R. § 1606.16 in order to accommodate the pedestrian bridge to be located at the northern end of the Ballpark along South Capitol Street. The Commission finds that the proposed pedestrian bridge interferes with the emphasis on South Capitol Street as a monumental corridor and has the potential to interfere with the safety of Ballpark patrons and pedestrians traveling on South Capitol Street.

8. The Commission finds that, as for exterior signage on the Ballpark, there should be two principal external naming rights signs, one sign being mounted to approximately 62 feet above the entrance on Potomac Avenue with lettering no more than 6 feet high, and the other sign located on N Street entrance just above the turnstile canopy approximately 20 feet above the North Plaza, and that any further naming rights signs that the Applicant chooses to erect should be subject to Commission approval

9. The Commission finds that, while the Applicant has shown, as required by §§ 1606.19, that it intends to implement measures designed to minimize parking and traffic conflicts and vehicular and pedestrian conflicts on the neighborhood and the United States Capitol and provide for safe and convenient movement to and through the Ballpark Site so as to minimize potential impacts on both the neighborhood and the United States Capitol, the Commission notes that the Applicant and DDOT have entered into a Memorandum of Understanding, which will include a review of parking, loading and access onto the Ballpark Site in an effort to ensure that all parking, loading and pedestrian and vehicular access is provided in a safe and convenient way. The Commission encourages DDOT and the Applicant to work together and with the Office of Planning to resolve these issues and create a comprehensive transportation management program

10. The Commission, specifically with regard to 11 D.C.M.R. § 1606.20(e), finds that the Applicant has adequately demonstrated that the Ballpark will promote the use of best practice environmental design, including stormwater management and recycling practices, and encourages the Applicant to include green roofs on the concourse restaurant, the portion of the Ballpark adjacent to the scoreboard and the preferred use space along First Street/Potomac Avenue.

#### **CONCLUSIONS OF LAW**

1. Pursuant to Section 1606 of the Zoning Regulations (11 D.C.M.R. §§ 1606.1 *et seq.*), the Commission has authority to review and approve the construction and operation of a Major League Baseball stadium (the "Ballpark") and ancillary uses in Squares 702 through 706 and Reservation 247 (the "Ballpark Site"), provided that the Ballpark meets the specific requirements contained in Section 1606. With the exceptions noted below, for which the applicant requested relief as provided for in Section 1606, or for which the Applicant requested variances from the required provisions of Section 1606, the Commission concludes that the Applicant has met its burden of proof that the Ballpark, including the Ballpark-related development on the northern portion of the Ballpark Site, meets the specific requirements of Section 1606 and specifically complies with the requirements of §§ 1606.19 and 1606.20.

2. The Commission concludes that the Applicant has met its burden of proof in seeking Commission approval for relief from the requirements of 11 D.C.M.R. §1606.7 in order to construct a preferred alternative development in lieu of the above-grade parking garages requested in the Initial Application on the northern portion of the Ballpark Site that would provide for residential, hotel and retail development wrapped around reconfigured above-grade parking for Ballpark related use

3 The Commission concludes that the Applicant has met its burden of proof in seeking Commission approval for relief from the strict applicability of the 14' floor-to-ceiling height requirement for preferred uses set forth at 11 D.C.M.R. § 1606.14(d) for a portion of the preferred use space within the Ballpark perimeter and the Ballpark related development

4 The Commission concludes that the Applicant has met its burden of proof of showing that the proposed Ballpark and Ballpark-related development will minimize potential impacts to the neighborhood and the United States Capitol in the areas set forth in 11 D.C.M.R. § 1606.19.

5. The Commission concludes that the Applicant has met its burden of proof of showing that the proposed Ballpark and Ballpark-related development will meet the goals and objectives set forth in 11 D.C.M.R. § 1606.20.

6 Approval of this Application is not inconsistent with the Comprehensive Plan.

7. The Approval of this Application will promote the orderly development of the Ballpark Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and the Zoning Map of the District of Columbia.

8. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D C Law 8-163, D C Official Code § 6-623.04(2001)) to give great weight to Office of Planning recommendations. The Commission carefully considered the OP reports and finds its recommendation to grant the Application persuasive.

9 Under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D C Law 13-135, D.C Official Code § 1-309 10(d)(3)(a)), the Commission must give great weight to the issues and concerns raised in the written report of the affected Commission. The Commission concludes that it has accorded ANC 6D the great weight to which it is entitled

10. The Application is subject to compliance with D.C. D.C Human Rights Act of 1977, as amended (D.C. Law 2-38, D C Official Code § 2-1401 01 et seq.) ("Human Rights Act").

## **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia orders **APPROVAL** of the Application for the construction and operation of a Major League Baseball stadium (the "Ballpark") and ancillary uses in Squares 702 through 706 and Reservation 247 This approval is subject to the following conditions:

1 The Ballpark and Ballpark-related development shall be developed in accordance with the plans prepared by the architects for the Applicant and submitted to the Commission on May 3, 2006, June 23, 2006, and June 30, 2006, as modified and approved by the Commission as set

forth herein, including the development of the space for preferred uses along the First Street, S.E. perimeter of the Ballpark in accordance with Option Two

2. The Applicant is required to comply fully with the provisions of the Human Rights Act, and this Order is conditioned upon full compliance with those provisions. In accordance with the Human Rights Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Human Rights Act. In addition, harassment based on any of the above protected categories is also prohibited by the Human Rights Act. Discrimination in violation of the Human Rights Act shall not be tolerated. Violators shall be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order

On July 6, 2006, the Commission voted to **APPROVE** the Application by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, John G. Parsons and Michael G. Turnbull to approve; Carol J. Mitten, not present, not voting)

The Order was adopted by the Zoning Commission at its public meeting on \_\_\_\_\_, 2006 by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, John G. Parsons and Michael G. Turnbull to approve; Carol J. Mitten, not present, not voting)

In accordance with the provisions of 11 D C M R § 3028, this Order shall become final and effective upon publication in the *D.C. Register*, that is on \_\_\_\_\_.

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**ANTHONY J. HOOD**  
**VICE CHAIRMAN**  
**ZONING COMMISSION**

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**JERRILY R. KRESS, FAIA**  
**DIRECTOR**  
**OFFICE OF ZONING**