

February 8, 2007

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Zoning Commission of the District of Columbia
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2007 FEB - 8 PM 3:42

Re: Response to the National Capital Planning Commission's Letter
Filed on February 5, 2007
Z.C. Case No. 06-46

Dear Members of the Zoning Commission:

This letter is submitted on behalf of MR N Street Southeast LLC and MR Ballpark 5 LLC (the "Applicants") regarding the letter filed by the staff of the National Capital Planning Commission ("NCPC") on February 5, 2007 for Zoning Commission Case No. 06-46 ("Z.C. Case No. 06-46") (Attachment A).

Contrary to the inference of the NCPC staff comments, Z.C. Case No. 06-46 is not a matter to be referred for NCPC comment and is, therefore, properly on the February 12 Zoning Commission agenda for decision. In summary, we note the following:

- (1) NCPC is not an agency receiving referrals for approval of a new development pursuant to §1604 of the Zoning Regulations and, the staff letter in any event, states: "We have reviewed the project submission and note that it does not appear to adversely affect any Federal interests . . .";
- (2) the Office of Planning ("OP"), as evidenced in its participation at the public hearing and its post-hearing submission, supports approval of the application; and
- (3) the Applicant has made no filing to close a portion of Half Street, S.E. or alter its existing platted right-of-way.

Based on these facts, the case is ready for disposition by the Zoning Commission on February 12, 2007.

ZONING COMMISSION
District of Columbia

CASE NO. 06-46

EXHIBIT NO. 37

ZONING COMMISSION
District of Columbia
CASE NO.06-46
EXHIBIT NO.37

I. Review and Comment by the National Capital Planning Commission Is Not Required for Approval of a New Development Pursuant to § 1604.

Pursuant to Chapter 16 of the Zoning Regulations, NCPC is not an agency to which the Zoning Commission refers applications for review and approval of a new development pursuant to the Capitol Gateway (CG) Overlay District provisions set forth in §1604.

NCPC, pursuant to the provisions of Section 3012.1, receives referrals for property reviewed under Section 1603(CG/W-2). See Section 3012.1, Attachment B.

Z.C. Case No. 06-46 concerns property fronting on M Street, S.E., located in the CG/CR District, which is the reason NCPC was not included in the agency referral process. NCPC staff implies, in its February 5th letter, that the Zoning Commission was required to refer Z.C. Case No. 06-46 to NCPC for review and comment. There was no omission by the Zoning Commission relating to any referral to NCPC for comment.

Furthermore, as quoted above, staff comments state that Applicant's submission does not appear to adversely affect any Federal interest.

II. The Applicant Has Filed the Materials in Response to Inquiries from the Zoning Commission and the Office of Planning.

In its January 3, 2007 report, OP recommended approval of Z.C. Case No. 06-46 subject to the receipt of additional information. The Applicants, on January 11, 2007, provided OP with the additional information it requested and the Zoning Commission held its public hearing for Z.C. Case No. 06-46 on January 11, 2007. On January 11, 2007, OP, based on the Applicants' presentation at the public hearing, again recommended approval of the application subject to clarification on certain components of the proposed development. The Applicant, in its post-hearing filing dated January 25, 2007, submitted supplemental information in response to the Zoning Commission's January 11th request. As the Commission will recall, the Applicant, at the public hearing, responded to each of the conditions recommended by DDOT.

Furthermore, the Office of Planning, in its Post-Hearing Report, dated February 7, 2007, has recommended approval of the application. A copy of the OP report is Attachment C.

III. The Applicant Has Not Requested a Street Closing.

In its letter, NCPC staff apparently is of the misunderstanding that Applicant has applied to close the street. No such application has been filed.

Policies 3, 8, 11 and 12 as cited in the staff letter are not affected by Applicant's proposal, those policies apply to proposals for the Federal government. In any event, they do not discuss such issues as curbs and gutters. The L'Efant Plan right-of-way is unaffected.

It was testified at the public hearing that certain street segments will likely be closed to vehicular traffic on game days such as N Street, S.E. just north of the stadium and Half Street, S.E. between N and M Streets, S.E. These temporary closures to vehicular traffic do not in any way affect the physical right of way. This is no different than the temporary street closings around the Verizon Center during games and other events.

IV. Conclusion.

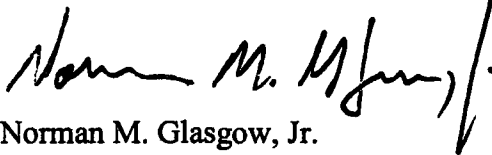
For the reasons stated above, Z.C. Case No. 06-46 is ready for decision as a part of the Zoning Commission's February 12, 2007 agenda.

As was testified at the public hearing, the ability to timely expand the capacity of the Metro Station closest to the Baseball Stadium is dependent upon the Commission being in a position to decide the application at this time.

Thank you for your attention on this matter.

Sincerely,

HOLLAND & KNIGHT LLP



Norman M. Glasgow, Jr.

cc: Jennifer Steingasser
Joel Lawson
Matt Jesick